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RELEASED FOR PUBLICATION
MORNING PAPERS

JUN 14 1951

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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# IN THE MATTER OF
# TRANSAMERICA CORPORATION

## RECOMMENDED DECISION

R. M. EVANS,
HEARING OFFICER.

PAUL C. HODGE,
LEGAL ADVISOR.

UNITED STATES OF AMERICA

BEFORE THE

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In the Matter of )
)
TRANSAMERICA CORPORATION )

## RECOMMENDED DECISION

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," (the Clayton Act), the Board of Governors of the Federal Reserve System on June 24, 1948, issued and thereafter served upon respondent, Transamerica Corporation, its complaint charging said respondent with violation of section 7 of said Act. By order entered herein, Rudolph M. Evans, a member of the Board of Governors of the Federal Reserve System, was duly designated to serve as Hearing Officer in this proceeding and, upon the completion of the taking of evidence, to make and file his recommended decision. Pursuant to appropriate authorization, Paul C. Hodge, General Counsel of the Federal Reserve Bank of Chicago, served as legal adviser to the Hearing Officer. The taking of evidence having been completed, the matter duly came on to be heard by the Hearing Officer upon the amended and supplemental complaint issued herein on July 19, 1949, and thereafter served upon respondent, testimony and other evidence, proposed findings as to the facts filed by opposing counsel, reply by respondent's counsel to findings proposed by counsel for the Board, reply by counsel for the Board to findings proposed by respondent's counsel, and briefs of counsel in support of and in opposition to the complaint; and the Hearing Officer, having duly considered the same and having ruled upon the proposed findings submitted, makes and files with the Board this his recommended decision, and herewith certifies to the Board the entire record of the proceeding.

## FINDINGS AS TO THE FACTS

PARAGRAPH ONE: (a) Respondent, Transamerica Corporation (hereinafter frequently called "Transamerica"), is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 4 Columbus Avenue, San Francisco, California. It is a holding company, having an authorized capital stock of 25,000,000 shares of a par value of $2 each, and having outstanding as of December 31, 1948, a total of 9,930,000 of such shares. Respondent was organized in 1928 by A. P. Giannini for the purpose, among others, of facilitating control and management through a single corporation of the banks and other corporations theretofore operated under his general direction.

(b) At or about the time of the filing of the amended and supplemental complaint, respondent had acquired and owned, directly and through subsidiaries, voting stock in each of the following commercial banks in the States of California, Oregon, Nevada, Arizona, and Washington, in the approximate percentages of the total of such stock of each bank stated:

### In California

| | |
|---|---|
| Bank of America National Trust and Savings Association, San Francisco | 22.88% |
| Central Bank, Oakland | 99.65 |
| The First National Bank of Garden Grove, Garden Grove | 90.00 |
| Bank of Pinole, Crockett | 92.31 |
| Central Bank of Calaveras, San Andreas | 92.50 |
| The First National Bank of Fairfield, Fairfield | 89.60 |
| The Temple City National Bank, Temple City | 86.67 |
| The First National Bank of Weed, Weed | 90.00 |
| First Trust and Savings Bank of Pasadena, Pasadena | 97.78 |
| The First National Bank of Bellflower, Bellflower | 95.00 |
| First National Bank in Corcoran, Corcoran | 92.00 |
| The First National Bank of Los Altos, Los Altos | 87.20 |
| Bank of Newman, Newman | 87.83 |
| First National Bank in Santa Ana, Santa Ana | 98.50 |
| First National Trust and Savings Bank of Santa Barbara, Santa Barbara | 96.18 |
| Bank of Tehachapi, Tehachapi | 92.50 |
| The First National Bank of Crow's Landing, Crow's Landing | 89.60 |
| The First National Bank of San Jacinto, San Jacinto | 66.90 |

California (continued)

| | |
|---|---|
| Farmers & Merchants Bank of Watts, Los Angeles . . . | 97.50% |
| The First National Bank of Mountain View, Mountain View . . . . . . . . . . . . . . . . . . . | 75.63 |
| The First National Bank of Oakdale, Oakdale . . . . | 93.00 |
| First National Bank in Turlock, Turlock . . . . . . | 89.87 |
| Bank of Beaumont, Beaumont . . . . . . . . . . . . . . | 93.00 |
| First National Bank in Delano, Delano . . . . . . . . | 90.27 |
| American Commercial & Savings Bank, Moorpark . . . . | 90.00 |
| Stanislaus County Bank, Oakdale . . . . . . . . . . . | 97.08 |

## In Oregon

| | |
|---|---|
| The First National Bank of Portland, Portland . . . | 68.60 |
| The First National Bank of Forest Grove, Forest Grove . . . . . . . . . . . . . . . . . . . . | 90.00 |
| Coolidge & McClaine, Silverton . . . . . . . . . . . . | 98.13 |
| Moreland-Sellwood Bank, Portland . . . . . . . . . . . | 97.00 |
| Clatsop County Bank, Seaside . . . . . . . . . . . . . | 97.00 |
| The First National Bank of Cottage Grove, Cottage Grove . . . . . . . . . . . . . . . . . . . | 90.00 |
| The First National Bank of Prineville, Prineville . | 90.00 |
| The Scio State Bank, Scio . . . . . . . . . . . . . . | 95.00 |
| Bank of Sweet Home, Sweet Home . . . . . . . . . . . . | 97.50 |
| The First National Bank of Eugene, Eugene . . . . . | 98.20 |
| Benton County State Bank, Corvallis . . . . . . . . . | 97.33 |
| Carlton State & Savings Bank, Carlton . . . . . . . . | 90.00 |
| Yamhill State Bank, Yamhill . . . . . . . . . . . . . | 90.00 |
| Monroe State Bank, Monroe . . . . . . . . . . . . . . | 91.67 |
| The First National Bank of Lebanon . . . . . . . . . . | 86.00 |
| State Bank of Malheur County, Ontario . . . . . . . . | 94.60 |

## In Nevada

| | |
|---|---|
| First National Bank of Nevada, Reno . . . . . . . . . | 99.10 |
| Farmers' Bank of Carson Valley (Inc.), Minden . . . | 88.00 |
| Bank of Nevada, Las Vegas . . . . . . . . . . . . . . | 70.00 |

## In Arizona

| | |
|---|---|
| First National Bank of Arizona, Phoenix . . . . . . . | 80.83 |

## In Washington

| | |
|---|---|
| National Bank of Washington, Tacoma . . . . . . . . . | 62.30 |

(c) In addition to the stocks owned as stated in the preceding subparagraph, Transamerica also owned, as of 1948, stock in banks, financial institutions, and other corporations as follows:

(1) Banca d'America e d'Italia, 92.59 per cent of the capital stock.

(2) The National City Bank of New York, approximately 7.2 per cent of the capital stock.

(3) First Savings Bank of San Jacinto, California, 65.40 per cent of the capital stock.

(4) All of the stock of Capital Company, engaged in the purchase, sale, leasing, management, and operation of real estate, and in the leasing and operation of agricultural, oil, gas, and mineral land. This company supervises, maintains, and constructs properties for its affiliated companies, and engages especially in the handling of properties owned by or acquired from affiliated banks.

(5) All of the stock of Allied Building Credits, Inc., engaged in financing new construction, largely residential, and in reselling mortgages and instalment notes to banks, insurance companies, and other investors. In 1948, this company purchased nearly $45,000,000 of notes and mortgages.

(6) All of the stock of Occidental Corporation, and in turn all of the stock of Occidental Life Insurance Company of California. This is the largest life insurance company located on the Pacific Coast, having in 1948 more than 15,000 sales representatives and nearly $2,000,000,000 in life insurance in force.

(7) All of the stock of Pacific National Fire Insurance Company, engaged in writing fire, automobile, and marine insurance. It had, in 1948, some 4,000 sales representatives and received in that year premium payments of nearly $10,000,000.

(8) Through its subsidiary named in (7) above, all of the stock of Premier Insurance Company, engaged in writing automobile insurance, principally in connection with instalment sales of automobiles. It received premium payments in 1948 of nearly $8,000,000.

(9) More than 99 per cent of the stock of Adel Precision Products Corporation. This company manufactures tractors, aircraft parts and equipment, and other metal products. Its 1948 sales were more than $6,000,000.

(10) Eighty-six per cent of the stock of General Metals Corporation. This company produces ferrous and non-ferrous castings and forgings, and had sales in 1948 of more than $9,000,000.

(11) All of the stock of Enterprise Engine & Foundry Company. This company operates foundries and produces diesel engines, oil burner equipment, and other machinery. Its sales in 1948 were more than $8,000,000.

(12) Slightly over 60 per cent of the stock of Columbia River Packers Association, Inc. This company operates fisheries and processing plants, and markets canned salmon, tuna, crabmeat, shad roe, and frozen fish. Its sales in 1948 were more than $12,000,000.

(13) More than 99 per cent of the stock of Corporation of America. This company, as of 1948, was engaged only in acting as trustee under deeds of trust in which respondent and its affiliated companies were named as beneficiaries.

(14) All or a substantial part of the stocks of various other companies, including Inter-America Corporation, American Brokerage, Inc. (inactive); The Axton-Fisher Tobacco Company (in liquidation); Coast Service Company; and Timeplan, Incorporated (inactive).

PARAGRAPH TWO: (a) Each of the banks named in subparagraph (b) of Paragraph One hereof is a commercial bank. Each of these banks accepts deposits subject to check issued by the depositor against his account. Each of these banks, through the check collection facilities of the Federal Reserve Banks, through correspondent banks or directly, or through one or more of these means, continuously and regularly sends checks deposited by its customers, which are drawn upon banks in States other than the State in which such bank is located, to such out-of-State banks for collection. Each of these banks continuously and regularly receives from banks in States other than the State in which it is located, through the check collection facilities of the Federal Reserve Banks, through correspondent banks or directly, or through one or more of these means, checks drawn by its own depositors against their accounts in such bank and sent by such depositors as a means of payment to payees in other States, and deposited for collection by such payees in banks in States other than the State in which the paying bank is located. Both in receiving for collection checks drawn upon banks in other States and in honoring the checks of its own depositors which are deposited for collection in and received from banks in other States, each such bank must, and does, arrange for the settlement of the resulting debit or credit balances. In order to operate as a commercial bank, these transactions across State lines are necessary and require constant communication and transportation between various States of the United States.

(b) In addition to the matters stated in subparagraph (a) above, commercial banks, including those named in subparagraph (b) of Paragraph One hereof, normally and regularly engage in all or substantially all of the following functions: collection or payment of bill-of-lading drafts, notes, and other commercial instruments; acceptance of bills of exchange; purchase or sale of securities for their own account or the accounts of their customers; collection of maturing securities or interest coupons due thereon for their own account or the accounts of customers; maintenance of correspondent relationships with banks in other States; telegraphic transfer of funds for their own account or the accounts of their customers; and other commercial transactions. The performance of these functions requires constant use of the channels of interstate communication and transportation and involves constant commercial intercourse across State lines, including the regular shipment and receipt of documents and the transfer of funds between and among various States of the United States.

(c) Each of the banks named in subparagraph (b) of Paragraph One hereof is engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PARAGRAPH THREE: (a) The banking group control of which was later concentrated in Transamerica had its origin in the organization by A. P. Giannini of the Bank of Italy in San Francisco, California, in 1904. Its expansion began with a first branch in 1909, a second in 1910, a third in 1912, 2 in 1913, 1 in 1915, 5 in 1916, and 7 in 1917, making a total of 18 branches at the end of that year. Until 1917, the method followed in buying other banks was for one or more of the officers of the Bank of Italy to buy the stock of the bank to be acquired with the proceeds of personal loans to them by another bank, these loans being secured by the stock purchased. The assets of the bank the stock of which had been thus purchased were then sold to the Bank of Italy, and the loans made to finance the stock purchased were paid from the sale of assets and the acquired bank liquidated. This method was followed because California law did not permit one bank to buy the stock of another.

(b) As the number of banks being acquired increased, this procedure became burdensome and inconvenient. In 1917, A. P. Giannini organized the Stockholders Auxiliary Corporation, the beneficial interest in its stock being owned by the stockholders of the Bank of Italy in the same proportion as their stockholdings in that bank. This company was organized for the purpose, among others, of acting as a purchaser of the stock of banks the assets of which were to be later acquired by the Bank of Italy. It also took charge of any assets of the acquired bank which had to be written off by the Bank of Italy. It acted as an insurance broker in placing insurance for the Bank of Italy and that which came to the Bank of Italy through its customers or in connection with loans made by it. In 1918, A. P. Giannini organized the Bancitaly Corporation, a New York corporation, in which about three-fifths of the stockholders were also stockholders in the Bank of Italy, and in which the Stockholders Auxiliary Corporation owned about 25 per cent of the stock. The Bancitaly Corporation acquired control of several banks in New York, interests in some foreign banks, and controlling stock interests in some California banks. A. P. Giannini was President of Bancitaly Corporation from the organization of that company until its dissolution in 1928. In 1924, Stockholders Auxiliary Corporation and certain stockholders of the Bank of America of Los Angeles organized a company known as Americommercial Corporation, which also engaged in acquiring controlling stock interests in California banks. Stockholders Auxiliary Corporation later came into the sole ownership of Americommercial Corporation. In 1927, after the passage of the McFadden Act, permitting national banks to engage in branch banking, the Bank of Italy absorbed the Liberty Bank of America of San Francisco and the Commercial National Bank of Los Angeles and became Bank of Italy National Trust and Savings Association under a national charter.

(c) In 1928, A. P. Giannini organized respondent, Transamerica, as previously found, for the purpose, among others, of concentrating under the control of a single company all of the various banks and other organizations within the group. At the request of A. P. Giannini, practically all of the stockholders in Bank of Italy National Trust and Savings Association and Bancitaly Corporation exchanged their stock in these companies for stock in Transamerica, thus placing in the hands of Transamerica, at the time of or shortly after its organization, substantially all of the stock of Bank of Italy National Trust and Savings Association and Bancitaly Corporation. The former had by that time acquired, by the purchase of other banks through the means stated and by the establishment of de novo branches, some 284 branches in California. In addition, Transamerica had acquired and held all or a substantial majority of the stock of California Joint Stock Land Bank, National Bankitaly Company, Bankitaly Agricultural Credit Corporation, Bankitaly Mortgage Company, Bank of America National Association of New York, Bancamerica Blair Corporation, Commercial Holding Company, Bankitaly Company of America, Occidental Corporation (a holding company owning Occidental Life Insurance Company and Occidental Investment Company), Bank of America (California) and its security affiliate, Corporation of America, and Pacific National Fire Insurance Company. The "Statement of Condition at the Close of Business December 31, 1928", issued by Transamerica, stated its resources as $1,093,449,250, and gave the names of its Directors as follows:

A. P. Giannini, President, Transamerica Corporation;
James A. Bacigalupi, President, Bank of Italy N.T. & S.A.;
A. J. Mount, Senior Vice President, Bank of Italy N.T. & S.A.;
P. C. Hale, Vice President, Bankitaly Company of America;
A. Pedrini, Vice President, Bankitaly Company of America;
L. M. Giannini, President, Pacific National Fire Insurance Company;
A. E. Sbarboro, Vice President, Pacific National Fire Insurance Company;
W. E. Blauer, Vice President, Bankitaly Mortgage Company and Vice President, California Joint Stock Land Bank;
Dr. A. H. Giannini, Chairman, Board of Directors, The Bank of America, N.A., New York;
Edward C. Delafield, President, The Bank of America, N.A., New York;
L. V. Belden, President, The Bankameric Corporation, New York;
J. E. Rovensky, Vice President, The Bankameric Corporation, New York;
Leon Bocqueraz, Chairman, Board of Directors, Bank of America of California;
E. J. Nolan, President, Bank of America of California;
C. N. Hawkins, Vice President, Bankitaly Agricultural Credit Corporation;
W. H. Snyder, Vice President, Commercial Holding Company;
George A. Webster, Vice President, Commercial Holding Company;
W. F. Morrish, Vice President, Corporation of America;
C. R. Bell, Vice President, Corporation of America. [BX 3-A]

In 1930, through a consolidation with Bank of America of California, which was itself a consolidation of United Security Bank and Trust Company with Merchants National Trust and Savings Bank, Bank of Italy National Trust and Savings Association became Bank of America National Trust and Savings Association, hereinafter frequently referred to as "Bank of America."

PARAGRAPH FOUR: (a) The Transamerica group—operating principally through Transamerica, but with active assistance and cooperation from other members of the group and especially from officials of Bank of America—continued its aggressive policy of acquiring other banks and extending and expanding its operations. From its organization in 1928 to the time of this proceeding, Transamerica acquired some 240 banks and branches in California, of which some 200 have been absorbed into and become branches of Bank of America.

(b) A bank cannot lawfully engage in interstate branch banking; however, Transamerica, not being a bank itself, was able to, and did, extend its controlled group-banking operations into other States. Transamerica first expanded the operations of the group into Oregon in 1930, through the acquisition of The First National Bank of Portland. Subsequently, Transamerica acquired some 56 banks and branches in that State, about 40 of which have been absorbed into the branch-bank system of The First National Bank of Portland. The Transamerica group expanded its operations into Nevada in 1934 through the acquisition by Transamerica of the First National Bank in Reno, subsequently changed to First National Bank of Nevada. Since this first acquisition in Nevada, Transamerica has acquired six other banks in Nevada, four of which have been converted into branches of the First National Bank of Nevada. In furtherance of the policy of expanding and extending the operations of the group, Transamerica entered the State of Washington in 1936 through the acquisition of the National Bank of Tacoma, subsequently changed to National Bank of Washington. Since this acquisition, Transamerica has acquired nine other banks in Washington, all of which have been converted into branches of the National Bank of Washington. Continuing its expansion and extension policy, the group entered Arizona in 1937 through the acquisition by Transamerica of the First National Bank of Arizona at Phoenix, the Phoenix National Bank, and its affiliate, the Phoenix Savings Bank & Trust Company. The First National Bank of Arizona at Phoenix and the Phoenix National Bank were consolidated and became the First National Bank of Arizona. This bank acquired a branch from another bank and later established two additional branches and merged with its companion bank, Phoenix Savings Bank & Trust Company.

(c) The usual method followed in acquiring banks was to arrange for the purchase by Transamerica of a controlling stock interest in the bank to be acquired, and thereafter if the bank purchased was to be converted into a branch, Transamerica would convey the assets to one of its controlled banks. It has been common procedure for Transamerica to sell to persons selected to be directors of a bank purchased by it, directors' qualifying shares with an option to Transamerica to repurchase. It has also been common for Transamerica to complete such arrangements prior to the time it became the owner of record of the capital stock of the bank acquired. By this means, boards of directors selected by Transamerica were provided for in advance of transfer to Transamerica of the stock bought in its behalf, and thus any need for Transamerica to obtain a voting permit from the Board of Governors of the Federal Reserve System in order to vote its stock for the election of a board of directors was avoided. There are a total of 324 directorships in Transamerica majority-owned banks which are filled by 266 individuals, and Transamerica holds options to purchase the qualifying shares in the case of 249 such directorships. It has also been a frequent practice by Transamerica, where it appeared necessary in order to secure a controlling interest in a bank it desired to purchase, to pay bonuses to officials of the bank or grant them special inducements in various forms, as well as to pay unusually high prices for shares that represented control, or where such purchase might aid in securing control. It has consistently sought to acquire controlling interests.

(d) As of June 30, 1948, the Transamerica group controlled in California 25 commercial banks having 529 branches, with a total of 554 banking offices; in Oregon, 13 commercial banks having 44 branches, with a total of 57 banking offices; in Nevada, 3 commercial banks having 12 branches, with a total of 15 banking offices; in Arizona, 1 commercial bank having 5 branches, with a total of 6 banking offices; and in Washington, 1 commercial bank, having 9 branches, with a total of 10 banking offices. Subsequently, the number of controlled commercial banks was increased in California to 26 and in Oregon to 16.

(e) During the pendency of this proceeding the Transamerica group, having secured permits from the Comptroller of the Currency to branch such banks, attempted to convert into branches of Bank of America 22 banks with 28 banking offices (one dual occupancy) in California which are majority owned by Transamerica. This conversion was prevented by injunctive orders issued by the United States Court of Appeals for the Ninth Circuit upon the petition of the Board of Governors of the Federal Reserve System and by subsequent action of that court in contempt proceedings instituted against Transamerica, Bank of America, and their respective chief executive officers, Sam H. Husbands and L. M. Giannini, for failure to obey the injunctive orders. In Oregon, Transamerica controls 15 banks (with 17 offices) now operated as affiliates of The First National Bank of Portland, for which applications to convert into branches of that bank are now pending before the Comptroller of the Currency.

PARAGRAPH FIVE: (a) A basic position of respondent in this proceeding is that Bank of America is not controlled by Transamerica, is not a part of the Transamerica group, and is a wholly separate institution dealing at arms length with Transamerica and banks and other corporations majority owned by Transamerica. The support for this position appears to be necessarily based principally upon, though not limited to, reductions in the proportions of the stock of Bank of America held by Transamerica, upon the present wide distribution of the stock of Bank of America, and upon the relatively insignificant stockholdings of L. M. Giannini in the Bank. The facts as to these particular matters are: (1) From the organization of Transamerica in 1928 until July 1937, it held more than 99 per cent of the stock of Bank of America; in July 1937, Transamerica distributed about 58 per cent of its holdings of stock in Bank of America to the stockholders in Transamerica, and thereafter, by sales, reduced its holdings of stock of Bank of America to percentages of the total stock of that bank as follows:

| | | | |
|---|---|---|---|
| 1938 | 41.17% | 1944 | 23.84% |
| 1939 | 30.16 | 1945 | 21.25 |
| 1940 | 36.53 | 1946 | 22.32 |
| 1941 | 30.85 | 1947 | 22.54 |
| 1942 | 25.05 | 1948 | 22.88 |
| 1943 | 21.36 | | |

During the pendency of this proceeding, Transamerica twice reduced its holdings of Bank of America stock by sale and by distribution of shares to its own stockholders. The first reduction was in 1949 to 11.1 per cent of the total, and this was reduced in 1951 to 7.66 per cent of the total stock of Bank of America. (2) As of August 31, 1950, the 24,000,000 shares of stock of Bank of America were distributed among more than 180,000 holders, exclusive of Transamerica, its subsidiaries, and nominees, and Bank of America employees' profit-sharing and family-estate trustees. (3) The stockholdings of L. M. Giannini, plus other shareholdings directly controlled by him, amounted to approximately two-tenths of 1 per cent of the total stock of Bank of America.

(b) From its organization in 1928 to July 1937, Transamerica had and exercised control of Bank of America through its ownership of more than 99 per cent of the stock of that bank. However important other elements of control may have been during that period, they are not considered here because of the direct control through stock ownership. The control exercised by Transamerica, not only of Bank of America, but also of its majority-owned banks and other companies, has always been and is one of policy, leaving the details of the management of the individual banks and other companies to officials selected directly or indirectly by Transamerica. Any radical departure from these policies, or any abnormal commitment, required prior consultation with and approval by Transamerica. The control exercised by Transamerica was for many years publicly acknowledged. The published Annual Report of Transamerica for 1932 contains the statement:

> The policies of the Giannini management of Transamerica Corporation have been restored and are hereby reaffirmed. [BX 3-E]

The published Annual Report of Transamerica for 1934 stated in part:

> Your Directors have named a committee of fourteen to serve as an Advisory Council to assist A. P. Giannini in directing the activities of all banks controlled by Transamerica Corporation. . . . This Council, in addition to its advisory functions, will co-operate with A. P. Giannini and your Board of Directors in choosing from time to time the chief operating executives of the Transamerica group. [BX 3-G]

The same Annual Report refers to L. M. Giannini, who was made head of the Advisory Council mentioned in the preceding excerpt, as follows:

> The selection of L. M. Giannini to head the Advisory Council is, in the opinion of your Board, a particularly happy one for, in addition to his close contact with the wide range of Transamerica's activities since their inception, he is a man whose seasoned judgment, qualities of leadership, and outstanding analytical abilities peculiarly qualify him to head the Council which will determine management policies for the entire group of Transamerica's banks. [BX 3-G]

The composition of the Advisory Council selected by the Directors of Transamerica to assist A. P. Giannini and Transamerica in selecting "the chief operating executives of the Transamerica group" and to "determine management policies for the entire group of Transamerica's banks" was L. M. Giannini as Council Chairman, and the following membership: John M. Grant, President of Transamerica; E. B. MacNaughton, President of The First National Bank of Portland, a Transamerica-controlled bank; C. F. Wente, President of the First National Bank in Reno, a Transamerica-controlled bank; and the following, each of whom held the position stated in the Bank of America: F. N. Belgrano, Jr., Vice President; W. E. Blauer, Vice President and Chairman of its General Finance Committee; Hugh L. Clary, Vice President and Vice Chairman of its Operating Committee; Louis Ferrari, Vice President and General Counsel; F. A. Ferroggiaro, Vice President; Dr. A. H. Giannini, Chairman of the General Executive Committee; A. J. Gock, Vice President; G. J. Panario, Vice President; A. E. Sbarboro, Vice President and Vice Chairman of its General Finance Committee, and Will C. Wood, Vice President. R. P. Everard, Secretary of Bank of America and of Transamerica Corporation, was designated as Secretary of the Advisory Council. Apparently this Council became inactive after a few years. The Annual Report of Transamerica for 1935 states:

> . . . it is fitting that there be incorporated in this letter to the stockholders of Transamerica Corporation a copy of the following preambles and resolutions in regard to Mr. Giannini which were adopted at a regular meeting of the Board of Directors of the Bank of America N. T. & S. A. on August 14, 1935:
>
> > WHEREAS, at a meeting of this Board of Directors held on July 9, 1935, there was presented for consideration a recommendation of the Board of Directors of Transamerica Corporation that Bank of America N. T. & S. A. place Mr. A. P. Giannini on a salary as Chairman of the Board of said Bank; and
> >
> > * * * * * *
> >
> > WHEREAS, this Board of Directors fully recognizes the fact that the gigantic task of reconstruction undertaken by Mr. Giannini when he resumed control of the management of Bank of America N. T. & S. A. on February 15, 1932, has been accomplished through the genius and indomitable leadership of Mr. Giannini; and
> >
> > * * * * * *
>
> [BX 3-H]

(c) (1) When Transamerica became a minority stockholder in Bank of America through distribution to its own shareholders of 58 per cent of its stockholdings in that bank, the effective control of that bank by Transamerica was not interrupted. Many factors, some tangible and others of an intangible character, have contributed to and aided in the continuance of this control to the present time, and promise its continuance in the future.

(2) In 1930, A. P. Giannini retired pursuant to a previously announced plan, and at his invitation Elisha Walker, an Eastern banker, became Chairman of the Board of Directors of Transamerica. The Board was reconstituted, and in 1931 it wrote down the book value of Transamerica

assets by about one billion dollars, most of which was due to the reduction to nominal figures of the sums previously carried as good-will and going-concern values. The Board also announced new policies which included eventual withdrawal of Transamerica from the control of banks. The Board stated in this connection:

> . . . Your Board believes that it is unsound to link, through a holding company, the ownership and control of a deposit bank with other unrelated activities and that it is essential to the complete success of any bank that it should be operated and publicly regarded as an independent institution without responsibility for, or connection with, any other business. It was for this reason that your Board determined upon the policy of confining the Corporation's investments in the banking field to minority interests not involving controlling influence. The eventual separation of its controlled banks from Transamerica, in accordance with this policy, will give such banks complete independence in their lending and investment policies which is the only sound foundation for a bank. [BX 3-D]

A. P. Giannini came out of retirement and, against the strenuous opposition of the new management, secured proxies more than sufficient to control Transamerica; whereupon the Walker management was ousted. A. P. Giannini again became Chairman of the Board of Directors of Transamerica, with L. M. Giannini as a Director and Chairman of the Executive Committee, and with other Directors and officers selected by A. P. Giannini. On February 24, 1932, soon after these events, the Board of Directors of Transamerica adopted the following resolution:

> Resolved, that the Chairman of the Board or the President of this corporation be, and he hereby is, authorized to designate, where deemed advisable by either of them to do so, the particular person or persons who shall represent the interests of this corporation on the Board of Directors of any other corporation of which this corporation owns stock. [TR 1734]

The foregoing action was rescinded on August 23, 1940, and the following resolution adopted:

> Resolved, that the Chairman of the Board of Directors or the President of this corporation be, and each of them hereby is authorized to execute for and in the name and on behalf of this corporation, a proxy or power of attorney in any form satisfactory to him appointing such person or persons

> as he shall determine as attorneys and proxies to vote the shares of stock of other corporations now or hereafter registered in the name of this corporation, or which this corporation may now or hereafter be entitled to vote at any and all meetings of shareholders of said other corporations. /TR 1735/

(3) In addition to the delegations of authority by Transamerica to A. P. Giannini as Chairman and to the President of Transamerica to designate the person or persons to represent the interests of Transamerica on boards of directors of corporations of which Transamerica held stock, and to name proxies to vote the stock held by Transamerica in other corporations, the by-laws of the Bank of America placed specific powers in the hands of A. P. Giannini. At all relevant times, A. P. Giannini had direct authority to formulate the policies by which the affairs and operations of the Bank of America were controlled. Section 4 of the Bank's by-laws as amended on September 22, 1931, reads in part:

> Section 4. <u>The Chairman of the Board</u>. The Chairman of the Board of Directors shall preside at all meetings of the Board and of the shareholders, and shall perform all other duties imposed upon him by the Board of Directors and these By-laws. The duties of the Chairman, in addition to the usual executive duties of such officer, shall also include responsibility for the policies upon which the bank's operations and affairs will be conducted. /BX 289/

When the position of "Founder-Chairman" was created for A. P. Giannini, Section 4 of the by-laws was, on May 8, 1945, amended to read in part:

> Section 4. <u>The Founder-Chairman</u>. The Founder-Chairman shall be responsible for the formulation of the policies upon which the bank's operations and affairs will be conducted and shall perform such other duties as may be imposed upon him by the Board of Directors and these By-laws. . . . /BX 289/

(d) (1) When the stock of a company is widely distributed among large numbers of small holders, it is common experience that a substantial though minority interest frequently exercises effective control. In the present instance, after reduction to 7.66 per cent of the stock of Bank of America, the holdings of Transamerica and its subsidiaries in that bank on January 31, 1951, were 1,838,850 shares. On August 31, 1950, (the nearest date for which figures are available) the next largest holder other than Bank of America employee trust funds, which had 450,891 shares, was a securities dealer who was the holder of record of 62,000 shares. More than half of the 24,000,000 shares of stock of Bank of America was held in lots of less than 500 shares by 173,109 owners, and almost a quarter of the total issue was held by 6,727 owners in lots of more than 499 but less than 2,000 shares. The record shows that in the years 1938 to 1950, inclusive, the shares voted by the management Proxy Committee (as distinguished from shares voted by other proxies, or in person) averaged approximately 99 per cent of all the shares which were voted. For example, the figures for recent years show:

| Year | Total shares voted | Voted by management Proxy Committee | Voted by all others |
|---|---|---|---|
| 1947 | 6,158,796 | 6,097,080 | 61,716 |
| 1948 | 6,214,715 | 6,143,564 | 71,151 |
| 1949 | 6,183,509 | 6,115,453 | 68,056 |
| 1950 | 7,108,579 | 7,031,046 | 77,533 |

Transamerica holds a voting permit to vote the stock it holds in Bank of America.

(2) Since 1939 the stock owned by Transamerica in Bank of America has been voted by the Bank's Proxy Committee. The formal designation of the members of this committee is by the Board of Directors of the Bank. This Proxy Committee has consisted of three members (except in one year five members were named) who have always been persons close to A. P. Giannini. Two of the usual members of the committee have been Margaret Mallory, office manager of the A. P. Giannini Company, who has served on the Proxy Committee every year since 1937, and George J. Giannini, brother of A. P. Giannini, who has served on the committee every year since 1941. The Proxy Committee has consistently voted for and elected as Directors of Bank of America the Directors already in office if they were available, and when a new member was added to replace a Director no longer available, the Proxy Committee voted for whoever was selected by the Board, usually at the recommendation of the Chairman of the Board, sometimes after consultation with Directors and officers. This provides the management with an effective instrument for perpetuating itself in control.

(e) Among the important intangible factors of control is the history of "Giannini management" of Transamerica and its affiliates, the long-established relationships among the members of this group, the long and continuous service of most of the important officials in the group, the expectation and acceptance of policy direction, and the momentum of established policies and procedures. All of these tend to preserve and continue unity of policy on the part of the management hierarchy.

(f) A result of the tangible and intangible factors entering into the control of Bank of America by Transamerica appears from an examination of the 1948 Board of Directors of that bank. The 1948 Board consisted of 25 members. Of this membership, 14 were members of the 1937 Board selected by Transamerica when it owned more than 99 per cent of the stock of Bank of America. These members were:

(1) W. E. Blauer,
(2) Leon Bocqueraz,
(3) G. E. Caglieri,
(4) J. Cereghino,
(5) John A. Corotto,
(6) A. P. Giannini,
(7) L. M. Giannini,
(8) A. J. Gock,
(9) J. E. Marble,
(10) H. A. Mazzera,
(11) Angelo Petri,
(12) A. E. Sbarboro,
(13) C. J. Sullivan,
(14) Z. Zentner.

Each of these 14 members of the 1948 Board served continuously in that capacity from 1937, except A. E. Sbarboro, who was relieved in 1938 and re-elected in 1946. The remaining 11 members of the 1948 Board were:

(1) F. S. Baer, who was elected in 1943 and served continuously through 1948. Baer came into the Transamerica group through its acquisition in 1942 of Pacific Finance Corporation of California, of which he was managing head.

(2) Louis Ferrari, who became a member of the Board in 1946 and served through 1948. He had previously been a Director for the years 1929 through 1932, inclusive. He became a trust attorney for the Bank of Italy in 1919. From 1926 to 1944 he was Vice President and General Counsel of Bank of America.

(3) F. A. Ferroggiaro, who became a member of the Board in 1940 and served continuously through 1948. He had previously been a Director in 1930 and 1931. He has been an employee of the Bank of Italy and its successor since its organization.

(4) Marshal Hale, Jr., who became a member of the Board in 1946 and served continuously through 1948. He took the place of his father, who had served as a Director from 1926 to 1945, inclusive, except for the years 1934, 1935, and 1936. He and his family have been closely associated with the Gianninis for many years.

(5) C. N. Hawkins, who became a member of the Board in 1925 and served continuously through 1948 except for the years 1934, 1935, 1936, and 1937. In 1916, his father sold two banks to the Bank of Italy and thereupon became a Director of that bank, to which position C. N. Hawkins succeeded. He was a Director of Stockholders Auxiliary Corporation in 1920. During the years 1934 to 1937 he was a member of the Advisory Board of the Bank of America.

(6) Eric A. Johnston, who became a member of the Board in 1946 and served continuously through 1948. He became a Director at the invitation of A. P. Giannini.

(7) Alfred J. Lundberg, who became a member of the Board in 1946 and served continuously through 1948. He became a Director at the invitation of L. M. Giannini.

(8) W. W. Mein, who became a member of the Board in 1938 and served continuously through 1948. He was a Director of Occidental Life Insurance Company from 1939 through 1947.

(9) Neil Petree, who became a member of the Board in 1943 and served continuously through 1948. He became a Director at the invitation of A. P. Giannini, and testified that in 1945 "Again Mr. A. P. Giannini suggested to me that he would like to know if I wanted to go on the Executive Committee, and I did, and so was elected." /TR 9834/

(10) E. R. Thurber, who became a member of the Board in 1932, at the time the Giannini management resumed control, and served continuously through 1948 except for the years 1934 to 1938, inclusive. He was a Director of California Lands, Inc., in 1939 and 1940, and a Director of Capital Company from 1941 through 1947.

(11) C. F. Wente, who became a member of the Board in 1944 and served continuously through 1948. He has been continuously employed in Transamerica-group banks since 1918. In 1929, he became Vice President of the Bank of Italy; in 1930, Executive Vice President; in 1934 and until 1937, President of the First National Bank in Reno, later First National Bank of Nevada, after its acquisition by Transamerica and continued as a Director and as Chairman of the Board; in 1934 and

thereafter, Director of The First National Bank of Portland; in 1937, President of the Central Bank, Oakland, California, a Transamerica bank; in 1943, Senior Vice President of Bank of America; and is Vice Chairman of the Executive Committee of that bank, a member of its Trust Committee, and Chairman of the Branch Premises Committee.

With very few exceptions, the members of the 1948 Board of Directors of the Bank of America were either long-time employees of or had been closely associated with the Transamerica group for many years. They were selected by the methods heretofore described and could not either have become or have continued as Directors except with the approval and support of Transamerica.

(g) Twelve of the Directors of the Bank of America named in the preceding subparagraph have also been Directors and/or officers of Transamerica or its subsidiaries (other than commercial banks) in various years since 1937, as follows:

(1) W. E. Blauer--Director, Bankamerica Agricultural Credit Corporation, 1939, 1940, and 1941; Director, Inter-America Corporation, 1939; Director, Pacific National Fire Insurance Company, 1939 through 1947.

(2) Leon Bocqueraz--Director, Capital Company, 1939 through 1947; Director, Pacific National Fire Insurance Company, 1939 through 1947.

(3) Joseph Cereghino--Director, General Metals Corporation, 1939 through 1947.

(4) A. P. Giannini--Chairman, Board of Directors, Transamerica Corporation, 1932 until his death in 1949; Director and Chairman of the Board, Corporation of America, 1933 through 1939; Director, Occidental Life Insurance Company, 1936 through 1947; Chairman, Board of Directors, Transamerica General Corporation, 1938 and 1939; Director, Merchants Realty Corporation, 1938.

(5) L. M. Giannini--Chairman, Advisory Council and Chairman, Executive Committee, 1935 through 1937, and Chairman, Executive Committee, Transamerica Corporation, 1938 through 1948; Chairman, Board of Directors, Bankamerica Agricultural Credit Corporation, 1928 through 1941; Director, California Lands, Inc., 1938 through 1940; Director, Capital Company, 1938 through 1947; Director and Vice President, 1939 and 1940, and Director and President, Corporation of America, 1941 through 1947; Director, Inter-America Corporation, 1939 through 1947; Director and President, 1933 through 1943, and Chairman of the Board, 1944 through 1947, Occidental Life Insurance Company; Director, Pacific Fire Insurance

Company, 1933 through 1947; Director, America and Security Corporation, 1938; Director, Merchants Realty Corporation, 1933 through 1947; and Director, Transamerica General Corporation, 1938 and 1939.

(6) A. J. Gock--Vice President, Transamerica Corporation, 1932 through 1939.

(7) Marshal Hale, Jr.--Director, Pacific National Fire Insurance Company, 1945 through 1947.

(8) C. N. Hawkins--Director, Bankamerica Agricultural Credit Corporation, 1939 through 1941.

(9) W. W. Mein--Director, Occidental Life Insurance Company, 1939 through 1947.

(10) A. E. Sbarboro--Director and Vice President, Inter-America Corporation, 1939 through 1947; Director and Vice President, Pacific National Fire Insurance Company, 1939 through 1947; Director, Western Furniture Exchange (later Western Merchandise Mart), 1939 through 1947.

(11) E. R. Thurber--Director, California Lands, Inc., 1939 and 1940; Director, Capital Company, 1941 through 1947.

(12) C. F. Wente--Director and Vice President, Bankamerica Agricultural Credit Corporation, 1939 through 1941; Director and Vice President, California Lands, Inc., 1939 and 1940; Director, Capital Company, 1939 through 1942; and Vice President, Corporation of America, 1939 through 1947.

(h) (1) The interrelationships between Transamerica and Bank of America are significant in considering the matter of control of Bank of America by Transamerica subsequent to 1937.

(2) Since 1937, Bank of America has performed or continued to perform a wide variety of services for Transamerica inconsistent with cessation of control of that bank by Transamerica after it became a minority stockholder. One important type of service performed by various officers and employees of the Bank of America has been assistance to Transamerica in acquiring other banks. G. M. McClerkin, a Vice President of Bank of America from 1932 until 1946, devoted a major portion of his time and efforts during that period to seeking out opportunities for Transamerica to acquire controlling stock interests in banks, and in negotiating or assisting in negotiating such purchases. Since 1946, he has been a Vice President of Transamerica, where he has continued his bank-purchasing activities and also serves as a liaison officer between Transamerica and its controlled banks. During the time in 1941

when Transamerica was in process of acquiring the controlling stock interest in the First Trust and Savings Bank of Pasadena, Edmund Nelson and S. C. Beise, each a Vice President of Bank of America, and Louis Ferrari, the General Counsel of that bank, actively participated in the various steps taken, and aided in carrying out and in supervising the carrying out of much of the work incident to such acquisition. S. C. Beise also assisted Transamerica in a similar manner in 1944 in connection with the acquisition by Transamerica of the stock of the First National Bank in Santa Ana and the First Trust and Savings Bank of Santa Barbara. In 1942, F. S. Baer, then Vice Chairman of the Board of Directors of the Bank of America, approached the President of the Citizens National Trust and Savings Association of Los Angeles on behalf of the acquisition by Transamerica of that bank. In 1945, C. F. Wente, then Senior Vice President of Bank of America, conducted the negotiations through which Transamerica acquired the Bank of Corning. These are merely specific instances of the continual activity which the record shows to have been engaged in by numerous officers and employees of the Bank of America in aid of the purchases of banks by Transamerica.

(3) Other types of services performed for Transamerica include the audit and examination of Transamerica-controlled banks by the Inspection Department of the Bank of America, reports of such inspections being supplied to Transamerica and to the banks examined. Similarly, the same department of the Bank audits and examines Transamerica subsidiaries not engaged in banking. Other services performed for Transamerica by personnel of the Bank of America include tabulating, addressographing, and mailing services; the handling of stock transfers; mechanical maintenance; stationery supplies; rent collections, burglar alarm inspection; and, until 1950, telephone switchboard service. All of these services are performed by the Bank at actual cost, and substantially all are performed exclusively for Transamerica and its subsidiaries.

(4) Officers and personnel of the Bank of America are freely moved to other banks controlled by Transamerica, and from such other banks to Bank of America. The record leads to the conclusion that Bank of America has served as a reservoir of trained personnel later placed in important positions in other banks controlled by Transamerica. An example of this appears in the case of C. F. Wente, whose many transfers among Transamerica-controlled banks are stated in subparagraph (f) above. In connection with his transfer, at the request of A. P. Giannini, from the presidency of Central Bank, Oakland, to Senior Vice President of Bank of America, Mr. Wente testified he "couldn't do anything but salute the general, and say, 'Yes, Sir, Mr. A. P., I will be here.'" F. N. Belgrano, Jr., became a Vice President of Bank of America in 1933; in 1939, he was made President of Pacific National Fire Insurance Company, a Transamerica subsidiary; in 1943, he was made President of Central Bank, Oakland, succeeding C. F. Wente. The vacancy as President of

Pacific National Fire Insurance Company caused by this transfer of F. N. Belgrano, Jr., was filled by moving into it A. E. Connick, a Vice President of the Bank of America. In 1947, Belgrano was made President of The First National Bank of Portland, succeeding E. B. MacNaughton, who was made Chairman. W. W. Hopper, who had been an employee of the Bank of America since 1922, became a Vice president of that bank in 1937; he had also been President of California Joint Stock Land Bank and of Bankamerica Agricultural Credit Corporation, both Transamerica subsidiaries; when C. F. Wente was moved from the First National Bank of Nevada to the Central Bank, Oakland, Hopper was made President of the First National Bank of Nevada. A. H. Brouse, an employee of the Bank of America since 1920, became a Vice President of that bank in 1928, was in 1938 made Executive Vice President of the National Bank of Washington, a Transamerica subsidiary, and thereafter was made President of that bank. H. C. Gruwell, after service in the Bank of America, was in 1941 made a Vice President of that bank, where he remained until 1945, when he was made Executive Vice President of the First National Bank of Arizona, and in 1947, President of that bank. Between 1927 and 1940, George J. Panario was Assistant Vice President and then Vice President of the Bank of America; since 1935, he has been successively President and Chairman of the Board of Directors of Capital Company; since 1940, he has been successively Secretary, Director, and Chairman of the Board of Directors of General Metals Corporation; since 1942, he has been Chairman of the Board of Directors of Enterprise Engine & Foundry Company; and he is also a Director of Occidental Corporation and of Western Merchandise Mart.

The foregoing are but a few instances illustrative of the large number of transfers of officials between Bank of America and Transamerica-controlled banks and companies which are shown by the record.

(i) (1) A different type of interrelationship appears in unusual corporate transactions.

(2) Subsequent to 1937, Pacific National Fire Insurance Company, a Transamerica subsidiary, and subsequent to July 31, 1941, Premier Insurance Company, a Transamerica subsidiary, wrote insurance on automobiles the purchase of which was financed by Bank of America. Inter-America Corporation, a Transamerica subsidiary, acted as broker in these transactions. The arrangement between Bank of America and each of the insurance companies has included a formula of adjustment with respect to the premiums paid for the insurance. Under this formula, if the actual losses incurred on such insurance, plus the cost of doing business, exceeded the premiums received by the insurance company, the difference would be paid to the insurance company by Bank of America. On the other hand, if the premiums received by the insurance company

exceeded the losses and expense, the difference would be paid to Bank of America by the insurance company. The net result of adjustments made pursuant to this formula has been payments by the Bank to the Pacific National Fire Insurance Company for the period from June 1, 1939, to July 31, 1943, totalling $998,158.70, and payments to Premier Insurance Company for the period from August 1, 1941, to September 30, 1946, totalling $1,109,400.17. Both of these insurance companies are stock companies, and their earnings, when declared as dividends, accrue to Transamerica.

(3) Since 1937, Corporation of America, a Transamerica subsidiary, has acted as trustee (and in recent years that has been its sole function) under deeds of trust in which Transamerica or its affiliated organizations are named as beneficiaries. This activity has largely been on behalf of Bank of America, and a number of officers of that bank are also officers of Corporation of America. They, together with officers of other Transamerica-controlled banks, were appointed to facilitate the execution and delivery of papers in connection with deeds of trust. The fees paid to Corporation of America by Bank of America are one-half of the total fees collected from the trustors, the other half being retained by Bank of America.

(4) Before and after 1937, group insurance policies issued by Occidental Life Insurance Company, a Transamerica subsidiary, to Bank of America included not only employees of that bank but also employees of Transamerica and of other of its subsidiaries.

(5) In offering to purchase the stock of the First Trust and Savings Bank of Pasadena, in November 1941, Transamerica agreed that if any officers or employees of the First Trust and Savings Bank were released from their employment in line with any management policy, Transamerica would endeavor to obtain suitable employment for such persons with the Bank of America.

(6) As previously found, one of the principal functions of Capital Company, a Transamerica subsidiary, has been to manage, operate, and sell real estate acquired by Bank of America through foreclosures. This company also manages the premises occupied by the branches of Bank of America. It also entered into an arrangement with Bank of America for the purchase and improvement of real estate. At the request of the Bank, which supplied appraisal and credit information, Capital Company made loans at competitive rates of interest to finance the acquisition and improvement of properties, and the Bank paid to Capital Company the difference between the interest actually received and what the interest would have amounted to if the rate had been 6 per cent. As a part of this arrangement, Capital Company required the borrowers to obtain from Bank of America financing for homes built upon the property, or

in case of sale of lots, that the purchaser offer Bank of America the first opportunity to make any building loans. Another arrangement was that Capital Company would participate in residential loans made by Bank of America by assuming any amount above the maximum the Bank could lawfully loan.

(j) Having fully considered the evidence respecting the manner of operation of Transamerica and its relationships and activities with and in connection with Bank of America, and with and in connection with its majority-owned banks and other companies, it is concluded, and therefore found, that Transamerica has had and now has the power to control and direct, and in fact has controlled and directed, and now does control and direct, the major policies and activities, as distinguished from the day-to-day details of operation, of Bank of America and each of the other banks named in subparagraph (b) of Paragraph One. As to such other banks, Transamerica acquired and now holds a controlling stock interest in each of them, and has openly and freely exercised that control. It is further concluded, and therefore found, that Transamerica has not held and does not now hold the stock in the banks named in said subparagraph (b) solely for investment.

PARAGRAPH SIX: (a) Much evidence was introduced or proffered by respondent assigning reasons for bank acquisitions, explaining the circumstances under which made, and the goal being sought. This evidence is principally intended to show that the purpose was to accept opportunities to acquire banks as they were presented in order to round out State-wide branch banking by extending the facilities and services of the system into areas where it was lacking, and to add to the lines and types of business not already adequately represented in the system; to acquire suitable banking premises not otherwise available; to acquire, at the request of owners or supervisory authorities, banks in failing or frozen condition; and to indicate there was no purchase of banks merely for the sake of increasing the size of the group or to reduce competition.

(b) Other findings show in detail the growth of the Transamerica group through 1948 (in which year this proceeding was commenced) and also the further acquisitions during the pendency of this proceeding, as well as the unsuccessful attempt to convey the assets of 22 banks with 28 banking offices to Bank of America. With respect to extending services and facilities, there are at least eight counties in California having two or more banking offices in which all the banking offices are Transamerica controlled. There has been no abatement of attempts to purchase other banks during this period. The testimony of a large number of independent bankers shows that the general reputation of Transamerica (and also Bank of America) among bankers in the area involved is one of constantly seeking to acquire more banks. Typical examples of this appear in the following extracts from such testimony:

> . . . That they (Transamerica and Bank of America) are very aggressive and very anxious to buy into the small banks in our neighborhood. /TR 3201/
>
> * * * * * * *
>
> The reputation among the bankers of Northern California unanimously is that they (Transamerica and Bank of America) are out to acquire any bank that they can get. /TR 3348/
>
> * * * * * * *
>
> Well, they (Transamerica and Bank of America) have purchased already five banks in the county, and there are four left, and they have all been invited to come into the organization. /TR 3152/

This line of testimony shows not only the great persistence of efforts to buy banks by or in behalf of Transamerica, but also makes it clear that Transamerica is not especially engaged in acquiring banks in bad condition. Illustrative of this is the testimony of the President of The Savings Bank of Mendocino County, which operates a commercial banking department, that the first efforts to purchase this bank were about 1923 to 1925 on behalf of the Bank of Italy, and continued at intervals of about 60 days for two years; that in the early 1930's, before 1933, Mr. McClerkin (then Vice President of Bank of America) made two attempts to purchase; that in 1933, when the bank was in difficulties, he approached McClerkin in an effort to sell the bank, but was unable to get an offer; that about 1936 McClerkin approached him to reopen negotiations for purchasing the bank; and that in 1941 the manager of the local branch of the Bank of America inquired about the possibility of buying the bank, saying he did so at the direction of his superiors.

(c) Respondent introduced testimony to the effect that in the past 25 or 30 years some 17 banks with numerous branches were offered for sale, considered, and the offer rejected by respondent. Even assuming this to be the fact, it would not affect the conclusion from the whole record respecting bank purchases by respondent. However, the weight of the testimony concerning numbers of the claimed offers and rejections make it clear that in some of the instances there was no offer, but, on the contrary, negotiations were had upon solicitation by or in behalf of respondent; in some instances negotiations broke down over the question of price; and in some instances no party to the negotiations was in a position to convey a controlling interest.

(d) Interstate branch banking is unlawful, and Transamerica cannot directly consolidate its controlled banks in the several States into a single bank. Although Bank of America is by its own statement "the world's largest bank" /RX 350/, Transamerica has evidenced a desire to create an even larger bank by interstate branch banking, if and when this is possible. The 1937 Annual Report of Transamerica contains the statement:

> . . . and should Congress enact legislation permitting branch banking over State lines, Transamerica Corporation, with the cooperation and consent of the other stockholders of member banks in which it is substantially interested, will be in a position to take advantage of the broader scope which the new legislation will offer and will be among the first to launch a branch banking system beyond State lines. /BX 3-J/

Practical steps in the same direction may be inferred from the fact that the internal operations of Transamerica banks in Oregon and Nevada and those of Central Bank, Oakland, are conducted under a Manual of Operations copied or adopted from the Manual of Operations of Bank of America, producing a uniformity of internal operations adapted not only to central management and control but also to unification into an interstate branch-banking operation should that become lawful.

(e) The course followed by Transamerica requires the conclusion that so long as it is profitable and advantageous to the group to acquire more banks, this will be done to the extent possible.

PARAGRAPH SEVEN: (a) A principal part of respondent's defense has been devoted to offering or tendering evidence directed to showing the continued existence of effective competition; that competition from commercial banks located outside the five-State area, together with competition from non-banking institutions within and without the five-State area, is such that respondent could not, even if it tried, bring about a substantial lessening of competition; and that no proper conclusion concerning the effect of respondent's stock acquisitions can be reached without considering the character and extent of competition from these sources. These matters have been considered in the light of the fact that this proceeding challenges the lawfulness of respondent's acquisition and use of stock in commercial banks within the five-State area and in the light of the characteristics and functions of commercial banks.

(b) The banking structure of the country as it now exists requires and depends upon two functions which are performed by and are unique to commercial banks. These are the money-payment and the money-creation functions. There is a third function--the extension of short-term business credit--in which commercial banks are dominant and for which, in the practical sense, there is no adequate existing alternative. In these areas there is no substantial competition with commercial banks from any source.

(c) The money-payment function rests upon the acceptance of demand deposits subject to being drawn upon by depositors through the issuance of checks. The conduct of all business depends upon the smooth operation of the elaborate mechanism by which money payments can be made between persons in the same or widely separated parts of the country through the check collection and clearance procedures of the commercial banking system, without persons having to make physical transfers of currency or coin in order to effect payment. More than 80 per cent of all money payments throughout the country are made by check. Some four billion checks a year are issued, representing a dollar volume of about one and one-half trillion dollars. Only commercial banks perform this function and there is no existing adequate alternative.

(d) The money-creation function of commercial banks rests on two principal factors. First, commercial bank demand liabilities (deposits subject to check) are widely used and accepted as means of payment or money. Second, commercial banks do not keep a full cash reserve behind each dollar of their demand deposit liabilities, but operate instead on a fractional reserve basis. Commercial banks are thus in a position to add to their demand deposit liabilities in exchange for note or security assets if they have cash reserves in excess of what must be held against their deposits or if they can obtain additional reserves. When a commercial bank lends to a borrower, it typically sets up on its books a demand liability (deposit subject to check) to his account. The borrower accepts the deposit as means of payment equivalent to cash. As the borrower writes checks against his new deposit, the funds are transferred and deposited elsewhere, usually in other banks. The cash reserves of the lending bank are drawn down, but the bank can readily meet such a drain as long as it has left the minimum fraction of cash reserves needed against its remaining deposits. The bank or banks receiving the deposits thus obtain more cash reserves than they need to hold against deposits, and in turn can increase their deposit liabilities by additional lending. In this country commercial banks are generally required by law to hold reserves equal to specified percentages of their demand and time deposits, with low percentages typically applying to time deposits. For member banks, whose deposits represent 85 per cent of all commercial bank deposits, these reserves must be kept as balances with the Federal Reserve Banks. For non-member banks, required reserves are generally kept in the form of vault cash or balances with correspondent banks. Balances in excess of the required amounts are excess reserves that may be used to support an expansion of commercial bank lending with a resultant increase in bank deposit liabilities. If 20 per cent of demand deposits must be held in reserves, then banks as a group may expand their deposits by five times the amount of the excess reserves. Member banks as a group may increase their total reserve balances by borrowing from the Federal Reserve Banks or by selling Government securities in the market, which are purchased by the Federal Reserve Banks. Non-member banks as a group may increase their total reserve balances by borrowing from correspondent banks, which in turn may borrow from Federal Reserve Banks or also may sell Government securities in the market. An adequate, though oversimplified, illustration of the process of money creation through an increase in bank lending is:

> Bank A sells $1,000 in Government bonds to the Reserve Bank, increasing the reserve balance of Bank A by that amount. Bank A thereupon lends $1,000 to Jones by adding that amount to his demand deposit balance. Jones draws a check for $1,000 on Bank A, payable to Smith, who deposits the check in Bank B. Bank B sets aside $200 as the required reserve against this increase in its deposits and then loans the remaining $800 to Brown. Brown draws a check for $800 to Johnson, who deposits the check in Bank C. Bank C sets aside $160 as the reserve against this increase in its deposits, loaning the balance, or $640, to Green. This process is repeated by similar transactions within the commercial banking system until the excess reserves of $1,000 originally created by the sale by Bank A of the $1,000 Government bond to the Reserve Bank supports an expansion of newly created deposits totalling $5,000. It is in this way that the commercial banking system as a whole is able to use excess reserves to produce expansion of the demand deposits within the banking system as a whole at the ratio of five to one when the ratio of required reserve is 20 per cent of demand deposits.

This money-creation function is unique to commercial banks and there is no existing substitute.

(e) Short-term business credit is that required by small, medium, and even large business concerns for or to supplement their working capital. In this area commercial banks occupy a pre-eminent position. Exclusive of trade credit (which is an arrangement by which suppliers of goods and services grant the privilege of deferring payment for such goods and services for periods of 30, 60, and 90 days), they supply more than 90 per cent of all short-term business credit. Because of the intimate knowledge of the affairs of business concerns in the areas in which commercial banks operate, including that acquired in the course of extending the other services for which such banks are commonly relied upon, they are able to and do extend and service short-term business credit to the almost total exclusion of other lenders. Financial institutions without the same knowledge of local conditions, and without ready access to such knowledge, afford no practical substitute for the short-term business credit function of local commercial banks.

(f) Because of the frequency of need for access to one or more of the services of commercial banks, they draw their business largely from areas within which customers may conveniently visit the bank as occasion may require. Thus, in this aspect of their customer relations commercial banks are largely local, and for the usually needed customer services a distant bank cannot adequately serve a customer. Very large concerns with national credit standing have access to credit from banks in many parts of the country and may also maintain accounts in widely scattered banks. This does not apply, however, to the great multitude of the customers of commercial banks. The smaller concerns, local business enterprises, and ordinary citizens must depend upon their local commercial bank or banks for the financial services peculiar to such banks; for all these customers there is no alternative, because distantly located banks do not serve or supply their needs.

(g) In addition to the three distinctive services previously described, all commercial banks perform some or all of the following services: acceptance of savings deposits; the making of real estate, personal, agricultural, instalment, term, and other types of loans; the collection of drafts, bills, and other commercial instruments; the acceptance of bills of exchange; the issuance of letters of credit; the sale of travelers' checks, cashiers' checks, and drafts on correspondent banks; the purchase or sale of securities for customers; the sale of foreign exchange; the renting of safety deposit boxes; the extension of trust services, and others. Within the area of some of these additional services there is some competition from sources other than commercial banks. Such sources, other than the Government lending agencies, are principally life insurance companies, building and loan associations, production credit associations, savings and loan associations, credit unions, finance companies, personal loan companies, and private individuals. All of these, however, depend upon the commercial banking system to carry on their own business, and most of them depend upon it for additional credit for their own operations. Such non-bank competition as exists in this limited area of services is immaterial here, for it does not compete with or afford a substitute for the major functions of commercial banks.

PARAGRAPH EIGHT: (a) In order to consider the effect of the acquisition and use by Transamerica of the stock of banks, as heretofore found, it is necessary to relate the Transamerica-controlled banks and their operations to the entire commercial banking structure of the area involved.

(b) (1) From its inception with the organization of the Bank of Italy by A. P. Giannini in 1904, the growth of the banking group the control of which was concentrated in Transamerica upon its organization in 1928, proceeded steadily from one bank in 1904 to 26 banks and branches in California in 1920, representing 2.90 per cent of the total number of banking offices in California. The number of such banking offices and the percentage of the total number of banking offices in California increased by years as follows: 1921, 31 offices, 3.33 per cent of the total; 1922, 63 offices, 6.20 per cent of the total; 1923, 83 offices, 7.16 per cent of the total; 1924, 106 offices, 8.70 per cent of the total; 1925, 158 offices, 12.43 per cent of the total; 1926, 185 offices, 14.30 per cent of the total; 1927, 297 offices, 22.42 per cent of the total; 1928, 352 offices, 26.27 per cent of the total. At this point control was placed in Transamerica, and thereafter the expansion and extension of Transamerica in the commercial banking field has been as shown in the following table:

(Figures are not available for 1949 for this table or for the tables showing loans and deposits, which hereafter appear in subparagraphs (c) and (d). Such data are available for 1950, but do not differ substantially from the 1948 figures.)

NUMBER OF TRANSAMERICA-CONTROLLED BANKING OFFICES AND THE PERCENTAGE SUCH NUMBER IS OF THE TOTAL NUMBER OF BANKING OFFICES, BY YEARS AND BY STATES

(The columns headed "Trans." show the number of Transamerica-controlled banking offices, and the columns headed "Percent" show the percentage of all banking offices controlled by Transamerica)

| | California | | Oregon | | Nevada | | Arizona | | Washington | | In total area shown | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Year | Trans. | Percent | Trans. | Percent | Trans. | Percent | Trans. | Percent | Trans. | Percent | Trans. | Percent |
| 1928 | 352 | 26.67 | | | | | | | | | 352 | 26.67 |
| 1929 | 449 | 34.20 | | | | | | | | | 449 | 34.20 |
| 1930 | 455 | 35.22 | 4 | 1.75 | | | | | | | 459 | 30.18 |
| 1931 | 421 | 33.98 | 4 | 1.85 | | | | | | | 425 | 29.21 |
| 1932 | 414 | 36.25 | 6 | 3.77 | | | | | | | 420 | 32.28 |
| 1933 | 419 | 38.94 | 17 | 13.49 | | | | | | | 436 | 36.27 |
| 1934 | 425 | 39.10 | 18 | 13.24 | 5 | 33.33 | | | | | 448 | 36.19 |
| 1935 | 433 | 40.43 | 26 | 18.71 | 7 | 41.18 | | | | | 466 | 37.98 |
| 1936 | 477 | 43.96 | 35 | 24.65 | 8 | 44.44 | | | 2 | .87 | 522 | 35.37 |
| 1937 | 497 | 45.51 | 44 | 30.99 | 12 | 63.16 | 5 | 13.51 | 7 | 3.10 | 565 | 37.27 |
| 1938 | 504 | 46.54 | 46 | 32.39 | 12 | 63.16 | 5 | 13.16 | 11 | 4.87 | 578 | 38.33 |
| 1939 | 505 | 46.80 | 46 | 32.62 | 12 | 57.14 | 5 | 13.16 | 10 | 4.44 | 578 | 38.43 |
| 1940 | 509 | 47.39 | 46 | 32.86 | 12 | 57.14 | 5 | 13.16 | 10 | 4.46 | 582 | 38.88 |
| 1941 | 511 | 47.76 | 47 | 33.33 | 13 | 59.09 | 5 | 13.16 | 10 | 4.46 | 586 | 39.20 |
| 1942 | 506 | 48.19 | 49 | 34.75 | 14 | 60.87 | 5 | 12.82 | 10 | 4.57 | 584 | 39.70 |
| 1943 | 508 | 48.85 | 48 | 34.29 | 14 | 60.87 | 5 | 12.82 | 10 | 4.55 | 585 | 40.01 |
| 1944 | 521 | 50.05 | 48 | 34.29 | 14 | 60.87 | 6 | 14.63 | 10 | 4.48 | 599 | 40.80 |
| 1945 | 527 | 50.10 | 49 | 33.79 | 14 | 60.87 | 6 | 14.29 | 10 | 4.35 | 606 | 40.62 |
| 1946 | 538 | 50.33 | 51 | 34.93 | 14 | 58.33 | 6 | 13.33 | 10 | 4.22 | 619 | 40.70 |
| 1947 | 549 | 50.69 | 56 | 36.84 | 15 | 60.00 | 7 | 13.73 | 10 | 4.08 | 637 | 40.94 |
| 1948 | 556 | 50.86 | 57 | 36.07 | 15 | 60.00 | 7 | 13.20 | 10 | 4.06 | 645 | 40.95 |

There was a dispute as to many of the above figures, arising primarily from problems relating to dual occupancies (two banking offices in one location). A recalculation which gave effect to the alternate contentions has been made of all the above figures, and no material changes resulted, though the general tendency was to increase slightly the Transamerica percentage of the total. For example, the number of Transamerica-controlled banking offices in the five-State area in 1948 is shown as 645, and the corresponding Transamerica percentage of the total as 40.95 per cent. The recalculation shows these figures as 641 and 41.90 per cent, respectively. A similar dispute arose over the figures as to deposits and loans shown in succeeding paragraphs (c) and (d). Similar recalculations were made as to all these figures, with similar results to those stated above as to number of banking offices. In the case of deposits, shown in subparagraph (c), the Transamerica percentage of all bank deposits for the five-State area for 1948 is shown as 38.85 per cent, and the recalculation shows this percentage as 40.45 per cent. In the case of loans, shown in subparagraph (d), the Transamerica percentage of the total of all bank loans in the five-State area for 1948 appears as 49.97 per cent, and the recalculation shows this percentage as 51.80 per cent. Because the recalculations make no change in trend and little in details, because other figures have been determined upon a basis comparable to that used in the tables referred to above and it is desirable to use the same basis in all such figures, and because respondent is put to no disadvantage by failure to use the recalculations, the original figures are used throughout these findings. The foregoing table relating to banking offices presents only a statistical record of the persistent and continuing expansion of Transamerica, showing the rate at which it increased its percentage of occupancy of the banking field to 1948, at which time it had under its control about 41 per cent of all the banking offices in the five-State area. Since 1948 Transamerica has increased its number of banking offices by 13 in California, 5 in Oregon, 1 in Nevada, 3 in Arizona, and 1 in Washington, making a total addition of 23 banking offices.

(2) Transamerica expanded in California from 352 offices in 1928 to 556 offices in 1948. During the same period the total number of banking offices in California decreased from 1320 in 1928 to 1093 in 1948. Thus, banking offices in California other than those controlled by Transamerica decreased from 968 in 1928 to 537 in 1948. Making the same comparison for the five-State area, but beginning with 1937, the first year in which Transamerica expanded into the last of the five States, the increase in number of Transamerica-controlled banking offices in operation was from 565 to 645. During the same period the total number of banking offices in the area increased from 1516 in 1937 to 1575 in 1948. The number of banking offices not controlled by Transamerica decreased from 951 to 930. These changes

occurred during a period when the population of the five-State area was increasing by 70 to 80 per cent, and the income of the population, retail sales, and business generally increased by much larger percentages.

(3) While the foregoing table shows the number of banks and branches controlled by Transamerica that were in operation, it does not reflect the many instances in which a bank or branch in the Transamerica group was merged or consolidated with another in the group, where a bank or branch acquired or established was discontinued, or where banks within the group in the first instance absorbed the business of various banks or branches acquired by Transamerica or its predecessors. Although the table shows the number of Transamerica-controlled banking offices in operation in 1948 in the five-State area as 645, the number of banks and branches acquired by Transamerica to June 30, 1948, was 679, and the number of branches established de novo was 233, or a total acquired or established of 912. The importance of the mergers, consolidations, and discontinuances more clearly appears from an examination of the facts respecting these matters in relation to smaller communities in the five-State area. The following table shows by States the number of communities having, as of December 31, 1947, but one banking office and in which the Transamerica group, since 1904--

| State | *Acquired and was operating the only banking office | Acquired two banking offices and was operating the only such office | Acquired three banking offices and was operating the only such office | Acquired four banking offices and was operating the only such office |
|---|---|---|---|---|
| California | 131 | 18 | 9 | 2 |
| Oregon | 26 | 2 | 0 | 0 |
| Nevada | 10 | 0 | 0 | 0 |
| Arizona | 1 | 0 | 0 | 0 |
| Washington | 5 | 0 | 0 | 0 |

* "Acquired" here includes purchases and establishments, the latter representing a small proportion of the total.

The following table shows by States the number of communities having, as of December 31, 1947, two banking offices and in which the Transamerica group, since 1904--

| State | *Acquired and was operating one banking office | Acquired two banking offices and was operating one such office | Acquired three banking offices and was operating one such office | Acquired four banking offices and was operating one such office | Acquired five banking offices and was operating one such office |
|---|---|---|---|---|---|
| California | 54 | 23<br>5 a/ | 5<br>1 b/ | 3 | 1 |
| Oregon | 15 | 1 | 0 | 0 | 0 |
| Nevada | 1 | 1 a/ | 0 | 0 | 0 |
| Arizona | 0 | 1 a/ | 0 | 0 | 0 |
| Washington | 3 | 0 | 0 | 0 | 0 |

a/ In these communities the Transamerica group acquired two banking offices and on December 31, 1947, was operating the two existing banking offices.

b/ In this community the Transamerica group acquired three banking offices and on December 31, 1947, was operating the two existing banking offices.

* "Acquired" here includes purchases and establishments, the latter representing a small proportion of the total.

The following table shows by States the number of communities having, as of December 31, 1947, three banking offices and in which the Transamerica group, since 1904—

| State | *Acquired and was operating one banking office | Acquired two banking offices and was operating one such office | Acquired three banking offices and was operating one such office | Acquired four banking offices and was operating one such office |
|---|---|---|---|---|
| California | 12 | 3<br>2[a] | 4<br>5[b]<br>1[c] | 1 |
| Oregon | 1 | 0 | 0 | 0 |
| Nevada | 0 | 0 | 0 | 0 |
| Arizona | 0 | 0 | 0 | 0 |
| Washington | 0 | 0 | 0 | 0 |

a/ In these communities the Transamerica group acquired two banking offices and on December 31, 1947, was operating two offices.

b/ In these communities the Transamerica group acquired three banking offices and on December 31, 1947, was operating two offices.

c/ In this community the Transamerica group acquired three banking offices and on December 31, 1947, was operating the three existing offices.

* "Acquired" here includes purchases and establishments, the latter representing a small proportion of the total.

The following table shows by States the number of communities having, as of December 31, 1947, four banking offices and in which the Transamerica group, since 1904--

| State | *Acquired and was operating one banking office | Acquired two banking offices and was operating one such office | Acquired three banking offices and was operating one such office | Acquired five banking offices and was operating three such offices |
|---|---|---|---|---|
| California | 2 | 1<br>2 a/ | 1<br>3 b/ | 1 |
| Oregon | 1 | 0 | 0 | 0 |
| Nevada | 0 | 0<br>1 a/ | 0 | 0 |
| Arizona | 0 | 0 | 0 | 0 |
| Washington | 1 | 0 | 0 | 0 |

a/ In these communities the Transamerica group acquired two banking offices and on December 31, 1947, was operating two offices.

b/ In these communities the Transamerica group acquired three banking offices and on December 31, 1947, was operating two offices.

* "Acquired" here includes purchases and establishments, the latter representing a small proportion of the total.

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(c) Individual banks and branches vary greatly in size and volume of business. It is, therefore, desirable to relate the total deposits in Transamerica-controlled banks and branches to the total of deposits in all commercial banks in the five-State area. This is another important factor of market occupancy. The following table shows the percentage of the total of all bank deposits held by the Transamerica group banks, by years, in each of the five States separately and also as a whole.

PERCENTAGE OF ALL BANK DEPOSITS HELD BY
TRANSAMERICA GROUP BANKS, BY STATES AND BY YEARS

| Year | California | Oregon | Nevada | Arizona | Washington | For whole of area shown |
|---|---|---|---|---|---|---|
| 1920 | 6.37 | | | | | 6.37 |
| 1921 | 7.56 | | | | | 7.56 |
| 1922 | 9.48 | | | | | 9.48 |
| 1923 | 10.51 | | | | | 10.51 |
| 1924 | 11.85 | | | | | 11.85 |
| 1925 | 12.71 | | | | | 12.71 |
| 1926 | 15.08 | | | | | 15.08 |
| 1927 | 20.18 | | | | | 20.18 |
| 1928 | 23.97 | | | | | 23.97 |
| 1929 | 31.08 | | | | | 31.08 |
| 1930 | 32.10 | 17.08 | | | | 31.03 |
| 1931 | 27.91 | 17.17 | | | | 27.15 |
| 1932 | 24.84 | 15.99 | | | | 24.28 |
| 1933 | 27.77 | 25.07 | | | | 27.61 |
| 1934 | 30.47 | 27.37 | 51.35 | | | 30.39 |
| 1935 | 30.59 | 25.34 | 58.41 | | | 30.43 |
| 1936 | 33.33 | 29.96 | 60.01 | | | 33.30 |
| 1937 | 34.49 | 34.85 | 70.64 | 22.52 | 3.77 | 31.27 |
| 1938 | 35.33 | 36.54 | 85.35 | 24.44 | 4.08 | 32.41 |
| 1939 | 35.24 | 35.66 | 81.23 | 24.05 | 4.00 | 32.09 |
| 1940 | 35.09 | 36.53 | 81.36 | 24.21 | 3.89 | 31.95 |
| 1941 | 35.99 | 37.61 | 79.76 | 23.93 | 4.39 | 32.61 |
| 1942 | 38.38 | 39.02 | 82.06 | 22.45 | 4.80 | 34.27 |
| 1943 | 39.93 | 40.60 | 80.75 | 23.01 | 5.04 | 35.40 |
| 1944 | 41.73 | 41.43 | 79.77 | 23.30 | 4.39 | 36.51 |
| 1945 | 41.58 | 40.70 | 79.67 | 22.53 | 5.31 | 36.54 |
| 1946 | 42.74 | 43.68 | 80.02 | 20.99 | 4.84 | 37.77 |
| 1947 | 43.14 | 44.11 | 76.90 | 20.44 | 4.58 | 38.15 |
| 1948 | 43.75 | 44.12 | 78.46 | 20.10 | 4.81 | 38.85 |

In 1928, the total of deposits in all banks in California was $3,454,284,000, and this increased to $12,930,427,000 in 1948. The deposits in Transamerica-controlled banks in California increased by growth and acquisitions from $827,992,000 in 1928 to $5,657,897,000 in 1948. Thus, the increase in deposits in Transamerica-controlled banks amounted to $4,829,905,000 as compared with an increase as to all other banks of $4,646,238,000. Making the same comparison for the five-State area, but beginning with 1937, the year in which Transamerica extended its operations into the last of the five States, the total deposits of all banks in 1937 amounted to $4,800,809,000, which increased to $16,837,446,000 in 1948. The increase in

Transamerica-controlled banks and branches during this period, through growth and acquisitions, was $5,040,292,000 as compared with $6,996,345,000 in all other banks.

(d) Another important factor in relating the market occupancy of Transamerica-controlled banks to all commercial banks is the volume of bank loans. The following table shows this in percentage proportions:

PERCENTAGE OF ALL BANK LOANS HELD BY
TRANSAMERICA GROUP BANKS, BY STATES AND BY YEARS

| Year | California | Oregon | Nevada | Arizona | Washington | For whole of area shown |
|---|---|---|---|---|---|---|
| 1920 | 5.82 | | | | | 5.82 |
| 1921 | 7.57 | | | | | 7.57 |
| 1922 | 9.37 | | | | | 9.37 |
| 1923 | 10.71 | | | | | 10.71 |
| 1924 | 11.65 | | | | | 11.65 |
| 1925 | 11.54 | | | | | 11.54 |
| 1926 | 13.32 | | | | | 13.32 |
| 1927 | 19.37 | | | | | 19.37 |
| 1928 | 22.59 | | | | | 22.59 |
| 1929 | 29.30 | | | | | 29.30 |
| 1930 | 31.64 | 15.35 | | | | 30.72 |
| 1931 | 29.73 | 12.19 | | | | 28.87 |
| 1932 | 28.03 | 12.57 | | | | 27.39 |
| 1933 | 31.09 | 20.70 | | | | 30.75 |
| 1934 | 31.49 | 27.76 | 26.04 | | | 31.35 |
| 1935 | 30.72 | 26.50 | 40.22 | | | 30.59 |
| 1936 | 31.03 | 29.95 | 53.20 | | | 31.07 |
| 1937 | 35.26 | 37.38 | 65.69 | 18.23 | 3.82 | 32.24 |
| 1938 | 37.32 | 41.99 | 83.56 | 21.52 | 4.33 | 34.43 |
| 1939 | 40.21 | 42.70 | 81.21 | 20.52 | 4.30 | 36.94 |
| 1940 | 40.37 | 44.03 | 79.31 | 19.89 | 5.11 | 36.92 |
| 1941 | 41.36 | 46.11 | 80.15 | 18.17 | 5.99 | 37.70 |
| 1942 | 43.88 | 45.87 | 81.17 | 17.23 | 6.66 | 39.89 |
| 1943 | 44.90 | 42.84 | 81.49 | 14.35 | 6.07 | 40.39 |
| 1944 | 47.33 | 46.36 | 83.08 | 11.29 | 6.12 | 42.23 |
| 1945 | 48.54 | 41.64 | 81.25 | 10.94 | 6.82 | 42.76 |
| 1946 | 50.38 | 42.65 | 79.70 | 9.34 | 7.04 | 43.51 |
| 1947 | 57.35 | 43.16 | 77.94 | 9.28 | 6.46 | 49.65 |
| 1948 | 56.79 | 46.78 | 79.05 | 14.93 | 6.78 | 49.97 |

In California the total loans of all banks increased $2,348,281,000 from 1928 to 1948. In this State the loan total of Transamerica-controlled banks increased $2,128,083,000 in this period as compared with an increase in loan total by all other banks of $220,198,000. Using the five-State summary for the available years, the total of loans, of all banks, increased $3,826,313,000 from 1937 to 1948; the total of loans of Transamerica-controlled banks increased $2,271,971,000 in the same period, as compared with $1,554,342,000 for all other banks.

(e) Another aspect of the bank deposit percentages set out in subparagraph (c) above, appears through segregating demand deposits from all other deposits. The following table shows the proportion of the total of all demand deposits of all banks held by Transamerica group banks:

PERCENTAGE OF TOTAL DEMAND DEPOSITS OF ALL BANKS HELD BY TRANSAMERICA GROUP BANKS, BY STATES AND BY SPECIFIED YEARS

| Year | California | Oregon | Nevada | Arizona | Washington | For whole of area shown |
|---|---|---|---|---|---|---|
| 1920 | 4.6 | | | | | 4.6 |
| 1925 | 8.5 | | | | | 8.5 |
| 1930 | 28.1 | 15.3 | | | | 26.9 |
| 1935 | 24.0 | 26.5 | 60.6 | | | 24.6 |
| 1940 | 32.3 | 38.1 | 80.0 | 24.1 | 4.0 | 29.3 |
| 1945 | 39.6 | 40.6 | 79.8 | 21.8 | 5.3 | 34.6 |
| 1948 | 42.3 | 44.5 | 79.1 | 18.9 | 4.5 | 37.1 |

The total of demand deposits in all California banks in 1930 was $1,442,135,000, and in 1948 the total was $7,270,681,000, an increase of $5,828,546,000. In the same period, the increase in this State for such deposits of Transamerica-controlled banks was $2,670,805,000 as compared with $3,157,741,000 in all other banks. Beginning with 1940, the first year for which the figures are available for the five-State area, to 1948, the increase in such deposits for all banks was $7,217,121,000; the corresponding figure for Transamerica-controlled banks was $2,890,677,000 as compared with $4,326,444,000 for all other banks.

(f) A further index is available through a comparison of the numbers of personnel employed in all insured commercial banks in the five-State area compared with Transamerica-controlled banks. Approximately 99 per cent of the commercial banks in the area are insured. The following table shows the number of officers and employees of all insured commercial banks and branches in the area as of December 31, 1949, and the Transamerica group proportion of the total, by States and in total.

| State | Total officers and employees of all insured commercial banks and branches | Officers and employees of Transamerica banks and branches | |
|---|---|---|---|
| | | Number | Per cent of total |
| California | 33,553 | 15,509 | 46.2 |
| Oregon | 4,226 | 2,154 | 51.0 |
| Nevada | 510 | 399 | 78.2 |
| Arizona | 1,753 | 354 | 20.2 |
| Washington | 5,798 | 372 | 6.4 |
| Total, 5 States | 45,840 | 18,788 | 41.0 |

(g) The proportion of deposits held by Transamerica-controlled banks has been shown. It is desirable, therefore, to show the proportions in terms of number of accounts. As of September 30, 1949, the total number of deposit accounts of individuals, partnerships, and corporations in insured commercial banks was 8,284,719 in California; 902,731 in Oregon; 102,585 in Nevada; 293,700 in Arizona; and 1,297,864 in Washington, with a total in the five States of 10,881,599. The following table shows the percentage of the total number of deposit accounts, divided into groups according to the size of the accounts and in total, held in Transamerica-controlled banks as distinguished from all others:

| State | Per cent of deposit accounts of | | | | Per cent of all deposit accounts |
|---|---|---|---|---|---|
| | $5,000 or less | $5,001 to $10,000 | $10,001 to $25,000 | More than $25,000 | |
| California | 53.3 | 44.5 | 44.3 | 38.8 | 52.8 |
| Oregon | 48.0 | 44.5 | 43.5 | 45.4 | 47.9 |
| Nevada | 77.8 | 74.4 | 75.6 | 82.3 | 77.6 |
| Arizona | 20.5 | 21.5 | 21.2 | 21.3 | 20.5 |
| Washington | 6.3 | 6.1 | 4.3 | 4.6 | 6.2 |
| Total, 5 States | 46.6 | 40.5 | 40.1 | 35.3 | 46.2 |

The Transamerica percentage of dollar volume of the deposit accounts shown by numbers above, divided into the same grouping by size of account, as of September 30, 1949, was:

| State | Percentage of dollar volume of deposits in accounts of $5,000 or less | $5,001 to $10,000 | $10,001 to $25,000 | More than $25,000 | Per cent of all deposits |
|---|---|---|---|---|---|
| California | 48.3 | 44.9 | 43.8 | 35.2 | 43.3 |
| Oregon | 46.6 | 44.7 | 43.4 | 43.0 | 45.0 |
| Nevada | 76.6 | 74.4 | 75.8 | 83.3 | 77.5 |
| Arizona | 20.7 | 21.1 | 21.8 | 21.8 | 21.2 |
| Washington | 7.0 | 6.0 | 4.2 | 2.1 | 5.2 |
| Total, 5 States | 42.7 | 40.8 | 39.5 | 32.3 | 39.0 |

(h) Segregating the demand deposit accounts from the totals of all deposit accounts shown in subparagraph (f) above, the total number of demand deposit accounts of individuals, partnerships, and corporations in insured commercial banks, as of September 30, 1949, was 3,119,046 in California; 449,478 in Oregon; 51,082 in Nevada; 163,040 in Arizona; and 674,495 in Washington; with a total in the five States of 4,457,141. The following table shows the percentage of the total number of demand deposit accounts, divided according to size of accounts, held in Transamerica-controlled banks as distinguished from all others:

| State | Per cent of number of demand deposit accounts of $5,000 or less | $5,001 to $10,000 | $10,001 to $25,000 | More than $25,000 | Per cent of number of all demand deposit accounts |
|---|---|---|---|---|---|
| California | 48.9 | 44.0 | 41.5 | 37.8 | 48.5 |
| Oregon | 44.9 | 43.3 | 43.9 | 45.4 | 44.8 |
| Nevada | 74.8 | 75.6 | 74.7 | 83.1 | 74.9 |
| Arizona | 21.0 | 19.7 | 20.5 | 21.4 | 20.9 |
| Washington | 5.8 | 4.2 | 3.5 | 4.2 | 5.7 |
| Total, 5 States | 41.2 | 37.4 | 35.8 | 33.8 | 41.0 |

The Transamerica percentage of the dollar volume of the demand deposit accounts in all insured commercial banks shown by numbers above, divided into the same grouping by size of account, as of September 30, 1949, was:

| State | Percentage of dollar volume of demand deposits in accounts of: $5,000 or less | $5,001 to $10,000 | $10,001 to $25,000 | More than $25,000 | Per cent of all demand deposits |
|---|---|---|---|---|---|
| California | 47.6 | 43.8 | 41.1 | 33.9 | 39.9 |
| Oregon | 46.9 | 44.0 | 43.7 | 42.8 | 44.5 |
| Nevada | 76.5 | 75.7 | 75.1 | 84.8 | 78.8 |
| Arizona | 19.5 | 19.5 | 21.0 | 22.1 | 20.5 |
| Washington | 7.3 | 4.1 | 3.4 | 1.8 | 4.2 |
| Total, 5 States | 40.8 | 37.3 | 35.4 | 31.0 | 35.4 |

PARAGRAPH NINE: (a) The amended and supplemental complaint separately charges the acquisition by respondent of stock in the Citizens National Trust and Savings Bank of Los Angeles, California, in violation of section 7 of the Clayton Act. This bank is engaged in commercial banking, having in 1947 a total of 35 banking offices, all in Los Angeles, with aggregate deposits of $349,147,000, and loans of $61,431,000. It is engaged in commerce, as "commerce" is defined in the said Clayton Act, in the manner set out in Paragraph Two hereof, and said paragraph is hereby adopted as to this bank as fully as if it had been named in subparagraph (b) of Paragraph One of these findings as to the facts.

(b) For a long period of years Transamerica sought to secure control of Citizens National Trust and Savings Bank of Los Angeles and its branches. The first direct approach to this end was made in 1942, although apparently Transamerica had been interested for several years before that date. In October 1942, F. S. Baer, a Vice President of Bank of America, inquired of the President of Citizens Bank if a sale of all or part of the stock of that bank to Transamerica could be worked out. This inquiry was reported to the Executive Committee of the Citizens Bank, which immediately rejected any consideration of such a proposal. Later in the same month, Mr. Baer renewed his inquiry, the matter was taken up with the Board of Directors of Citizens Bank, and Baer was informed that the Directors did not wish to dispose of their stock holdings or to pursue the matter further. In May 1943, a representative of Nelson Douglass & Company, a securities dealer, informed the President of Citizens Bank that Transamerica intended to present an offer to the Board of Directors of Citizens Bank to exchange stock of National City Bank of New York for Citizens Bank stock. Later in that month an offer was addressed to the Directors of Citizens Bank by Transamerica to acquire 124,000 shares of Citizens Bank stock. There were then outstanding 250,000 shares of such stock, 2,000 shares of which were already owned by a Transamerica subsidiary. The Board of Directors of Citizens Bank having declined the Transamerica offer, Nelson Douglass & Company began advertising the offer in Los Angeles newspapers, soliciting in that manner, and also by direct contact with stockholders, acceptance of the Transamerica offer. There was active resistance on the part of Directors and officers of Citizens Bank, and many of its substantial stockholders, to the Transamerica effort to secure control. Against this opposition Transamerica failed to secure control, but did increase its stockholdings to 54,583 shares at the end of 1943. Although this attempt failed, Transamerica has continued its efforts to buy stock in Citizens Bank, and through purchases made from time to time increased its holdings to 58,142 shares in April 1949. Of these shares, Transamerica itself on that date held 38,142; its subsidiary, Occidental Life Insurance Company, held 15,000 shares; and Occidental's subsidiary, Premier Insurance Company, held 5,000 shares. In each year since 1943 Transamerica, through cumulative voting of its shareholdings, has elected 5 of the 21 Directors of the Citizens Bank.

(c) The actions of Transamerica in seeking to purchase and purchasing controlling interests in other banks, the nature of the negotiations and offer made in this instance, and the additional purchases of stock since 1943, indicate the purpose of Transamerica to acquire control of the Citizens National Trust and Savings Bank. It is, therefore, concluded that the acquisitions by Transamerica of stock of this bank are not solely for investment, but for the purpose of securing control of the bank in order that it may be added to Transamerica's interstate group-banking structure. The banking offices, deposits, loans, and other data concerning Citizens National Trust and Savings Bank have not been included in findings showing the proportions of market occupancy by Transamerica. The facts found in this paragraph are, however, considered in the light of all other findings made.

PARAGRAPH TEN: (a) As previously stated, commercial banks enjoy a monopoly of the money-payment and money-creation functions, and dominate the market in short-term business credit. These facts, together with the fact that substantially all those who require the services afforded by commercial banks must rely upon such banks in the local area to which they have ready access, place in the hands of such banks much power over the business affairs of the area which they serve. The local bank or banks in a community have the power to over-expand credit by lending too freely and too much, and, on the other hand, have the power to so restrict credit as to hamper growth and development. To the extent that banking offices are controlled by one group, all these powers are in the hands of that group, and this includes the power to discriminate among business enterprises or individuals.

(b) There is not the same freedom of entry into banking as in other types of business. Authorization must first be secured from regulatory agencies before new banks or branches may be established. Regulation concerning entry into banking is directed primarily to the protection and safety of depositors, and its exercise includes consideration of the effect of such establishment upon existing banks and the availability of business to support the new bank and permit its successful operation. An over-banked condition, which may result in bank failures, is sought to be avoided. A bank may not lawfully buy the stock of another bank, but entry presents no problem to a holding company such as Transamerica other than its ability to buy a controlling stock interest in an established bank. The size and resources of a large banking group also enable it to enter a community before it is clearly apparent that a bank is warranted, and thus anticipate and block the organization of a local bank, which must depend upon the business available at such location for its continuance. In this way, bank locations in promising areas may be pre-empted by a large group through a branch which does not have to be immediately profitable in order to continue. As the size and resources of a banking group increase, its power to suppress potential competition increases. Its size alone may discourage and prevent the establishment of independent banks in direct competition with it, or serve as an inducement to existing small banks likely to be or already in direct competition with it, to sell to the group at its solicitation.

(c) There is testimony that Transamerica did not attempt to acquire any bank against the wishes of its owners; and there is testimony showing specific instances where this was not true. There is testimony by numerous individuals stating their satisfaction with the services afforded by Transamerica-controlled banks and their conclusions respecting the continuance of competition; and there is also evidence showing that as a result of acquisitions by the Transamerica group, in a large number of communities that had two or more banks, the only banking services now existing are Transamerica controlled. There is opinion testimony by economists as to what constitutes competition and monopoly; and much testimony introduced and proffered by respondent to show that its expansion and methods of expansion and operation have been benign in character and dominated by a wish to make superior services and facilities available to more people. All of these matters have been considered. They are largely immaterial. The controlling facts are that it is clear from the record that by the significant standards—number of commercial banking offices, volume of deposit liabilities, and volume of loans—Transamerica-controlled banks have, in the five-State area, approximately 41 per cent of all banking offices, 39 per cent of all bank deposits, and 50 per cent of all bank loans; that despite the tremendous growth of population and wealth in this area, the expansion of Transamerica has been accompanied by a decrease in the number of banking offices independent of Transamerica, a substantially higher relative increase in deposits in Transamerica-controlled banks than in all other banks, and the absorption by Transamerica of practically all of the total increase in bank loans; that Transamerica has the purpose and the power to continue to expand its occupancy of the market in the five-State area; that its present position is held with a proportion of approximately 13 per cent of the capital funds of all banks in the area; that its acquisition and holding of the stocks of the banks named in subparagraph (b) of Paragraph One and of Citizens National Trust and Savings Bank of Los Angeles are not solely for investment; and that the effect of its holding and use of such stocks may be to substantially lessen competition and restrain commerce in commercial banking in the States of California, Oregon, Nevada, Arizona, and Washington, and tend to create a monopoly in such line of commerce in said area.

## CONCLUSION

The acquisition, and the holding and use by Transamerica, as aforesaid, of the stock of the banks named in subparagraph (b) of Paragraph One of the foregoing findings as to the facts and of Citizens National Trust and Savings Bank of Los Angeles, named in Paragraph Nine, constitutes and is a continuing violation of section 7 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (U. S. C. A., Title 15, Par. 18). In considering the relief necessary and appropriate to put an end to the aforesaid violations of law in a manner which will have a practical result consistent with the intent and purpose of said section 7, account has been taken of the factual situation presented by the record. The stock of Bank of America was the first acquisition by Transamerica of importance in this proceeding, Bank of America was the hard core around which the Transamerica-controlled banking group was built, and it still is the center and principal support for the group. The long and close association of Bank of America in aiding in constructing the Transamerica group, the unity established over the years, the personal associations and relationships among important officials in Transamerica and Bank of America, and similar intangible factors, provide sound reason to believe that even if Transamerica were required to divest itself of the stock it now holds in Bank of America, the existing relationship would continue. In these circumstances, to require Transamerica to divest itself of the stock it now holds in Bank of America, but allow it to hold the stock of other banks, would accomplish nothing. Divestiture by Transamerica of the stock of other banks will place majority holdings of the stock of those banks into new and different hands so that prompt and full disassociation from Transamerica can be expected. These considerations have guided the framing of the order.

ORDER

IT IS ORDERED that respondent, Transamerica Corporation, a corporation, forthwith cease and desist from violating the provisions of section 7 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," (the Clayton Act) in the manner set out in the findings as to the facts herein; and it is specifically ordered that said respondent divest itself fully and completely of all capital stock, whether directly or indirectly owned or controlled by it, of each of the following named banks:

In California

Central Bank, Oakland,
The First National Bank of Garden Grove, Garden Grove,
Bank of Pinole, Crockett,
Central Bank of Calaveras, San Andreas,
The First National Bank of Fairfield, Fairfield,
The Temple City National Bank, Temple City,
The First National Bank of Weed, Weed,
First Trust and Savings Bank of Pasadena, Pasadena,
The First National Bank of Bellflower, Bellflower,
First National Bank in Corcoran, Corcoran,
The First National Bank of Los Altos, Los Altos,
Bank of Newman, Newman,
First National Bank in Santa Ana, Santa Ana,
First National Trust and Savings Bank of Santa Barbara, Santa Barbara,
Bank of Tehachapi, Tehachapi,
The First National Bank of Crow's Landing, Crow's Landing,
The First National Bank of San Jacinto, San Jacinto,
Farmers & Merchants Bank of Watts, Los Angeles,
Citizens National Trust and Savings Bank of Los Angeles, Los Angeles,
The First National Bank of Mountain View, Mountain View,
The First National Bank of Oakdale, Oakdale,
First National Bank in Turlock, Turlock,
Bank of Beaumont, Beaumont,
First National Bank in Delano, Delano,
American Commercial & Savings Bank, Moorpark,
Stanislaus County Bank, Oakdale,

In Oregon

The First National Bank of Portland, Portland,
The First National Bank of Forest Grove, Forest Grove,
Coolidge & McClaine, Silverton,
Moreland-Sellwood Bank, Portland,
Clatsop County Bank, Seaside,
The First National Bank of Cottage Grove, Cottage Grove,
The First National Bank of Prineville, Prineville,
The Scio State Bank, Scio,
Bank of Sweet Home, Sweet Home,
The First National Bank of Eugene, Eugene,
Benton County State Bank, Corvallis,
Carlton State & Savings Bank, Carlton,
Yamhill State Bank, Yamhill,
Monroe State Bank, Monroe,
The First National Bank of Lebanon, Lebanon,
State Bank of Malheur County, Ontario,

In Nevada

First National Bank of Nevada, Reno,
Farmers' Bank of Carson Valley (Inc.), Minden,
Bank of Nevada, Las Vegas,

In Arizona

First National Bank of Arizona, Phoenix,

In Washington

National Bank of Washington, Tacoma;

that said divestment be made in good faith, and that none of the capital stock of any of said banks be sold or transferred directly or indirectly to any presently existing or later organized or acquired subsidiary or affiliate of respondent, or to any director, officer, employee, agent, or nominee thereof, or to any person acting for or in behalf of or subject directly or indirectly to the control of respondent or any of its subsidiary or affiliated companies, or any director, officer, employee, agent, or nominee thereof; that said divestment be made without using or attempting to use any of said capital stock in any manner in directly or indirectly acquiring or conveying to others any of the assets of any of said banks; and that said divestment be made in such manner that each of said banks may continue to operate as a going concern wholly independent of respondent.

IT IS FURTHER ORDERED that within 90 days from the service of this order upon it, respondent file with the Board of Governors of the Federal Reserve System a report in writing showing in detail the steps it has taken and which it intends to take in compliance with this order; that within one year and 90 days from said service of this order respondent file in the aforesaid manner a report in writing showing in detail the steps it has taken in compliance with this order; and that within two years and 90 days from said service of this order, respondent file, as aforesaid, a report in writing showing in detail the manner and form in which it has completed compliance with this order.

R M Evans

HEARING OFFICER.

June 13, 1951.