SECURITIES AND EXCHANGE COMMISSION
WASHINGTON

February 10, 1939.

PERSONAL

Hon. Adolf A. Berle, Jr.,
70 Pine Street,
New York, New York.

Dear Adolf:

1. Thanks indeed for your letter of February 8. I shall feel honored to have you include anything I have written in one of your case books – even if you were to insert it as a horrible example.

2. I would like nothing better than to have a long pow-wow with you when you come down next week.

3. I agree with you that, with respect to many dangers to preferred stockholders, the best safeguard lies in their acquiring control of the Board of Directors, if and when preferred dividends accumulate for more than a stated amount. I also agree that non-payment of 12 quarters is not an adequate basis for a shift of voting power. You will note that at page 54 I so indicated: I there pointed out that there were outstanding preferred stocks where default for only one or two quarters was made the basis of a shifting of voting power.*

I also referred (p. 55) to a comment by Stevens which is worth considering, viz., that a shift might well be based on the failure of earnings to reach a specified level rather than on the nonpayment of dividends.

4. A mere shift in voting power on nonpayment of dividends or otherwise, will not, however, meet the problem of what I have called the "squeeze play". For, as I pointed out on pages 38-39, control of the directorate by the preferred will not make possible the payment of preferred dividends while a capital deficit exists, in any state where dividends cannot be paid during a period when the capital is impaired.

5. With your points A, B and C, I can agree as a general outline.

6. As I recall it, the North American certificate contains a fairly adequate provision as to the creation of new preferred stock; but, as I pointed out on pages 52-53, there is no protection whatsoever against the creation of debt.

* See also the second paragraph of footnote 35, p. 50.

7. As to your notion of not allowing preferred stock to be issued where more than 25% of the assets of the corporation consist of stocks in other companies, I would be most strongly inclined to agree. I am not sure, however, that the Commission would have the right to adopt that rule under the Holding Company Act, where the purpose of the issue comes within Section 7(c)(2). In that connection you might note my comments on page 57 (point 9) with reference to the presumption against preferred stock.

8. I am enclosing a copy of a speech I made last September on the subject of long term debt, entitled, "Too Much Interest in Interest," to which I referred, without a specific reference, page 34, note 17. I still think my essential point is right. (I was much encouraged in that belief by the subsequently published book, "Debts and Recovery"). I would, however, today modify what I said in that speech about preferred stock. I am thinking of taking that speech as the first chapter of a little book, to which will be added a second chapter dealing with preferred stock, and a third on government "spending."

Yours sincerely,

Jerome Frank