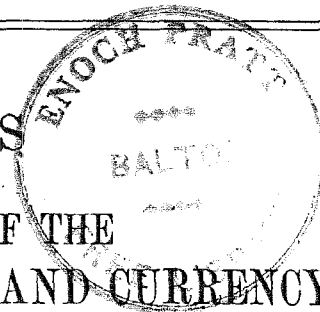


STOCK EXCHANGE PRACTICES

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE
SEVENTY-SECOND CONGRESS
SECOND SESSION



ON

S. Res. 84 and S. Res. 239

RESOLUTIONS 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

PART 6

(NATIONAL CITY; CONTINUATION OF
RICHARD WHITNEY TESTIMONY)

FEBRUARY 21, 22, 23, 24, 27, 28, AND MARCH 1 AND 2, 1933

Printed for the use of the Committee on Banking and Currency



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

TESTIMONY RESUMED OF CHARLES E. MITCHELL, PRESIDENT OF THE NATIONAL CITY BANK, NATIONAL CITY CO., AND CITY BANK FARMERS TRUST CO., NEW YORK CITY

Mr. PECORA. Mr. Mitchell, you made notations during your examination this forenoon of certain items with respect to which you wanted to obtain information or confirmation from the records of the bank and the company. Have you done so during the recess?

Mr. MITCHELL. I have, I think, covered the questions you asked, Mr. Pecora.

Mr. PECORA. All right. You may proceed to answer them.

Mr. MITCHELL. Your first question had to do with the trustees under the National City Co. trusteeship. The first trustees were James Stillman, F. A. Vanderlip, and S. S. Palmer.

Mr. PECORA. All right.

Mr. MITCHELL. Then you asked how these trustees are appointed. Under the agreement they are appointed by the members of the board, not by the board as a board, but by the members of the board delegated as individuals to sit for the election.

Mr. PECORA. When you say "by the board" do you mean the board of the National City Bank?

Mr. MITCHELL. Yes, sir; members of the board.

Mr. PECORA. In other words, members of the board of directors of the National City Bank, select the three trustees, who act as trustees for the shareholders of the bank in connection with their ownership of the stock of the National City Co.

Mr. MITCHELL. They act as trustees of the shareholders of the bank.

Mr. PECORA. And as vacancies occur among these trustees for the shareholders, how are those vacancies filled?

Mr. MITCHELL. They are filled by an appointment that is made by the individuals sitting as a group, not as a board.

Mr. PECORA. What individuals do you mean?

Mr. MITCHELL. The individuals who constitute the board of directors of the National City Bank.

Mr. PECORA. And are any of those trustees removable by anyone other than the board of directors of the bank?

Mr. MITCHELL. I think under the trustee agreement there is a differentiation between the board of directors and those who are designated and delegated to the power of trustee reappointment and removal. A majority of those individuals signing a paper may remove any trustee and may replace any trustee.

Mr. PECORA. Now, let me see, Mr. Mitchell, about this: How many constitute the full membership of the board of directors of the bank, how many individuals?

Mr. MITCHELL. I think we have authority for 27 at the moment.

Mr. PECORA. How many of that board compose the group that you speak of as having the power to designate the trustees?

Mr. MITCHELL. Twenty-seven individual men.

Mr. PECORA. Twenty-seven individual men.

Mr. MITCHELL. Yes.

Mr. PECORA. Do you mean to say that when they act in any manner involving the designation of a trustee, they disassociate themselves from their relationship to the bank as its directors?

Mr. MITCHELL. Yes, sir.

Mr. PECORA. Is that in pursuance of any provision of the original trust agreement that was made back in 1911 when the National City Co. was organized?

Mr. MITCHELL. I so understand it.

Mr. PECORA. Have you a copy of that trust agreement?

Mr. MITCHELL. I haven't it here, and the information I have gotten has been received by telephone from New York.

Mr. PECORA. Has any one of your associates or the other officers of the bank who are present a copy of that trust agreement, do you know?

Mr. MITCHELL. I tried to get it, and we had to get this information by telephone, so I think I can answer your question "no." But I will inquire. [After making inquiry of some of his associates.] I will say "no."

Mr. PECORA. How is it possible for those 27 individuals who compose the board of directors of the bank, to function not as directors but as individuals when they designate trustees for the shareholders of the bank to represent them as shareholders of the stock of the National City Co.?

Mr. MITCHELL. I can only draw the assumption that when that agreement was drawn, the stockholders appointed a group of men to act for them, and they as individuals should be the individuals who constitute a board of directors of the National City Bank.

Mr. PECORA. Was the identity of the members of that group coincident with the identity of the members of the board of directors of the bank at that time?

Mr. MITCHELL. I cannot really give you anything more than I have already given you. That comes from reading over the telephone what that provision is.

Mr. PECORA. Well, then, that leaves the situation in this fashion, does it not, namely, the persons who own all the capital stock of the National City Co. are the shareholders of the National City Bank? In substance is that correct?

Mr. MITCHELL. It seems to me you are asking something that might have a legal angle to it that I would not understand. I can state it very definitely: That these three trustees are the shareholders of all the stock of the National City Co., and under the agreement they hold that stock for the benefit of the shareholders of the National City Bank.

Mr. PECORA. Yes; but those three trustees are in no way chosen today by the shareholders themselves, are they?

Mr. MITCHELL. No. This goes back to the original provision, and—

Mr. PECORA (interposing). And that provision was inserted in the trust agreement at the very outset of the existence of the National City Co.

Mr. MITCHELL. I think that is true.

Mr. PECORA. So that at no time since the National City Co. was organized have any of the shareholders had any voice in the designation of the trustees who hold their stock for them, is that correct?

Mr. MITCHELL. I should say that is correct, except as they have the right to appoint the individuals as members of the board of di-

rectors, and do so appoint them, and those individuals, year by year, whoever they may be, are the designating body of the trustees.

Mr. PECORA. Well, as a matter of fact, has there been at any time since you became the president of the National City Bank any action at the annual meetings of the shareholders which was attended in person by more than a few actual shareholders of the bank?

Mr. MITCHELL. You are speaking of shareholders now of the bank?

Mr. PECORA. Yes, sir.

Mr. MITCHELL. Oh well, we have a room two-thirds the size of this, which is crowded at every annual meeting.

Mr. PECORA. And you have how many shareholders of record?

Mr. MITCHELL. Something over 85,000.

Mr. PECORA. So that if they were to crowd that room, two thirds the size of this, to its utmost capacity, you wouldn't have more than a very small fraction of 1 per cent of the shareholders actually attending meetings at which this group is chosen.

Mr. MITCHELL. Yes; as to the number of shareholders. But we have a very large percentage, of course, of the capital stock represented by shareholders who are present.

Mr. PECORA. To whom are the directors of the National City Co. accountable or responsible for their acts and for their administration of the company?

Mr. MITCHELL. Accountable to the trustees, who are the shareholders.

Mr. PECORA. They are accountable to these three men who are chosen by a group of the directors of the bank, aren't they, in fact?

Mr. MITCHELL. They are selected by a group of men who constitute as individuals the board of the National City Bank.

Mr. PECORA. Whenever in pursuance of the laws of the State of New York, under which the National City Co. was organized, it is necessary to have a stockholders' meeting of that company, the meeting is confined to these three trustees?

Mr. MITCHELL. That is so.

Mr. PECORA. Do these three trustees ever make a report at a stockholders' meeting, to the shareholders themselves?

Mr. MITCHELL. No.

Mr. PECORA. Have you ever known them to do it?

Mr. MITCHELL. No.

Mr. PECORA. Have you ever known those trustees to keep any minutes or record of any proceedings that they have had as such trustees for the stockholders of the National City Co.?

Mr. MITCHELL. You asked me this morning if the trustees had meetings and if they kept minutes. I read from a memorandum of the cashier of our bank answering that question [reading]:

Referring to your inquiry regarding minutes of proceedings of the trustees who hold the stock of the National City Co. I wish to advise that I am the custodian of the records of the trustees, which consists of the trust agreement, documents relating to the appointment of present and former trustees, dividend orders executed by the trustees, powers of attorney given by them to agents to indorse stock certificates, and incidental papers. There is no minute book or minutes of proceedings of the trustees in my possession. Action taken by the trustees has been recorded so far as my knowledge extends, which goes back a good many years, in the documents and standing orders and appointments above referred to.

Mr. PECORA. That means that they have never kept any minutes of any proceedings of theirs, doesn't it?

Mr. MITCHELL. I should think that that means that.

Mr. PECORA. And to your knowledge have those trustees ever made any report to the stockholders of the company for whom they act as trustees?

Mr. MITCHELL. I think I answered "no" to that.

Mr. PECORA. They have not.

Mr. MITCHELL. No.

Mr. PECORA. Has the National City Co. made any public report to the holders of its stock, of its corporate proceedings?

Mr. MITCHELL. I do not understand just what you mean as to its corporate proceedings.

Mr. PECORA. Let me put it this way: Does the National City Co. make any annual report of its business operations?

Mr. MITCHELL. As chairman of the three institutions, we make a report to the shareholders at their annual meeting, and I report at that time on the operations of the National City Co. for the past year.

Mr. PECORA. So that the report which you as the chairman of the three institutions make every year is an oral report, is it not?

Mr. MITCHELL. It is printed and sent to every shareholder.

Mr. PECORA. Insofar as that annual report alludes to the business of the National City Co., it is very general and sketchy, isn't it?

Mr. MITCHELL. Well, I do not consider that it is more general and sketchy than with respect to the bank. It used to be that way; no report of earnings or the balance sheet of the National City Co. was furnished to our shareholders.

Mr. PECORA. When for the first time did the National City Co. furnish that information to its shareholders?

Mr. MITCHELL. I think two years ago.

Mr. PECORA. Prior to that it never gave any such information even to its shareholders?

Mr. MITCHELL. It did not. Now, may I continue with the questions you asked this morning?

Mr. PECORA. If you will.

Mr. MITCHELL. You asked me if I knew whether there was provision, either in the original charter or the by-laws, providing that no contract should be invalidated by the participation therein by a director. I find that that is a provision in the original charter of the company, in 1911. Now, do you care to have me answer the further questions you asked?

Mr. PECORA. Yes, sir; whatever they are. I have not a note of them.

Mr. MITCHELL. You asked me regarding the management funds and my participation therein. You asked me particularly my participation therein and gave me certain figures for 1928 and 1929 to corroborate.

Mr. PECORA. Yes.

Mr. MITCHELL. I judge that the figures you gave were the amounts that I received in 1928 and 1929. Now, I call attention to the fact that the management fund of a given year is distributed in part in the middle of the year and in part in the following year. So that

Mr. MITCHELL. If you come to preferreds, I think there were several. There was Cannon Mills.

Mr. PECORA. United Aircraft?

Mr. MITCHELL. We offered a unit of preferred stock and some common with it.

Mr. PECORA. Of what corporation?

Mr. MITCHELL. Of the United Aircraft. Grasselli Chemical Co. and Hershey Chocolate Co.

Mr. PECORA. How about Wesson Oil and Snowdrift?

Mr. MITCHELL. Preferred stock.

Mr. PECORA. Have the minutes arrived yet, Mr. Cary?

(There was no audible response.)

Mr. PECORA. Now, to go back for a moment to the \$15,000,000 bond issue of the Cuban-Dominican Sugar Co. which the National City Co. offered to the public at 97½ in 1924, do you recall whether the National City had any representation on the board of the Cuban-Dominican Co. at that time?

Mr. MITCHELL. Mr. Ripley, our vice president, who is with the City Co., was a member of the board. Oh, Mr. Russell—excuse me—Mr. Stanley Russell.

Mr. PECORA. Mr. Stanley A. Russell?

Mr. MITCHELL. Yes; vice president.

Mr. PECORA. And how about Mr. Gordon S. Rentschler, the present president of the National City Bank?

Mr. MITCHELL. I should have to refresh my recollection, but I think very likely he was, because he was regarded as one who knew more about our sugar interests than anybody else.

Mr. PECORA. How about Mr. Guy Cary?

Mr. MITCHELL. He did not represent us in any way. I think Mr. Guy Cary was counsel for the Cuban-Dominican Sugar.

Mr. PECORA. He or his firm is counsel for the National City Co.?

Mr. MITCHELL. That is correct.

Mr. PECORA. And also counsel for the National City Bank?

Mr. MITCHELL. That is so.

Mr. PECORA. And he is on the board of directors of the bank?

Mr. MITCHELL. I am reminded that Mr. Cary or his firm were not counsel for the Cuban-Dominican. He went on that board representing certain private interests, for which he was counsel, and those interests were not related to the National City Co. or bank.

Mr. PECORA. By the way, in 1928 when you received those sums that you have testified to out of the management funds of the National City Bank and the National City Co., how many other companies were you an officer or director in?

Mr. MITCHELL. It is hard for me to remember dates or any particular year. I should say that—the list is a matter of record in the directory of directors, but I would assume in answer to your question that I was a director of perhaps 10 or a dozen companies.

Mr. PECORA. Not any more than that?

Mr. MITCHELL. I would not say so. If we had a directory of directors it would give that clearly.

Mr. PECORA. Do you know just the number of different corporations of which you were an officer or director at any one time?

Mr. MITCHELL. No; I do not. But I think that would cover it quite completely, outside of the National City Bank, the National City Co., the City Bank Farmers Trust Co., and perhaps some companies that were our own companies for one purpose or another.

Senator BROOKHART. How much stock did you own in the bank?

Mr. MITCHELL. At what time or what year?

Senator BROOKHART. Say in 1927.

Mr. MITCHELL. Oh, I should think, and I have not the exact figure on that date and it is difficult to say, but in the neighborhood of 30,000 or 35,000 shares of stock.

Senator BROOKHART. Did you sell any of that stock?

Mr. MITCHELL. I bought, sir.

Senator BROOKHART. In what years did you buy?

Mr. MITCHELL. I bought the largest amount of stock in 1929.

Senator BROOKHART. Before or after the collapse?

Mr. MITCHELL. In the midst of the panic.

Senator BROOKHART. Trying to sustain the value of the stock?

Mr. MITCHELL. Yes, sir; trying to protect our shareholders.

Senator BROOKHART. Do you remember what price you paid?

Mr. MITCHELL. I can not tell you exactly, but in the neighborhood of \$375 a share I should think.

Senator BROOKHART. And it has been as high as \$600 or \$700 a share.

Mr. MITCHELL. No. I think its high was somewhere around \$570 a share or something like that.

Senator BROOKHART. \$576 a share?

Mr. MITCHELL. Something of that sort.

Senator BROOKHART. All right.

Mr. PECORA. Well, Mr. Mitchell, did you also sell during the year 1929 any substantial portion of your holdings of National City Bank stock?

Mr. MITCHELL. I held in the midst of the panic all the stock I had owned for a long, long time, and in order to keep the market from collapsing where it would be destructive to the interests of our shareholders I permitted the National City Co. to put into an account which I established for them of my own, stock which they might purchase from our shareholders to the tune of \$12,000,000. In other words, I put all that I had back into this institution, and for its stability. Some of that stock was subsequently sold. There were personal transfers through the years. To-day I hold the largest amount of stock of the National City Bank that I have ever held.

Mr. PECORA. No; I asked you this: You stated in answer to Senator Brookhart's question that you bought the bank's stock very extensively in 1929, and that a portion of that was embraced within the period of the stock-market collapse. Now, my question was: Have you also sold very extensively of your holdings in that period or before the end of that year?

Mr. MITCHELL. Well, I bought 28,300 shares, which I had hoped to hold only temporarily. It was done in order to help the situation.

Mr. PECORA. To sustain the market?

Mr. MITCHELL. Yes. Of that, 10,000 shares were sold, leaving me at that time the holder of 53,300 shares of stock. There were some personal transactions of a part of that holding in the latter part of

1929, and since that time I have bought that stock back, so that today I am the holder of that and a little more.

Senator BROOKHART. A little more than 53,000 shares?

Mr. MITCHELL. Yes, sir.

Senator BROOKHART. At what price did you buy those back?

Mr. MITCHELL. I paid for those 18,300 shares—I can not tell you offhand just what it would be, but I can give you an approximate figure. Let me see, at \$375 or \$380 a share—

Senator BROOKHART (interposing). That was during the panic?

Mr. MITCHELL. Yes, sir.

Senator BROOKHART. Then you sold 10,000 shares?

Mr. MITCHELL. I am giving you the net of that 18,000 shares. I am counting that as this extra stock that I bought at that time, Senator Brookhart.

Senator BROOKHART. All right.

Mr. MITCHELL. I should say roughly, and I do not recall exactly, but that the net price of the 18,300 shares of stock was about \$375 to \$380 a share, as a guess.

Senator BROOKHART. If I understood your statement, then, afterwards you sold a part of that stock.

Mr. MITCHELL. I did.

Senator BROOKHART. And then still later bought it in, recently.

Mr. MITCHELL. I, frankly—

Senator BROOKHART (interposing). How much did you buy in recently?

Mr. MITCHELL. I bought in all that I sold, and I bought a few shares more in the meantime.

Senator BROOKHART. What price did you pay for those last purchases?

Mr. MITCHELL. I sold this stock, frankly, for tax purposes.

Senator BROOKHART. That was to avoid income tax?

Mr. MITCHELL. Throwing my fortune into the breach as I did for the benefit of this institution, Senator Brookhart, in 1929, I had a definite loss in that stock which I was forced to take.

Senator BROOKHART. In other words, by making a sale of it that showed a loss in your income.

Mr. MITCHELL. That certainly did.

Senator BROOKHART. And then you bought it back afterwards?

Mr. MITCHELL. Yes, sir.

Senator BROOKHART. And, now, those are the prices I want to get, what you sold at and what you bought it back at.

Mr. MITCHELL. The prices are a matter of record, but the one to whom I sold this stock, a person of some means, had no ability to take the loss that existed in that stock and at the end of last year I bought the stock back at what had been paid for it.

Senator BROOKHART. At the same price?

Mr. MITCHELL. Yes, sir.

Senator BROOKHART. That sale was just really a sale of convenience, to reduce your income tax?

Mr. MITCHELL. You can call it that if you will.

Senator BROOKHART. Well, is that right?

Mr. MITCHELL. Yes; it was a sale, frankly, for that purpose, where you hoped the buyer would be able to make a profit. And it was

bought with the idea of making a profit. But the accumulated loss was so great that I offered, and did buy, the stock back this year at what had been paid for it.

Senator BROOKHART. This buyer was a friend of yours, of course. He had favored you and you wanted to favor him.

Mr. MITCHELL. It was not that kind of negotiation. But I simply could not see that buyer take that loss. And I hold today that stock.

Senator BROOKHART. You did not have a similar sympathy for all these buyers here in the room and buy that stock back, did you?

Mr. MITCHELL. If anybody here in the room, or anybody that you know, has suffered a loss in gross that I have in City Bank stock, then you know somebody that I do not. I, individually have suffered a greater loss from the market failure in National City Bank stock than any other individual in the United States.

Senator BROOKHART. Well, the real fact is, then, that neither yourself nor any of the big financial crowd realized that this thing was inflated beyond all reason in 1929?

Mr. MITCHELL. I did not realize this, and I was looking over today—

Senator BROOKHART (interposing). The fact is that the public cannot rely on the judgment of the big financial crowd in these financial matters at all.

Mr. MITCHELL. With respect to the future and on market prices and on the economics of the situation, there are so many factors over which the men in finance have no control and really have comparatively little knowledge, that it is just as impossible for them to predict a definite future as it is for anybody else.

Senator BROOKHART. Then, shouldn't they state that fact in every prospectus that they put out to the people? Shouldn't they state: We do not know and nobody can tell what will happen, and it is impossible to tell.

Mr. MITCHELL. Well, I will tell you for all of them, myself included, that we are human, we are filled with error, and it does not matter how good our intention may be we are going to make mistakes at times. I only hope that we can learn something from all this and be able to reach that period when we can put into constructive effort the lessons that we have learned during this period.

The CHAIRMAN. The committee will now—

Senator FLETCHER (interposing). Mr. Mitchell, what were your holdings in the National City Co. at this time?

Mr. MITCHELL. You see, the stock of the National City Co., the investment affiliate, is not a stock that is owned by the public at all, Senator Fletcher.

Senator FLETCHER. Yes.

Mr. MITCHELL. That is owned by these three trustees for the benefit of the shareholders of the National City Bank. So that every shareholder of the National City Bank has an interest ratably to his holdings as to the total of the assets and earnings of the National City Co. And that beneficial interest is evidenced by a stamp on the back of the shares of the National City Bank, so that the beneficial interest in the company goes along with the bank shares.