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SPEECH

of

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One of the most striking phenomena of the American political system is the story of reform by way of scandal. We as a people have no genius for preventive justice. We stir to activity only when some shocking revelation convinces us that we have been duped. But by the time we act the damage has been done--the horse has been stolen. Some time ago the late Judge Pound of the Court of Appeals urged the formation of a Ministry of Justice, a group who would be constantly on duty to criticize our legal institutions, to plan, to prevent and so to make it needless to punish. But the attempts at this and similar methods of reform have not been encouraging. As a people, that sort of a thing does not interest us; it is flat, drab, colorless. We would prefer, I'm afraid, the investigation and the midget on Morgan's lap. Politically, it is the same way. We are much more stirred by the battlecry, "Turn the rascals out" than by any other slogan. It is a phase of our national temperament that, to say the least, is not very flattering.

Our Commission and the laws we administer are the products of investigation. As you know, the Commission is acting for the Congress in making further studies as a prelude to legislation. In particular, under the direction of Mr. David Schenker, who was Judge Pecora's able assistant, and under the supervision of Judge Healy, the Commission is looking into the field of investment trust to get a case history, make a diagnosis and suggest a prognosis and, if necessary, to recommend treatment. I should like to discuss with you briefly what are the striking features of this problem and how it came to be the object of Congressional inquiry. It merits attention and illustrates what I mean in speaking of the American phenomenon--of waiting for scandal.

It is familiar history that the investment trust in America is an institution borrowed from England, where it has served a most useful purpose in the diversification of risk, for even a small investor. The record of investment trusts in England has been long and honorable. The institution had a tradition which implied fairness to all shareholder relations - a tradition which condemned a management which would use the trust for selfish purposes of any kind. Largely on the faith of the British record, which you may be sure was blatantly "ballyhooed" by the American high pressure gentry, investment trusts became immensely popular in this country after the war, particularly in the late twenties.

Unfortunately the American entrepreneurs had no desire to live up to the high standard of the English companies or, for that matter, to recognize the fiduciary character of their undertaking implied in the word "trust". Many of the sponsors of these enterprises were nothing but large scale market operators looking solely to capital appreciation and unmindful of investment return as a guide. The unhappy part played by these corporations in the speculative mania of the last decade has been the subject of many articles, and is very colorfully set down by John T. Flynn in his book on "Investment Trusts". He has also pointed out the social side of the problem.

"Measures should be taken to prevent the control of the investment trust from falling into the hands of the so-called insiders. Whatever other ingenious devices the bankers and promoters can invent

for drawing into great controllable pools the funds of the small investor, they ought not to be able to lay their hands upon the kind of money which seeks refuge in an investment trust. It is, in fact, a haven, a shelter for the perplexed and defenseless dollar, seeking sanctuary from the pursuit of the hungry pack which hunts it ceaselessly over the moors of finance. It should be regarded as the shelter of the money of the man who is hearkening to the incessant ballyhoo of the thrift preacher who tells him he must save his money against the coming on of age and industrial obsolescence. Unless we are to throw out the whole system on the scrap heap we cannot put this consideration down as an unimportant one. The quickened pace of life in this age of the machine has created for society an old age problem which cannot be ignored. I do not speak of the old age problem of the thriftless man, of the inadequate man. I speak of the problem of the industrious man who conforms to the soundest and most cherished principles of the present system - the man who works continuously and saves his money. What good will his saved money do him unless there is some means of investing it in safety? Unless we are prepared to insist on the impossible and preposterous proposition that every man should know how to invest his money, then we have got to recognize that here is a public interest worth protecting."

When an investment trust is formed, there is no new value created, nor for that matter is it intended to create wealth thereby, directly or indirectly. Its principal appeal can only be the argument of diversification, the claim that as in all forms of insurance the risk of loss is reduced by the variety of the underlying properties. The capitalization of an investment trust is extraordinarily like bank credit but unfortunately there are theoretically no limits to the amount that can be created. There is of course a limitation set by the sales resistance of the public, which, since the investigation by Mr. Pecora, has reached an all-time high.

It is strange to contemplate the incontrovertible fact that no specific regulation has been directed to these entities so much like banks. There are in reality compelling arguments for supervising the activities of these so-called trusts. After all, a bank has a deposit liability, which is an ever-present sword of Damocles. Although most states give the banks a ninety-day breathing spell, you and I know what happens to a bank which invokes this privileged stay. These trusts, on the other hand, have no deposit liabilities. Frequently they have no creditors at all, only shareholders who believe they are preferred. Thus the restraint of imminent claims is not present. There is, of course, some danger in a stockholders' bill. But that is at best a difficult procedure. When the shares are widely held, the management, if unscrupulous, has little to fear from its stockholders. The resort to the courts is a cumbersome, costly, and long drawn out process. As we all know, a lawyer who acts in the best of faith in behalf of minority interests runs the risk of being called a "blackmailer". If he has a good case, word goes about and interveners spring up magically to lend a hand and share the reward. In my experience, the judicial supervision does not work well. I recall one case tried before me where the management of a bank had on its hands a frozen asset in the form of a note of a wholly-owned subsidiary. A new company was formed, and the public subscribed most of the money. One of the first assets which the new company

acquired was this note which the bank endorsed without recourse. At the trial on the issue of liability, counsel for the management contended that this company was a trading corporation and consequently not subject to the higher standard of honesty and care which applied to fiduciaries. On the issue of damages, the same counsel argued that it was proper for the management to pay dividends, even though the capital had been impaired because it was a trust, and a trustee could pay income earned, even though the corpus of the trust had suffered a loss. This was like changing the system in the middle of a bridge game.

Even if there were no history of abuses, the idea of regulating these enterprises ought to have occurred to the legislative mind or to the members of a ministry of justice anxious for preventive measures by surrounding the occasion of sin with legal restraints. But there were abuses, staggering in the sums of money lost and in the betrayal of trust revealed. The investigation by the Senate Committee disclosed how through the medium of the investment trust the promoters secured control over vast amounts of the public's money. One banking house, by an investment of five million, through the device of pyramiding came to control ninety millions of dollars. This is a kindred of the holding company evil of separation of ownership and control so clearly portrayed by Berle and Means. In fact, it is no accident that in Section 30 of the Public Utility Holding Company Act of 1935 it is provided:

"...The Commission is authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer. The Commission is authorized and directed to make a study of the functions and activities of investment trusts and investment companies, the corporate structures, and investment policies of such trusts and companies, the influence exerted by such trusts and companies upon companies in which they are interested, and the influence exerted by interests affiliated with the management of such trusts and companies upon their investment policies, and to report the results of its study and its recommendations to the Congress on or before January 4, 1937".

They are both phases of the larger problem of the extent to which the giant corporation is socially desirable. At the present rate we are having industrial fascism - not industrial democracy. It is no answer to say that we have widespread ownership. The difficulty is that ownership no longer is synonymous with control. Control alone, i.e., power, without moral responsibility is social dynamite.

In the field of investment trusts we saw our old friend - human greed. Through calls, options and management fees the entrepreneurs too richly rewarded themselves. The most dastardly practice was the "unloading" scheme that was so prevalent. It is unfortunate that as a people we do not react violently against a conflict of interest in financial transactions. There is where the law can be intelligent and realistic. In the detection of wrongdoing or in the speedy imposition of sanctions, civil and criminal, there is a field for legal action. These, to be sure, are highly desirable. But the wise thing is to outlaw the very undertaking of conflicting positions by any one who is custodian of the public's funds. Men are human, and temptation often conquers. During the course of the Senate hearing, Mr. Dillon, of Dillon, Read & Company, in answer to the criticism that his share of the profits had been large and out of all proportion to the share received by the public, stated in effect that he could have taken more. Thereupon Senator Adams of Colorado said, "Do you remember that Lord Clive said? *'When I consider my opportunities, I marvel at my moderation'*." The banking act of 1933 took into account this game of unloading when it abolished banking affiliates. While the statutes we enact cannot hope to achieve moral regeneration of men in whom the jungle instinct is deeply rooted, the law can accomplish much through the requirement of publicity and the outlawing of obvious conflicts of interests. We are, by the uncontradicted record, now convinced that it is just a pious but empty pose when a man claims that he can be Dr. Jekyll as a director, guarding the interests of security holders; and Mr. Hyde when his firm sells or purchases from that same company.

The inquiry to be conducted by our Commission is very timely because it is expected that when the Holding Company Act has been upheld by the Supreme Court, there will be many companies which will resort to the investment trust device so as to retain their investment by yielding up control. In view of the recent developments whereby many of the large investment trusts have become much larger, it is very important that the government be fully informed on all the facts. This time we should go in for prevention. One particular point on which light will be shed is the actual or probable effect on the stock market of heavy trading by these companies. As you know, -"pool operations" were notorious in the way in which they facilitated manipulation. Individuals desiring an artificial market had to conspire because the resources of one man were inadequate for the task. The tremendous liquid wealth of some of the investment trusts gives them the ability at least, if not the design, of the outlawed pools.

In the report of the Senate Committee on Banking and Currency, there is recognition that the Securities Act of 1933 has given the public some protection by requiring full disclosure of the pertinent facts relating to the organization of these investment trusts. It was felt that the conduct and management of these trusts were properly the subject of some form of regulation to make difficult a recurrence of the notorious abuses which cried aloud a demand for governmental control. I am sure that out of the study which the Commission is making will come a report which will be intelligent, impartial, and realistic in its analysis of the problems and in its recommendations for legislation.

Another and notorious instance of how we lock the door too late has been the corporate reorganization procedure of this country. For years and years we have permitted a racket to flourish whereby fraud and impositions of all kinds were practiced upon security holders. It is seldom realized that in legal theory the misconduct arises out of the creation of the status of principal and agent. After all, that is what is behind a deposit agreement. Generations of lawyers have made this power of attorney which is involved in the deposit of a security with a committee, a document of tremendous length and complexity. Few if any of the provisions are for the advancement of the security holders' interest. Most of the space is given to enlarging the powers, restricting the liability, and extending the immunity of the members of the committee. There is a certain comedy in the term "protective". It is not difficult to see who is being protected. Perhaps the title should be "Protection Committee". The anomaly of this relationship is that the agent fixes the terms of his employment, and the principal is forced to like it or lump it.

Pursuant to a request of the Congress, the Securities and Exchange Commission has been conducting for over a year a study of protective committees and their functioning. Day after day almost from the beginning of the study, the Commission has been holding public hearings exposing the weaknesses of our reorganization system and the venality of the men who run it. It matters not whether it be the securities of a railroad, of an industrial, of a foreign corporation, or of a foreign government; the revelations were startling to those of us who put our trust in the leaders in the world of finance.

The report of the Commission and the recommendations for legislation, I believe, will be one of the most important contributions to the government in years. I am thoroughly convinced that from the point of view of technical skill and clarity of presentation this report will be outstanding.

One of the commonest phenomena in the American reorganization picture is the trading by members of the committee in the securities which they purport to represent, as well as in the other securities of the particular corporation in receivership. This is but an extension of the practice of insiders' trading which was outlawed by Section 16 of the Securities Exchange Act of 1934.

Incidentally, there is some proof that this section of the law is attaining its objective. Prior to the Securities Exchange Act of 1934 it was a sound axiom of security trading to say, "Sell them when the good news comes out". This was so because very often directors, officers and large stockholders having prior access to news which tended to be "bullish" would accumulate stocks in advance of public announcement, and then, as the innocents came into the market on the report of the good news, the insiders would unload. The converse, of course, would happen in the event that the information was of a deflationary nature.

By Section 16 of the Act the insiders must file with the Commission and with the exchanges reports of their purchases and sales monthly. Furthermore, they must account to the corporation for profits which they make out of a purchase and sale or a sale and purchase which occurs within a period of six months.

One of the best-informed market men in New York called my attention to the fact that of late the market rises promptly on the announcement of good news, as, for example, the declaration of an extra dividend. This is of course a normal reaction, and would have happened before but for the trading activities of insiders. In the opinion of this expert, the Securities Exchange Act is responsible for the change.

It is to be hoped that the principle of Section 16 will be extended to transactions by members of protective committees. Some of them would not be deterred by publicity, but in most cases disclosure would be of great value.

The members of a protective committee were frequently recipients of important news in their capacity as agent for the security holders, and the moral standards of this group were such that to many of them profits on such inside information raised no question of ethics. In all analogous circumstances the law would have imposed a duty to account on the basis of a violation of fiduciary obligation. Strangely enough, there was no case which applied this ancient principle of equity until very recently in the Paramount Reorganization here in New York. All of us will remember *that* case because the attorneys for the trustees had their fees cut a half million dollars - not to a half of a million, *but less a half of a million, which is in itself a claim to fame.* One of the significant features of that case was the denial by Judge Cox of any compensation whatsoever to members of the Protective Committee who had been engaged in trading in the securities which they purported to represent. The extension of the concept of fiduciary obligations in this field has been retarded by the fact that our best people committed the acts we now regard as improper. Frequently under our present system morals are determined by what actually prevails in practice. It is to be hoped that this principle of not rewarding a faithless servant will be extended and will have a salutary affect on the conduct of future protectors of shareholders' rights.

On the subject of fees there is little that can be accomplished by rules of law. Compensation claims can never be made uniform. Often there is the widest spread, even in the reorganizations of substantially similar companies. Judicial supervision is as good a method of control as one can hope to devise. There seems to be a trend toward a closer scrutiny of bills for expenses and fees, toward an insistence that there be no duplication of work where the work can be of little help to the receivership estate. This is a welcome development from the viewpoint of the investor.

The public hearings have disclosed instances where a reorganization was used by the unscrupulous as a device for securing control of the whole enterprise. It is quite clear that a concern in difficulties presents a splendid opportunity to a promoter. If he and his associates can set themselves up as a committee for the voting shares, they are in a strategic position to control the reorganization, to fix the terms of the sale, and to end up as the dominant parties in the new enterprise. Such conduct (and the cold facts are contained in the stenographic record of our hearings) makes it difficult to use the term "protective committee" without a smile.

In this field more than in any other that has come under our scrutiny, do we find amazing conflicts of interest. The lawyers of the reorganization bar have much to answer for because of the complacent way in which they and their clients have assumed positions diametrically opposed to one another in fact and in theory. In at least one case it has been shown that the lawyer for the corporation drew the petition in behalf of a friendly creditor instituting the receivership. He filed an answer in behalf of the corporation. Subsequently he became the counsel for a supposedly unfriendly creditor who opposed another unfriendly creditor's intervention. He became counsel for the trustees. Later he was counsel for the directors, who were subject to suit by the receivership estate for alleged breaches of fiduciary duties. Perhaps there exists a man so objective that he can play all these parts at one and the same time, with fairness to all parties. It is safe to say that such a marvel is difficult to find. There is much sense in the dogma that a human being is just incapable of playing all these parts. Suppose, for instance, the test of pure logic were applied to such a state of facts. The dilemma is obvious. As counsel to the corporation one must be an adversary to the creditor or else one is false to the corporation. It is nothing less than solemn bamboozlement to pretend that one can represent with equal fervor the debtor and the creditor. I agree that it is seldom that the conflict of interest appears so unmistakably as in the case I mention. But in reorganizations the conflict of interest is so common as almost to be a necessary incident.

There is nothing which illustrates more completely the mockery of the term "protective committee" than the manner in which members of the committee have protected themselves and their friends. We have had the frankest kind of admissions to the effect that the primary purpose of the formation of many committees has been the opportunity afforded thereby of protecting certain prospective defendants (including members of the committee) against suit. We can now appreciate the full meaning of the term "protective committee" or "protection committee". At least, we have a clue on the important issue - who is being protected?

During the course of the Commission's investigation many witnesses who were important figures in various organizations were interrogated about their motives. Some were naive although their purposes were obvious. A few were quite candid. They stated that they undertook the formation of committees in part, at least, in order to prevent liability suits against the officers and directors of the corporation. Many of the committees of course denied that they possessed such a motive. It would not be fair to leave with you the impression that all protective committee members misbehave. Such is not the case. There are many honorable committee members who are faithful to their trust. But the number of those who act principally in their selfish interest is so large that the intervention of the force of politically-organized society seems necessary.

One of the issues which has provoked discussion centers around the common practice of underwriters serving as committee members for the holders of securities for which they have been underwriters. Here is a situation where potential conflict of interest strikes one at a glance.

True, the most plausible kind of an argument can be made for the practice. The underwriter, feeling a moral responsibility, rallies to the defense of the security holders when default occurs or bankruptcy threatens. A similar argument is set up to defend the practice of members of the underwriting firms acting as directors of companies whose securities they have underwritten. Here, too, personal factors are decisive. One thinks immediately of a recent diagnosis of our present economic plight: "The trouble with Capitalism is the Capitalist". If we are to have the protective committee device, it is going to be difficult to eliminate the investment banker. Who else will have the desire, the urge, to initiate group action? Most people we could suggest will be, as they are now, limited by a sort of inertia. It has been suggested that investment bankers as a class should not be excluded, but only the particular underwriter for the securities involved. When this was suggested to one prominent banker, he replied with refreshing candor, "If such be the rule, we will act for X's issues, and X will act for ours. We will take better care of X's interest than he himself would have, and we expect he will protect us with equal care."

To the charge that committee members violate their duty when they fail to bring suit against the management in behalf of the security holders, this interesting defense is put forth: "We are not obliged to spend," the spokesman says, "the security holders' money in the preparation of a suit when it might turn out to be baseless or in favor of a different class of security holders. Or it might be that the cause of action lies only in favor of those who held securities at the time of the offense who are not security holders now." To this claim there is no simple single answer. The particular facts of the case will be determinative on this issue. However, the principle should be kept inviolate, to wit, that committee members are fiduciaries and must act with the utmost good faith. Sometimes this will require affirmative action. Sometimes the duty will not be violated by inaction. It is a standard of conduct, and the obvious criticism is that the courts have not applied it with consistent vigor. By reason of the failure to insist upon the requirement of fiduciary conduct, certain practices have taken on the garb of respectability.

I could of course go on for some time indicating the spots where the system has been shown to be weak, such as, for example, the practice of pledging the depositors' securities for a loan to the committee. Often this has had the effect of tying the hands of the committee by giving the lending bank a lever to advance its own interests. We have seen an unfair plan succeed because the lending bank was in the saddle. Or I could detail at length the evils of committee patronage. But enough has been said to make clear the point - that we have permitted the development of a technique for handling distressed companies which has not worked well. We must proceed to lock the door, but too late.

In the field of Real Estate Reorganizations we have found every form of chicanery and overreaching. But here again we are acting too late. There is little doubt but that the activities of the Sabbath Committee will occupy the stage during the next Congress. There has not been a city where the committee conducted an investigation which did not have its share of fraudulent real estate receiverships. The trouble is that most of the properties are by now reorganized; the damage is done.

Similarly in the field of Municipal Reorganizations. The bondholder did not escape because he held the obligation of a city, town or county. Here, too, the shrewd aggressive racketeer solicited deposits and armed with the deposited securities, he proceeded on the old principle of self-aggrandizement. That chapter is about to close. I am informed that over eighty per cent of the defaulted municipals have undergone some form of rearrangement. The Report, however, should contain some interesting comments on situations like Asbury Park and Coral Gables, where, as usual, the bondholders won last prize.

Legislation does not spring up phoenix-like. Information itself is not a compelling political force. This we know from the many fact-finding investigations which proved abortive. I shall just mention the much-heralded Wickersham investigation and pass hurriedly on with a comment from Horace: "Montes laborant nascitur ridiculus mus". But information is the necessary prelude to intelligent political action. Out of this Reorganization Study will come a clear-cut picture of evils society should not permit to endure. With the facts will be a program of reform. It is our wish that the record will itself stimulate the legislators to action.

One noticeable instance of how an investigation can ripen into legislation is the famous Pecora inquiry. Another is the remarkable study of the Public Utility Holding Companies conducted by the Federal Trade Commission under the direction of Judge Healy. In 1927 the late Senator Walsh introduced a resolution in the Senate seeking to investigate the practices of these companies. It was represented that there was no need of a disclosure that the companies had nothing to conceal. As a counter-suggestion it was represented that if there were to be an investigation it should be handled by the Federal Trade Commission. The events which followed were startling. Here it was possible to see the compelling force of information.

After a long and bitter controversy which occupied the center of attraction in the longest session of Congress within my memory, the present Act was passed. Unfortunately the legislative struggle created bitterness which has persisted, and now the validity of the Act of Congress is to be tested in the Courts. The Commission had hoped that the public utility holding company executives would comply with the law and aid in the difficult task of wisely administering the law. They have adopted a different course. Nearly all the large companies have refused to register and have brought suit against the Commission, the Attorney General, the Postmaster General, the local postmaster; and the local United States Attorney. Just before December 1, our most constant visitor was the United States Marshal. On November 26 the Commission, in accordance with the statute, brought a bill in equity to enforce the law against the Electric Bond and Share Company and five of its principal intermediate holding company subsidiaries. By agreement sixteen more holding company subsidiaries were added as parties to the suit.

In a recent hearing Counsel for one of the suing companies hinted that the government had acted unfairly, as he put it, in picking its case, picking its court, and picking its own issues. The work "pick" was given sinister significance. But the fact is that government brought suit against the best known and one of the oldest of the great holding company systems

which controls nearly 15% of the privately owned electric utility industry in this country and which is a member in good standing of the Edison Electric Institute. We brought suit promptly upon learning that the company had decided not to comply with the law. As for picking the court, we sued here in New York where their principal office is located and which is the headquarters for the entire system. As for picking our issues, the fact is that we proceeded under Section 18 of the statute which authorizes the Commission to proceed wherever it appears -- that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the statute.

I am at a loss to consider how the government could have acted with more fairness. In the first place we permitted the companies to insert any language they cared to use in registering so that their constitutional rights would not be impaired. We even went further and were willing to have registration terminate if any court should decide that by registering the companies were barred from contesting the validity of the Act. But this did not deter the companies from their plan of wholesale non-registration.

The basis of the refusal to register has been the advice of lawyers that by registering, the company would run the risk of waiving its privilege of testing the Act. There is no case which even by inference suggests this position. The decisions of the Supreme Court establish beyond a reasonable doubt that even if the Act or the Commission acting pursuant to the Act attempted to make registration a waiver of constitutional rights this waiver would be invalid because of duress. The leading case on this point is *Union Pacific R. R. vs. Public Service Commission of Missouri*, 248 U. S. 67, where the Supreme Court reversed the state court for holding that an application under the law barred a constitutional issue. When to this is added the further fact that the companies would expressly reserve their rights, the risk is so infinitesimal as to be practically non-existent. So doubtful is the claim of the lawyers for the holding companies that one suspects that non-registration was the important end because it fitted in with the strategy of the industry in its assault upon the law.

As a further evidence of its fairness the government announced that until the validity of the Act had been determined in a civil suit to be brought promptly by the Commission, neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act and that even after the Supreme Court had given a favorable determination no penalties would be sought for earlier offenses. It was also announced by the Postmaster General that even if he had the authority (a question which is extremely doubtful) he would not exclude any non-registering company from the mails pending the determination of the Constitutional issue.

Over fifty suits have been brought against the Commission in the various courts of the country. As a physical fact these could not all be tried. In order that the interests of the American people be adequately protected, there can be but one suit at a time. The presentation of an appropriate record which would reveal the economic background of the holding company legislation is a gigantic task. As the Attorney General has said "Even the champion is asked to take them on only one at a time". There is another and more fundamental reason why the energies of the Commission and of the

Department of Justice should not be diverted from the Electric Bond & Share suit. The industry, through its representatives, has solemnly announced that the Act is unconstitutional in all its sections and in all its intended applications. In other words, they have declared that the power of the National Government does not extend to the regulation of any of these systems. That issue should be decided first of all. It would be uneconomic to have the law tested in a case which would not fairly present the true basis of Congressional action. If the Government should lose the Electric Bond and Share case, there is finis to be written to the statute. Most of these other cases have complications in procedure or venue which make them undesirable as the test cases. In fact, the companies have indicated their intention to argue that, regardless of the validity of the law generally, it is constitutionally unapplicable to the facts of their particular system.

It seems to me so obvious that the Commission could be sued only in the District of Columbia that I am perplexed by the fact that in nearly all the cases brought outside the District, the Commissioners have been made parties defendant. We shall, of course, attack the venue and take all appropriate and legal steps to oppose the effort to harass the Government with a multitude of vexatious suits. We have offered to assent to a temporary injunction until the Supreme Court decides the Electric Bond and Share case. As the Attorney General stated in his brief recently in the Supreme Court of the District of Columbia -

"As chief law officer of the Government, I conceive it to be my duty to exercise such powers as I possess over the course of Government litigation and appeals, to insure that an important and far-reaching enactment of the Congress is tested fairly and expeditiously. The determination in the suit selected for the testing of this Act may not determine the validity of the Act in its application to a few companies specially circumstanced, but it will determine the fundamental constitutional question involved and as many aspects of the Act as could possibly be determined in any one case with relation to a typical holding company. Because that is true, I have not felt it improper to suggest to the Court that I would feel justified in permitting injunctions issued in other cases by a court of first instance to go unappealed, if need be, in order that a record might be made up for the Supreme Court in the one case which will befit the great constitutional issues involved."

This litigation will be momentous. It is to be, so it seems to me, an epochal decision on the future of this country. It marks a realistic attempt to control a development which threatens government itself. No minor disputes should impede the swift and fair presentation of the Government's position to the Supreme Court. It has wisely been said that we live by law or we live by force. Force may take many forms, one being a wholesale refusal to register. What do you think would happen in this country if, at the outbreak of the war, legal advisers to the organized groups of citizens should declare that the Selective Service statute was unconstitutional and urge refusal to comply? To be sure, that is an extreme case, yet in the theory of state and society, the present action of the utility executives is analogous. Thoughtful men have viewed with alarm the almost

unanimous decision not to register. Its implications of resistance to law are disturbing, particularly in these days of social fermentation. A letter from one of the most distinguished students of our corporate system has been called to my attention. He wrote to congratulate one utility official for his decision to register under the Act. He wrote in part -

"As a critic, perforce, of some aspects of the public utility situation, may I congratulate you and your associates upon your decision to register under the new law. It is the law, until set aside by the Supreme Court. All good citizens should be governed by that consideration. Moreover, this Holding Company business is part of a far bigger question. Don't forget that as conservative a President and as good a lawyer, as Chief Justice Taft, he is on record as sponsoring a Federal Incorporation law. As self-appointed big brother to the "little rich" (men and women voters all) and one of the "raped masses", so long as Hopson and Insull go virtually scot free, I predict more, not less trouble ahead".

And so we are administering the Act for the few who have observed the law. Despite the litigious difficulties there is no attitude of intemperance or vindictiveness on the part of the Commission or its staff. The law is difficult, the duties on the Commission very onerous. But a tradition has been established with the Commission of approaching a task with as many incidents of the judicial process as possible. No regulation before information, and to every one a fair hearing. The job which Congress has given us is not to be done tomorrow or tomorrow's tomorrow. Many years will have elapsed before the policy of the Act can be said to have attained fulfillment. The justification for the law in the meantime will be obscured while the issues are in the courts or in the realm of politics. It should be remembered that President Roosevelt himself summarized the social aims of the Public Utility Holding Company Act of 1935 when he said in transmitting to the Congress the Report of the National Power Policy Committee:

"It is time to make an effort to reverse that process of the concentration of power which has made most American citizens, once traditionally independent owners of their own businesses, helplessly dependent for their daily bread upon the favor of a very few, who, by devices such as holding companies, have taken for themselves unwarranted economic power. I am against private socialism of concentrated private power as thoroughly as I am against governmental socialism. The one is equally as dangerous as the other; and destruction of private socialism is utterly essential to avoid governmental socialism."