A Digest of the Testimony of

M. S. ECCLES

in the Hearings upon the Complaint

issued pursuant to the Clayton Act

by the

Board of Governors of the Federal Reserve System

in the Matter of

Transamerica Corporation,

given at Washington, D.C.

February 7, 8, 9, 10, 11, and 14, 1949

(Note: The marginal notations on the following pages indicate the pages of the official transcript of the hearing at which the testimony is reported.)

WITNESS: Marriner S. Eccles

Page

490 The witness stated his full name as Marriner Stoddard Eccles, that he is resident at Washington, D.C., that he is currently a member of the Board of Governors of the Federal Reserve System and had been Chairman of the Board. He said that he was first appointed to the Board by President Roosevelt in November 1934, being

491 designated Governor, or chief executive officer, of the Board as then constituted. In accordance with the Banking Act of 1935, the Board was reconstituted on February 1, 1936, at which time the witness was designated as Chairman, and he continued in that capacity until February 1, 1948. Although not redesignated as Chairman at that time by President Truman, the President nevertheless requested him to stay on the Board as a member.

492 The witness stated that, in his official capacity as a Board member and as Chairman, he had had occasion to consider matters relating to Transamerica

493 Corporation. He said he had known A. P. Giannini since 1916 and had become acquainted with L. M. Giannini since coming to Washington. He said he had had a great many business dealings with A. P. Giannini, personally, and

with institutions of which the latter was an officer, and that after he had come to Washington, the companies in which he was interested had continued to have business dealings with A. P. Giannini and the institutions with which he was affiliated.

494 He said that his family is heavily interested in the First Security Corporation, a bank holding company which owns the First Security Bank of Utah and the First Security Bank of Idaho. Mr. Eccles' brother succeeded him as president of the First Security Bank of Utah.

He said that the First Security bank's principal banking connections in California and Oregon are with the Bank of America and the First National Bank of Portland, and that the Bank of America's principal banking connections in the area in which the First Security banks operate are those banks, no doubt because the connections have proven to be satisfactory and profitable for both groups.

495 The witness also said that the Amalgamated Sugar Company, a company organized by his father, in which his family is heavily interested, and of which he is currently chairman of the board, has substantial banking relations with the Bank of America in California

and the First National Bank in Portland. He said, moreover, that he had established these connections and that the relationship has been satisfactory and cordial.

496 Referring to his career in the banking business, the witness said that it dated back to 1913. He was first connected with a Logan, Utah, banking company and later became director and vice president in the Thatcher Bros. Banking Company, Logan, Utah, in which institution his family acquired substantial stock interest. He became director of a small bank at Hyrum, Utah, and of another one at Richmond owned by the same group of people, and was made president of one of those banks.

497 In 1920, the witness's family, which already had some holdings in the First National Bank of Ogden and the Ogden Savings Bank, substantially increased their stock ownership and the witness became president of both institutions, succeeding Mr. Browning of the Browning guns family, who became president of the Utah National Bank.

About 1922, Mr. Browning suggested to the witness that the two banks become consolidated, that the witness become president of the consolidated bank

and Mr. Browning chairman of the board, and this plan was carried out. Mr. Orval W. Adams was executive vice president of the consolidated institution.

498 Shortly thereafter, Mr. Adams left the institution and the witness's brother, George S. Eccles, was elected an officer. The witness said that he had substantial other business to look after and devoted only a small part of his time to the banking business, but after Mr. Adams' departure, he for a time maintained an office in the bank. He continued to have interests in the Thatcher bank, the Hyrum bank, and the Richmond bank, and acquired an interest in a bank in Montpelier, Idaho.

Meanwhile, Mr. Browning had died and his son, Marriner Browning, assumed direction of the Browning

499 interests. Banks were purchased at Blackfoot, Idaho, and Rock Springs, Wyoming, and there were other requests for establishing banks or purchasing banks because there had been a great banking mortality after the First World War, particularly in Idaho.

About this time, the witness said he gave consideration to the question of further expanding or confining his interest to one bank. He discussed the matter with Mr. Browning and it was decided that expansion

would be justified if sufficient banks could be acquired to support the overhead of credit inspection and audit inspection that would be needed.

500 Mr. E. G. Bennett, a banker of Idaho Falls, Idaho, having been approached to come with the organization as vice president and general manager, became interested in the proposition, and it was finally decided to go ahead with the expansion program. Mr. Bennett's bank was acquired, as well as a bank at Anderson Falls, a bank at Pocatello, and three banks in the Shoshone section of Idaho. With this nucleus, the bank holding company known as First Security Corporation was formed. Further expansion occurred from time to time until the bank holiday, the First Security Corporation having a total of 28 banks in Utah and Idaho.

After the bank holiday, branch banking was authorized by the legislatures of Idaho and Utah. Thereupon, the banks in Idaho were put into a branch banking organization and the Utah banks were formed into

501 two branch systems. (The witness said: "I have been an advocate for a good many years, like Mr. Giannini, of limited branch banking.") The branch institutions in Utah were the First National Bank of Salt Lake with two branches, and First Security Bank of Ogden with

three branches. In May of 1948, those two institutions were merged into the First Security Bank of Utah, leaving but one branch bank system in Utah. The witness said that, during the time that these organizations were being formed and acquired, he was devoting half of his time to the banking business.

502 Adverting to matters related to Transamerica Corporation which came under consideration by the witness as a member of the Federal Reserve Board, he stated that his attention was first directed to the Corporation right after he became a member of the Board. The Banking Act of 1933 placed certain regulatory power with reference to bank holding companies in the Board of Governors, in accordance with which it was necessary that bank holding companies obtain voting permits to

503 vote the stock of affiliated or subsidiary banks. Transamerica Corporation made application for a voting permit in 1933 and the permit was issued in 1937.

504 The witness stated that the subject of the expansion of Transamerica Corporation first came officially to his attention in January 1938. At that time, there was a meeting called by Mr. Morgenthau at the Treasury, followed by several other conferences for the purpose of considering bank holding company legislation.

Page

The witness said that he did not initiate those conferences but thought that they were instigated in the first instance by Mr. Crowley, Chairman of the F.D.I.C. At these meetings, the subject of Transamerica Corporation in relation to the bank holding company problem was the principal discussion. These meetings resulted in the introduction of a bank holding company bill in the spring of 1938 and the President of the United States made a statement very critical of bank holding companies and pointing out the need of enforcing their liquidation.

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The Board's solicitor showed the witness a photostatic copy of a document entitled "Excerpt from the President's Message", dated April 29, 1938, and the witness indicated that this was the message he had in mind. Counsel read into the record the following quotation from this document:

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"Bank Holding Companies: It is hardly necessary to point out the great economic power that might be wielded by a group which may succeed in acquiring domination over banking resources in any considerable area of the country. That power becomes particularly dangerous when it is exercised from a distance, and notably so when effective control is maintained without the responsibilities of complete ownership.

"We have seen the multiplied evils which have arisen from the holding company system in the case of public utilities, where a small minority ownership has been able to dominate a far-flung system.

"We do not want those evils repeated in the banking field, and we should take steps now to see that they are not.

"It is not a sufficient assurance against the future to say that no great evil has yet resulted from holding company operations in this field. The possibilities of great harm are inherent in the situation.

"I recommend that the Congress enact at this session legislation that will effectively control the operation of bank holding companies; prevent holding companies from acquiring control of any more banks, directly or indirectly; prevent banks controlled by holding companies from establishing any more branches; and make it illegal for a holding company, or any corporation or enterprise in which it is financially interested, to borrow from, or sell securities to, a bank in which it holds stock.

"I recommend that this bank legislation make provision for the gradual separation of banks from holding company control or ownership, allowing a reasonable

Page

time for this accomplishment -- time enough for it to be done in an orderly manner and without causing inconvenience to communities served by holding company banks."

509 The witness said that he did not approve the bill introduced in 1938, which involved a "death sentence" for holding companies, and he so expressed himself to Mr. Jones, Mr. Crowley, Morgenthau, various staff people present at the meetings, and to President Roosevelt. He said it was his opinion that a "freeze" bill or a regulatory bill would be much better and adequate so far as the general public interest was concerned.

510 The witness pointed out practical difficulties for the liquidation of banks owned by a bank holding company, saying that, in some instances, it would be impossible to sell the stock of the banks locally. He made the following statement:

511 "Of course, I was a believer in branch banking and had there been an adequate branch banking bill to take care of the situation, the holding company could have been liquidated into branch banking -- could have been liquidated and a substitute branch banking could have been put in its place .... There was another way that a holding company could have carried out the liquidation. That would have been, of course, to pay out to

the stockholders of the holding company the stock of the subsidiary banks, but I pointed out that where there were thousands and thousands of stockholders, as was the case in Transamerica, for instance, or in these Northwest banks, that to pay out that stock to the stockholders would mean that some bank over in North Dakota -- a unit bank -- or Montana or Iowa or Minnesota would be owned by those thousands and thousands of stockholders far removed from the local bank and that you would have had a situation where you would not have had a responsible ownership and, therefore, you would have had difficulty getting a responsible management if you had tried to liquidate through that means, and that would not have well served the public."

512 He said that regulation to control expansion would adequately meet the situation.

513 He said that his position was partly predicated on his knowledge of the Transamerica situation. "The whole program was developed as a result of what had been considered a dangerous and an unjustifiable expansion of Transamerica. As a matter of fact, that was the only holding company in the picture that had had any expansion since the bank holiday. I think I pointed out at that time that, in order to get at that one situation that

would put what seemed to me punitive legislation for all the holding companies when, as a matter of fact, there had not been expansion but there had actually been a contraction of holding companies throughout the United States, with the exception of the Transamerica situation."

515 Adverting to the relations of the Gianninis with the Washington supervisory agencies, the witness stated that, in the fall of 1938, during his absence from Washington, Mr. Ransom, Vice Chairman of the Board, attended a meeting called by the Secretary of the Treasury at which he was advised that the Comptroller of the Currency was sending a telegram to the Bank of America with reference to their condition and the need for discontinuing the payment of all dividends immediately. The witness said he learned about it after the event either by wire or telephone, that he had no knowledge of the intended action, and that it came as somewhat of a shock to him and to other members of the Board.

516 Following the sending of the telegram, Mr. Ransom participated in various discussions with the Treasury Department because there was some suggestion

that the Comptroller of the Currency might file formal complaint with the Board under Section 30, which would require the Board to conduct hearings for the purpose of determining whether or not just cause appeared for removing an officer or a director from a bank.

The witness said that, in addition to the information which came to him through Board channels, he received a letter from A. P. Giannini, enclosing a copy of the telegram the Bank had received, together with its reply to the Comptroller. At this point, the witness identified documents shown to him by the Board's solicitor as being the letter and enclosures to which he referred. They were received in evidence

518 as Board's Exhibit 32.

519 The witness said that he did not recall discussing the matter with the Treasury or the Comptroller's office immediately after being apprised of the controversy, it being the feeling of the Board that it should not participate in the discussions being had among the Treasury, the Comptroller, and the F.D.I.C., in view of the possibility of the Section 30 case. Later, however, the Board sent a communication to the Secretary of the Treasury pointing out the inadvisability of a Section 30 case. Several communications were received

Page

by the witness from the Gianninis in late 1938 and the spring and summer of 1939. He also said that he had several personal meetings with L. M. Giannini who, feeling that there was a prejudice on the part of Morgenthau and Crowley, tried to persuade the Board to take over the matter. He said that, in the year following the sending of the aforementioned wire, the Gianninis had been unable to get any satisfaction out of the Treasury, the Comptroller's office. He said he referred to the Treasury and the Comptroller because the Comptroller is a bureau of the Treasury, and in this case, the Secretary of the Treasury, himself, was interested and the General Counsel of the Treasury was personally very active in connection with the policy of the Comptroller's office and was undertaking and largely making the policy and the program.

522 In the fall of 1939, the Gianninis suggested that the Board make its own examination of the Bank of America because they were considering the advisability of converting the Bank of America from a national bank into a state bank, and wanted membership in the Federal Reserve System. Thus they would be able to get away from the supervision of the Comptroller and the

523 Secretary. The witness said that the Board did not

want to undertake a special examination but, under the pressure of the Gianninis that the Board make a separate and independent examination and advise them whether they would be accepted as a state member bank, the Board concluded that it should intervene in the matter.

Accordingly, the witness called on Mr. Morgenthau, Secretary of the Treasury, taking with him a memorandum that would enable him to state fully and accurately the views of the Board as to why it felt it had some responsibility in the matter and should intervene and participate with other agencies in seeing whether or not an amicable adjustment and settlement of the difficulties could be brought about. Thereafter, the witness and Governor McKee represented the Board in conferences or discussions held with the other agencies.

524 In the spring of 1940, the witness said the Comptroller filed a show-cause action as to why the Comptroller should not publish the examination report of the Bank of America. About this time, Mr. Cushing, an attorney for the Gianninis, came into the picture.

525 The publication of the show-cause order was contrary to the advice of the Board as well as of Mr. Jones and others. The Gianninis ignored the show-cause order and apparently the Comptroller was finally

unwilling to take the responsibility of publishing the examination report. The idea grew out of conversations between Mr. Cushing and the Board that it should be possible for reasonable people to get around a table and come to a settlement or agreement. Mr. Cushing ascertained that the Gianninis would be willing to participate in such a conference and it was the witness's belief that the Board was responsible for getting the Comptroller and other agencies to agree to holding such a conference as a basis for discussion, with the Comptroller submitting a program for the settlement of the criticisms that had been directed against the Bank.

526 The Comptroller's program was discussed at numerous meetings at which Governor McKee and the witness represented the Board. The conferences were held in the office of Undersecretary of the Treasury Bell, and Ed Foley, the Treasury lawyer, Preston Delano, Comptroller of the Currency, Cyrus Upham, Deputy Comptroller, Leo Crowley, Chairman of the F.D.I.C., and Mr. Jones of the R.F.C. were others who were present or represented.

As a result of the conferences, a program was worked out that called for certain adjustments,

certain policies with reference to the operation of the Bank. The witness said that he had taken the
527 position, concurred in by the Board, that the Bank should not be required to discontinue the payment of dividends for the reason that Transamerica Corporation depended to a considerable extent upon the receipt of those dividends for the payments of its dividends. Moreover, the effect of an institution of this size in the year 1940 discontinuing its dividends or substantially reducing dividends when other banks were paying or increasing dividends would hurt the bank and make it more difficult to meet the requirements of the Comptroller.

It was considered by all of the banking authorities that the capital and surplus of the Bank were entirely inadequate in relation to the deposits and the condition of some of their assets. The witness said that the Bank had what was considered at that time substantial losses, doubtful paper. The bond account was written up to substantial premiums, or, at least, the profit on the bonds was being taken when the bonds were sold and replaced in the portfolio by the same or equivalent bonds purchased at the premium price.

Finally, the Bank of America agreed to issue a substantial amount of preferred stock in order to obtain new capital. "They took the position that they couldn't sell to the public. As I recall, they may have thought they could sell to the public some stock, but, at least, it later developed that they couldn't sell enough stock to the public, at least at this time, and so they agreed -- I think they agreed to sell stock to the Reconstruction Finance Corporation -- preferred stock. The Bank refused to sell stock to the Reconstruction Finance Corporation. They preferred to have Transamerica, the holding company, sell the stock to the Reconstruction Finance Corporation, Transamerica agreeing to put this money from the sale of the stock to the Reconstruction Finance Corporation in the bank." He said that that was done and the agreement was carried out.

530 The witness said that, following the agreement, he exchanged letters with Mr. L. M. Giannini, President of the Bank of America N.T. & S.A. Following an identification by the witness, the Board's solicitor read into the record a letter written by the witness to Mr. L. M. Giannini, dated March 22, 1940, and Mr. Giannini's reply, dated April 1, 1940. Mr. Eccles' letter read as follows:

"Dear Mario: It would seem that one can safely assume that substantially all the hurdles barring the road to a final satisfaction of the issues between the Bank of America N.T. & S.A. and the office of the Comptroller of the Currency have been successfully negotiated. For that reason, I think it is an appropriate time for me to express to you my personal gratification at what appears to be a very fair and workable program, and I might add, one which comes out at the end point that I felt all the way along was the real objective to be attained.

"This being so, I am doubly gratified at whatever contribution I was able to make toward the successful conclusion of the negotiations.

"One very important element in the success of the matter, and without which the discussions might have ended in an impasse, was the fair and temperate attitude of yourself and Mr. Cushing during the entire course of the discussions. I don't believe that two better representatives could have been selected under all the circumstances. This temperate attitude is also vital to the actual performance of the agreed program and I am pleased to note that the statement you issued following the directors' meeting last week, continued this fair and uncritical attitude.

"Furthermore, I think it was a wise decision to publicize the agreement, as it was bound to become a matter of public information in any event and full publicity following the meeting prevented the circulation of rumors and inaccurate statements and interpretations on the part of the press.

"I sincerely trust that the gratification I have expressed above, with reference to matters which are now in the past, will be experienced in the future with reference to the various matters that lie in the field of performance rather than negotiation. And I feel confident that this will prove to be the case.

"With kindest personal regards, I am
Yours sincerely, M. S. Eccles, Chairman."

L. M. Giannini's reply was as follows:

533 "Mr. Marriner S. Eccles, Chairman of Board of Governors, Federal Reserve System, Washington, D.C., Dear Marriner:

"You were very nice indeed to send me your letter of March 22 and I appreciate the thoughtfulness that prompted it.

"Despite the unpleasant circumstances under which the conferences in Washington were held, I enjoyed them because they renewed again my confidence

in some of the persons responsible for administering our important governmental activities. As a result of the conferences, I feel that I came to know you and John McKee better and to appreciate the breadth and soundness of your views and the fact that no personalities entered into the formation of your opinion and the rendering of your judgments. I know that both of you did very constructive work in bringing about a solution of the perplexing problem that had developed.

"I know, too, that Larry Clayton and Ira Clerk had much to do in this matter in a constructive way.

"Will you express to Larry and John, and accept for yourself, my sincere appreciation and kindest regards. Sincerely yours, Mario."

540 Upon further questioning, the witness stated again that Transamerica sold preferred stock to the R.F.C. and furnished the funds to the Bank of America because the Bank of America people were not willing to sell preferred stock to the R.F.C. directly, and so it was agreed that the money would be furnished by the R.F.C. to Transamerica and that Transamerica, in turn, would provide capital to the Bank of America.

Page

The witness said he recalled some arrangements that were under way for the Bank to obtain the new capital from the market. The supervisory authorities were interested only that the Bank get new capital in accordance with the agreement with the Comptroller, and were not interested in the source. The witness said that new capital was the only means by which the Bank could continue dividends (which, the witness agreed, was a desirable thing to do) and at the same time, carry out its other commitments.

542 The witness said that back of the entire difficulty between the Government and the Gianninis was what was considered excessive expansion on the part of the Gianninis. He said that the matter of expansion was discussed to a considerable extent among Mario Giannini, Mr. Cushing, Governor McKee, the witness, and other people who worked upon the 1940 agreement.

543 Respecting an understanding with Mr. Giannini, the witness said: "There was an understanding reached that any further expansion would not be undertaken without approval by the regulatory agencies, those charged with responsibility, and that was primarily the basis for the agreement of settlement that was

undertaken. Without such an understanding, the effort would have really been somewhat meaningless."

The subject of Transamerica bank expansion again came to the witness's attention in the spring of 1941 in connection with an option by Transamerica to buy the Temple City National Bank. He said that Temple City was a national bank and Transamerica was considering its conversion into a state member bank with membership in the Federal Reserve System. He said that it was "our understanding" that the reason for this conversion from a national bank into a state member bank was for the purpose of testing the authority of the Treasury in connection with the issuance of a license to do a banking business, whether state or national. The Board concluded that they did not want to be a party to any such program and felt that it was inadvisable for Transamerica to carry out an expansion program.

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545 The witness stated that he called Mario Giannini on the telephone in reference to this matter and told him that "I was very much disappointed and disturbed at the attitude of Transamerica in undertaking a further expansion, this having been the first expansion since the agreement had been made in the

spring of 1940, that it was contrary, certainly, to the general understanding of all of the supervisory agencies, that the Board had intervened with the Secretary of the Treasury and with the R.F.C. and the Comptroller for the purpose of trying to get what seemed to be a fair and reasonable settlement, and we had succeeded in doing so and that for them to now continue a program of expansion was extremely disturbing and disappointing to the Board and that it was contrary to the understanding, and certainly the gentleman's agreement which we had."

546 The witness said that he recalled the telephone conversation quite distinctly because it was such a shock to him and so unexpected because there had been such a complete understanding with Mario and Mr. Cushing that, if there was to be any further acquisition, it would not be done without the approval of the agencies. He said Mr. Giannini replied that he did not think that they were going contrary to the understanding and it was not their intention to have the Board feel that they were going contrary to an understanding.

The witness stated that the next notice he took of the Transamerica expansion was in connection with the First Trust and Savings Bank of Pasadena, which was very close to the time of the Temple City matter.

Page

His recollection was that the Federal Reserve Bank of San Francisco was requested by the Pasadena bank to make an examination for the purpose of determining whether or not approval would be given for the establishment of two branches, two branches that were in contemplation, one at Alhambra and the other at Temple City, California.

547 The witness said that the branch application was discussed with the F.D.I.C. and the Comptroller's office, that it was denied by the Board and the Board's decision communicated by letter to Transamerica Corporation.

548 The witness identified a document shown him by counsel as a copy of the communication to which he referred and he further identified initials appearing therein as being initials of Mr. Leo Crowley and Mr. Preston Delano, said initials having been obtained before the original of the letter was dispatched to Transamerica Corporation. The letter in question, dated February 14, 1942, was received in evidence as Board's Exhibit 35 and was read into the record by the Board's solicitor.

549 The solicitor for the Board introduced a series of letters which followed the letter of February

Page

14, 1942, referred to previously. They were the following: Letter of Transamerica Corporation, dated March 17, 1942, to the Board of Governors; letter from the Federal Reserve Bank of San Francisco, dated July 13, 1942, to Mr. T. W. Smith, President of the First Trust and Savings Bank of Pasadena; letter from the Federal Reserve Bank of San Francisco, dated July 13, 1942, to Transamerica Corporation; letter from Transamerica Corporation, dated August 8, 1942, to the Federal Reserve Bank of San Francisco; letter from A. P. Giannini, on letterhead of the Bank of America N.T. & S.A., dated August 17, 1942, to Marriner Eccles, Chairman of the Board of Governors; letter of M. S. Eccles, Chairman, to A. P. Giannini, Chairman of the Board of Transamerica Corporation, dated November 13, 1942; letter from A. P. Giannini, dated November 25, 1942, on the letterhead of Transamerica Corporation, to Honorable M. S. Eccles, Chairman, Board of Governors; letter from M. S. Eccles, Chairman, dated December 19, 1942, to A. P. Giannini, Chairman of the Board of Transamerica Corporation. All these letters were received in evidence as Board's Exhibit 36a through 36i.

556 The witness stated that, after the exchange of correspondence contained in Board's Exhibits 35 and 36,

Page

the matter of Transamerica's acquisition of banking offices again came to his attention about January 1943.

557 The witness identified a letter, dated February 5, 1943, addressed to him by A. P. Giannini, requesting an informal conference with members of the Board. The letter was received as Board's Exhibit 37 and was read into the record by the Board's solicitor. The witness said that the meeting was subsequently held and that, prior thereto, members of the Board's staff pre-

558 pared a memorandum of the Board's criticisms and complaints which would be a basis for discussion at the

559 meeting. He said that he had this memorandum with him at the time of the discussion with Mr. Giannini and that the substance of it was communicated to Mr. Giannini.

562 Relative to his part in instigating the memorandum, the witness said: "I don't recall, but I think what I would have done in the usual course of events would have been to have asked the staff, possibly the Secretary of the Board, Mr. Morrill, and say, 'Here is a conference we are having with Mr. Giannini with reference to the differences that have developed between the Giannini interests and the Board, and I would like you to prepare for the Board's consideration all of the questions and criticisms that ought to be considered and

taken up at this conference.'" He said that the memorandum was considered by the Board prior to its meeting with Mr. Giannini. He said that the conference with
563 Giannini lasted four or five hours and that all questions were explored but, upon being pressed on the point whether the document was read to Mr. Giannini or shown to him,
564 he said: "I am not certain. I don't know whether Mr. Giannini was given a copy of the document. I wouldn't be certain. Or whether the document was read to him or whether the document -- the substance of the document -- was discussed with him. I just don't recall."

565 The witness was then shown a memorandum dated February 17, 1943, written by the Board's Secretary, Mr. Carpenter, which referred to a meeting of the Board in relation to the memorandum under discussion, and having so refreshed his recollection, the witness said that it was agreed by the Board that the memorandum should be used as a basis for the discussion at the conference to be had with Mr. Giannini.

569 The witness said that present at the conference were Mr. Giannini and all of the members of the Board. No other persons were present. The witness said that, after the meeting, he requested Mr. Morrill of the Board's staff to immediately interview each of the Board members

Page

and to obtain from them their views and recollections of what had taken place at the meeting. Based on such interviews, Mr. Morrill prepared a memorandum which recorded the views of the several Board members, which

570 memorandum was then taken up with each Board member to ascertain whether or not there were any corrections, criticisms, or suggestions, or whether it expressed what they recalled to have transpired at the conference.

571 The witness was handed a draft of a document entitled "Confidential Draft of Report of Informal Conference with A. P. Giannini on February 18, 1943" and, having identified it as the Morrill memorandum to which he referred, used it to refresh his recollection of the meeting.

573 He said: "Giannini showed a good deal of resentment at the restrictions that were being imposed upon him by the supervisory agents, not only the Board, but also, particularly, was he critical of, as I recall, the Treasury, the Comptroller's office.

"He felt that he was being hampered unnecessarily in the expansion that had taken place and possibly would be taking place in the future, and this was entirely unwarranted. He showed a good deal of resentment about the attitude that was taken.

"He felt that the supervisory people didn't like what he was doing and maybe they ought to take over. Of course, the Board pointed out to him what they had considered was an understanding with reference to the expansion program, and he raised a strong objection to being singled out for special treatment, special consideration, and said that he felt that his organization was being singled out and was being treated unfairly.

"As to who was the controlling and dominant figure in this whole situation, he never questioned the fact, but seemed to take the responsibility for what was being done by Transamerica as well as the banks of Transamerica, and he did say that he was willing to abide by any agreement that was made to apply to other bank holding companies.

574 "It was pointed out to him that so far as other bank holding companies were concerned, there had been practically no expansion, that where there had been any, it was very minor, that, I think, on the whole there had been no overall expansion of bank holding companies, that, therefore, to apply restrictions to others was entirely uncalled for because no other bank holding company had undertaken to acquire the stock of any bank without first advising with and consulting and getting

the approval of the Board and arranging for a voting permit, prior to it and, as I have indicated, there was very little of such expansion undertaken."

575 The witness stated that it was pointed out to Mr. Giannini that the Board, particularly Mr. McKee and the witness himself, in 1940 had made a real effort of conciliation in order to get a basis for future operation of the Giannini interests and that certainly it was understood at the time that the expansion program that had been previously undertaken would not be continued and that no further expansion would be undertaken through the acquisition of the stock of other banks without first taking the matter up with the Board.

Respecting Mr. Giannini's reaction, the witness said that Giannini was concerned about bank holding company legislation of the "death sentence" variety and, rather than have that sort of legislation, he would be willing to have an agreement or arrangement made whereby "so far as he was concerned -- and he said he would have to take it up with his boys out West before he could give us a definite assurance, but that he would be willing to any arrangement made for no further expansion, except he did have two deals that were on the fire at the time".

576 Giannini said that he was not at liberty to tell the commitments but that he did expect to consummate

Page

those deals and then any further expansion would not be undertaken if an arrangement could be worked out that his people would agree to and that would also be agreeable to other bank holding companies.

579 The document, "Copy of a Draft of Report of Informal Conference with A. P. Giannini", was received into evidence as Board's Exhibit 39 and was read into the record by the Board's Solicitor.

586 The witness stated that, following the conference of February 1943, the subject of Transamerica bank acquisitions again came to his attention when the Board learned from the president of the Citizens National Trust and Savings Association of Los Angeles, Mr. Ivey, that Transamerica was undertaking to acquire the stock of that bank. He said that the Board was concerned because, if Transamerica succeeded in acquiring control of this bank which had 30 odd branches in the Los Angeles metropolitan area, it would give them another branch system in the Los Angeles area, where they were already the largest banking operation. The Board consequently sent a telegram to the Federal Reserve Bank of San Francisco for transmittal to Transamerica. The witness identified a

587 copy of a telegram dated May 26, 1943 as the wire to which he alluded and such document was received into evidence as Board's Exhibit 40.

Page

A copy of the letter sent by Mr. R. B. West, Vice President of the Federal Reserve Bank of San Francisco, dated May 29, 1943, to Transamerica Corporation, which incorporated telegram introduced as Board's Exhibit 40, was received in evidence as Board's Exhibit 41.

588 A copy of Transamerica's letter of July 9, 1943, addressed to the Board of Governors of the Federal Reserve System, containing an enclosure entitled "Memorandum in re telegram of Board of Governors of the Federal Reserve System of May 29, 1943 to accompany letter of Transamerica Corporation to the Board responsive thereto", was received in evidence as Board's Exhibit 42.

589 Referring to Transamerica's reply of July 9, 1943, in which it disagreed with the position of the Board and stated that had it been advised by its legal counsel, Messrs. Wilkie, Owens, Otis, Farr, and Gallagher, that, in their opinion, there was "nothing in the laws, regulations, or agreement with the Board of Governors of the Federal Reserve System that would preclude Transamerica Corporation from entering into transactions such as those referred to in the Board's telegram".

590 The witness said that, thereafter, Mr. Dreibelbis, who was then general counsel for the Board, Mr. Leachman, special counsel for the Board, and Mr. Cagle,

assistant chief of the Division of Bank Examinations, had gone to California for the purpose of making an examination of Transamerica Corporation and to report back to the Board as to what action, if any, the Board could or should undertake in view of the situation that existed that might curb the further expansion of the Transamerica group. He said that the Board considered various methods for attempting to deal with the situation, mentioning adequate holding company legislation, agreement between supervisory agencies to use such influences as they had to prevent further expansion, and the possibility of modification or cancellation of voting permits.

591 He said that Mr. Dreibelbis suggested the possibility of proceedings under the Clayton Act, up to which time he had had no knowledge, and he didn't know that any other Board member had any knowledge, as to their power or authority or responsibility under the Clayton Act, it having never theretofore been brought to the attention of the Board by its counsel or anybody else connected with the Board.

592 He said that, at that time, Mr. Dreibelbis submitted a memorandum to the Board entitled "Responsibilities and powers of the Board under the Clayton Act" and dated July 26, 1944.

Page

594 The witness said that, while Mr. Dreibelbis' memorandum was under consideration, the Board learned that the Attorney General was considering the question of whether or not there were grounds for a Sherman Act proceeding, and the Board felt that, while the investigation of the Department of Justice was under way, it would not be appropriate for it to do anything further in the matter. With respect to the Justice Department's

595 investigation, the witness said that some conferences were held in the Attorney General's office in 1945, it being his recollection that there were present: Mr. Delano, Comptroller of the Currency, Attorney General Clark, and a representative from the F.D.I.C., probably Francis Brown, its attorney, and the witness himself.

596 At this point, the solicitor for the Board handed to counsel for Respondent copies of correspondence which had been demanded by the latter, to wit: Letter dated October 31, 1945, written by Attorney General Clark to Chairman Eccles; letter dated February 26, 1947, written by Chairman Eccles to Attorney General Clark; and letter dated March 4, 1947, written by Attorney General Clark to Chairman Eccles.

597 The witness said that, in the fall of 1947, the subject of the acquisition of banks by Transamerica

Page

Corporation was again taken under consideration by the Board, due to the fact that there had been no action by
598 the Attorney General or on the pending bank holding company bill and Transamerica was continuing its expansion
599 program. He said that the Board had asked its counsel to present recommendations and that it had received a memorandum from Mr. Townsend dated October 31, 1947. (At this point, the Board's solicitor offered in evidence the Dreibelbis memorandum of 1944 in relation to the Clayton Act authority of the Board, and it was received as Board's Exhibit 43. He also offered the legal memorandum submitted to the Board October 31, 1947, which was received as Board's Exhibit 44.)

602 The Board's solicitor read into the record the memorandum of October 31, 1947.

609 Acting on the recommendations of counsel, the Board instructed its legal division, with such support as it needed from other staff people, to make an investigation, and it was upon the conclusion of that investigation that the Board issued its complaint in this case.

610 Adverting to certain affidavits by L. M. Giannini and Sam Husbands which were filed by Transamerica Corporation and which charged that personal bias and prejudice of the witness was at the bottom of the current proceedings, the witness commented as follows:

Page

"There is nothing that could be said which is further from the truth than that I have a personal prejudice. Had it been possible, in my public duty, my public position, for me to follow my personal inclination, I would certainly have preferred not to be placed in this

611 position. The record is replete with evidence that great effort and patience were shown on the part of the Board over the past ten years in an effort to come to an agreement, an arrangement, with the Transamerica people that would make action such as is now being undertaken unnecessary.

"It has been shown that in 1940 the Board, at the instigation of the Transamerica people, intervened with the other supervisory agencies -- particularly the Secretary of the Treasury, the Comptroller of the Currency and the F.D.I.C. -- in order to try to work out an arrangement that would avoid the further criticism and objection on the part of those agencies.

"The Board did intervene and succeeded, at that time, in working out what was then a satisfactory arrangement with reference to the Bank of America.

"Certainly, if there is prejudice on my part in this matter, then it must be apparent that there is likewise prejudice on the part of all of the other

supervisory agencies as well as upon the part of every member of this Board; that the record certainly does not single me out for prejudice -- not only the present members of the Board, who were unanimous in favoring this action, but the members of the Board who are not at present members of the Board. I have in mind particularly that Mr. McKee, Mr. Ransom -- who has since passed away -- favored every action that the Board took in trying to deal adequately with this situation.

"If the Board is in error in carrying out what they interpreted to be their public responsibility, if the Board be in error in following the advice of counsel, not only the advice of those in the present legal department but counsel who were formerly with the Board, then it cannot be said that, because of error, the Board, and me as a member of the Board, have acted only in bias and prejudice.

"Certainly, this procedure is not final. Certainly, any order that the Board might issue is subject to review by the courts; and so it does not seem that the accusation of prejudice, in view of the opportunity that is afforded to the Transamerica people to have this entire subject reviewed by the courts, is justified.

"Certainly my personal relationships to the Gianninis and with their institutions over the long period of years would not indicate any reason for my having prejudice.

"As I stated yesterday, the personal business relationships have been most agreeable and pleasant. However, being one member of a Board of seven -- and the Board being only one of three supervisory agencies -- even if I should undertake to show favoritism or, let me put it, prejudice, in favor of the Gianninis, the other members of the Board and the other supervisory agencies would have carried on and would have, no doubt, whether I had been here or not, undertaken this course.

"Even before I came here, the evidence indicates, that difficulty had been had with a predecessor Board of which Mr. Eugene Meyer was the Governor and difficulty had been had with, I understand, the Comptroller's office; that this friction, you might say, which developed -- this criticism, this effort on the part of the Board since I came with it -- was not original or new, and I was sufficiently hopeful to feel -- both Mr. McKee and I -- that possibly the Transamerica people had not been handled right, that there was a way of getting around the table and having an understanding without resort to legislation or other action; and with great hope and expectation we undertook such a course, and it is with the greatest disappointment on my part that the relationship has finally ended in the course that it has now taken. It is with personal regret that I say that."

WITNESS: Marriner S. Eccles

CROSS EXAMINATION

Page

615 Replying to counsel's question whether he came to Washington as a member of the original New Deal group of President Roosevelt, the witness said that he was unknown to President Roosevelt in 1933 when he was asked by the Treasury Department to come to Washington, that he did so only because it was a time of emergency and he felt that he should give some public service. He said

616 he had never held public office up to that time and that, if anything, he had been considered a Republican, although he considered himself an independent and still does.

617 He came to Washington February 1, 1934 as an Assistant to the Secretary of the Treasury and was appointed to the Board by the President in November 1934. He said he continued to maintain a residence in Ogden, Utah, and later an apartment at the Ben Lomond Hotel in Ogden, that he voted in Utah and paid his income tax there.

618 He said that he organized the Eccles Investment Company in 1916, that he has been president since 1929, succeeding his mother in that office.

Page

He said that the company "is a personal holding company that was organized for the purpose of taking
618 over the interest of three brothers, five sisters, and myself, in an estate, and seven of those members were minors. The interests included a variety of interest that came in from the estate, including a few banking shares which were substantial at that time, including sugar stocks, lumber stocks, and real estate, a variety of retail lumber stocks, construction stock, construction company, and those were the principal things. There was just a variety of holdings that were put into
619 this family corporation." He said that the company, at the present time, owns 44 percent of the voting shares of First Security Corporation and about 1/2 of 1 percent of the non-voting shares.

620 The witness said that he had studied a good many financial statements and a good many statistics although he did not assume any direct responsibility for
621 supervision of the surveys made and statistics published by the Board's staff. Referring to a question about his knowledge of the banking structure, etc. in the 12th Federal Reserve district, the witness said that he looked at the statistics for the country as a whole and couldn't give banking statistics for any particular district. He

Page

622 identified the states included in the 12th Federal Reserve district and said that his banking experience prior to his Government service was entirely in that district with the exception of a bank in Rock Springs, Wyoming, and that he is better acquainted with general economic conditions in that district, but not with the statistics.

The witness identified the head office and branches of the Federal Reserve Bank of San Francisco and the areas served by each office. He also said that Wyoming is in the 10th Federal Reserve district, under the jurisdiction of the Omaha Branch of the Federal

625 Reserve Bank of Kansas City. He said that he is acquainted with the geography and the distribution of the population in a general way in the 12th district and in Wyoming.

626 The witness repeated that Mr. Dreibelbis's memorandum (Board's Exhibit 43) was the first opinion that the Board had received from counsel with respect to its powers under the Clayton Act, although the Clayton Act had been on the books for 30 years.

627 Counsel for the Respondent read an excerpt from the Dreibelbis memorandum which suggested that the

629 matter of the Board's authority and responsibility under the Clayton Act be taken up with the Attorney General.

Page

In a further question, counsel for Respondent attempted to suggest that it was pursuant to the Dreibelbis memorandum that the Board turned over its files on the Transamerica matter to the Attorney General in connection with the latter's anti-trust investigation. The Board's solicitor objected to this implication and counsel for Respondent was able to obtain from the witness only the statement that the Board's files were turned over to the Attorney General in 1944 and that the Dreibelbis opinion was also dated in 1944. The
630 witness further said that he did not recall whether or not the questions raised by Dreibelbis were taken up with the Attorney General.

The witness stated that it was after the Attorney General had completed his investigation of the question of an anti-trust proceeding against Transamerica that he attended a conference at which the
633 Attorney General was present in 1945. He said that he did not remember that the Attorney General advised him at that conference that his investigation did not develop facts to sustain a case against Transamerica, it
634 being his recollection that the meeting was held primarily for discussing the need of bank holding company legislation and he supposed that the Attorney

General was present with the representatives of the bank supervisory agencies because his investigation of Transamerica would have given him some interest in the whole question of necessary regulatory legislation. However, the witness agreed that the Attorney General declined to
634 undertake a prosecution of Transamerica under the anti-trust laws.

635 Relative to Mr. Townsend's employment by the Board, Mr. Townsend stipulated that he entered the Board's employment on March 1, 1945, and that in December 1945 he made the final argument before the Securities and Exchange Commission on another matter in which he had
636 been engaged against Transamerica. The witness said that the Board felt that the continued employment of Mr. Leachman of Dallas as outside counsel was impractical and costly, and raised the question with Mr. Dreibelbis about the employment of full-time counsel with the Board, whereupon Mr. Dreibelbis recommended the employment of Mr. Townsend as Assistant General Counsel, up to which time, he doubted that any member of the Board had ever met Mr. Townsend. He said that he did not remember that
637 Mr. Townsend's past employment on Transamerica matters was even considered and that the particular work to which he might be assigned in the Board's office was within

the authority of the General Counsel for the Board. However, Mr. Townsend was assigned to take Mr. Leachman's place on the Transamerica matter.

The witness said that in February 1947 he urged the Attorney General to reconsider his previous
638 opinion that no prosecution of Transamerica was warranted and, thereafter, was advised verbally by the Attorney General that he had sent the communication to Mr. Snyder, Secretary of the Treasury, at the latter's request. Although the witness wrote the Secretary of the Treasury with reference to the same matter, he never received a reply from either the Attorney General or the Secretary.

639 The witness said that it was after the foregoing events that the Board requested a report from Mr. Townsend with recommendations on the Transamerica matter. When asked if Mr. Townsend's memorandum was the basis upon which the Board authorized the investigation that led to the initiation of the current proceedings, the witness replied: "Not that solely. That was one of the factors, certainly. That, without all of the background that had gone before over the years, would not certainly have been any basis for action; but that taken into account with everything that had preceded it was responsible for the authorization to determine whether or not

Page

this action was warranted."

641 The witness would not agree that his word "background" meant only the background that had been discussed in his testimony. He said it was a 30-year background and only the high spots had been touched upon.

Referring to the unanimity of the Board's action in initiating the Transamerica hearing, the witness said that there had been a number of instances where there had been disagreement in the Board but that he could not at the moment recall any specific instances.

He acknowledged that counsel for Respondent
643 was correct in stating that the witness was at the time of his testimony serving as Chairman pro tem of the Board during the absence of Mr. McCabe, and by election of the Board.

644 At this point (following a recess), the Board's solicitor stated that the witness wanted to correct an erroneous impression left by his previous testimony with respect to the Sherman Act investigation: The fact is that the matter was not referred by the Attorney General to the Secretary of the Treasury at the Secretary's request, but rather that the Attorney General

Page

himself had voluntarily referred the matter to the Secretary.

645 The witness stated that, following the unanimous adoption of the resolution by the Board directing that an investigation be undertaken under the direction of its legal division to ascertain whether to institute statutory proceedings contemplated by section 11 of the Clayton Act, looking to the entry of an order requiring Transamerica to divest itself of certain bank stocks, he wrote a letter dated November 7, 1947 to Preston Delano, Comptroller of the Currency, apprising him of the Board action. Counsel for the Respondent read the
647 letter into the record.

648 That letter stated that the Board's action referred to the possibility of the entry of an order requiring Transamerica Corporation to divest itself of the stock of any or all of the banks which it owned with the exception of that of Bank of America N.T. & S.A. Adverting to that fact, counsel for the Respondent called the witness's attention to the fact that the
649 Complaint in the current proceeding demands the divestment of the stock of Bank of America also and the witness replied that that change had come about after the investigation and the report.

The witness stated that, following the Board's directive of October 31, the Board's staff conducted an investigation in Washington, D. C. and in California, Mr. Townsend being in charge of that investigation, assisted by other members of the staff including Messrs. Chase,
650 Thompson, Smith, and Horbett. Assistance was also rendered by the staff of the Federal Reserve Bank of San Francisco but the witness stated that he did not know how
652 that matter was arranged. He also said that he did not participate in periodic consultations with respect to the charges which were to be made in the Complaint, but he did review the Complaint before it was filed.

657 His attention having been directed to the allegations of the Complaint referring to banks owned by Transamerica in the states of Arizona, Washington, and Nevada, the witness stated that he was aware and intended that the charges of the Complaint apply to the states of Arizona, Nevada, and Washington, as well as to the others mentioned.

660 Responding to an inquiry as to the specific communities in the State of Arizona with respect to which it was his intention to charge that competition had been lessened by the banks, or trade had been restrained, or that there had been any tendency to create a monopoly,

Page

the witness said: "I did not consider any of the communities specifically in the State of Arizona or any other state. As far as my consideration was concerned, I took into account the whole, over-all situation, which seems to me the only way this matter can be considered, which is not the question of whether in some particular community, whether in Arizona, California, or Oregon, or in any other community that a monopoly existed or that the operation tended toward the creation of a monopoly in any particular individual community or state. I took into account the effect upon the entire area of a continuation of the growth of the Transamerica Corporation, certainly in the light of what had happened in the past with reference to its growth, that there was a question, as I understood it, of whether or not this expansion of Transamerica was tending toward the creation of a monopoly, or was tending to lessen competition, not in any one isolated or particular community or one particular state."

661 The witness said again that it was the over-all statistical picture that he regarded as important, rather than the question of the existence of a monopoly in any one place.

Page

663 The witness said that he was not familiar with the growth during the last ten years of the deposits, loans, and banking offices of the First National Bank of Arizona and its affiliate, Phoenix Savings and Trust Company.

666 Upon being asked by counsel whether, in approving and authorizing the filing of the Complaint, he did not feel it was necessary for him in the performance of his public duty to inquire as to the competitive situation in any locality discussed in the Complaint, the witness answered that he did not.

671 Upon being shown a copy of the president's annual report to the stockholders of the Valley National Bank, Phoenix, Arizona, for January 11, 1949, the wit-
672 ness said he had not seen the document before and he further said that he was not familiar with Arizona at all, having never been in the state.

679 The witness identified a statement of the Board's Secretary, dated February 9, 1949, as a correct statement of the action taken and the persons present at the meeting of the Board on October 31, 1947. Counsel for Respondent read the statement into the record. After stating that those present at the meeting were Board members Eccles, Symczak, Draper, Evans, and Clayton, it

Page

continued: "By unanimous vote of the members present, the legal division was directed to make the investigation recommended in Mr. Townsend's memorandum. In taking that action, it was understood that appropriate letters would be sent over the Chairman's signature to the Attorney General, the Comptroller of the Currency, and the Chairman of the Federal Deposit Insurance Corporation, advising them of the Board's action and that, if he should so desire, Chairman Eccles would be at liberty to discuss the matter informally with Undersecretary of the Treasury Wiggins."

680 The witness also identified memorandum marked as Board's Exhibit 44 as the memorandum of Mr. Townsend to the Board, dated October 31, 1947, referred to in

681 the minutes of the Board just quoted. He also said that the three letters referred to in the minutes quoted were similar to the letter previously read into the record as having been sent to Comptroller of the Currency Delano.

The attention of the witness was directed to a volume entitled "Banking Studies", prepared by members of the staff of the Board of Governors. He said that, while he knew the volume was published, he had not read any portion of it and didn't know what went into it, that the material contained in it represented the views

of the individual members of the staff upon certain subjects and that the Board took no responsibility for

682 it. Counsel read an excerpt from a chapter of the said volume, written by C. E. Cagle, and entitled "Branch, Chain, and Group Banking", as follows:

"Federal Laws. - The only Federal statute which might be regarded as restricting or affecting chain banking as such is the Clayton Anti-Trust Act. It affects chain banking only to the extent that the banks involved might be regarded as linked together through interlocking directors, officers, or employees, and then only if one of the banks is a member of the Federal Reserve System. Many insured and non-insured banks which are not affected are larger and more important than many member banks which are affected by the Act. An amendment contained in the Banking Act of 1935 removed any restrictions with respect to interlocking directorates of banks not located in the same, adjacent, or contiguous cities or towns. The Act is not applicable in cases where a majority of the stock of the banks in question is owned by the same shareholders."

683 The witness said that the item quoted had not been brought to his attention in connection with his

consideration of the Board's duties and responsibilities under the Clayton Act.

The witness said he personally owns 1/9 interest in Eccles Investment Company and that the other stockholders were his brothers and sisters, each of whom
684 also had a 1/9 interest. He said that he is Director and President of Eccles Investment Company, that there are 9 directors altogether, that he continued as President and Director during all the time that he had been a member of the Board of Governors. He said that he was President of the First Security Corporation from 1926 until he went to Washington in 1934 and, at that time, he sold his stock interest in First Security Corporation to the Eccles Investment Company, and was paid therefor in cash.

686 As to whether he regarded the 44 percent ownership of the voting shares of First Security Corporation held by Eccles Investment Company as sufficient to control, the witness said: "The 44 percent of voting stock owned by the Eccles Investment Company would, I suppose, be considered control of the First Security Corporation if it wasn't for the fact that another company, in which we have absolutely no connection, completely independent, owns an equal amount. Certainly if 44 percent of a company or a great deal less than 44 percent were owned and

the balance of the stock was sufficiently scattered, even as little as, certainly, ten percent is often control. Very often control has been exercised by corporations where there is no stockholder ownership. The question of control is a matter of fact. In a particular instance, the Eccles Investment Company would only control in conjunction with another company if they were always in complete agreement." In the case mentioned, he did not regard that the 44 percent ownership was control.

687 The witness said that the First Security Corporation controls the stock of three banks -- The First Security Bank of Idaho, The First Security Bank of Utah, and The First Security Bank of Rock Springs, Wyoming. He did not remember the percentages of stock ownership but stated that it was substantially more than 50 percent in each instance.

688 He said that in 1948, the First National Bank of Salt Lake City and the First Security Trust Company of Salt Lake City were merged into the First Security Bank of Utah National Association, the banks having been owned by the First Security prior to the merger. When asked how many unit banks had been merged or consolidated with the three banks previously identified as

Page

now owned by the First Security Corporation, the witness did not give any very definite answer except to say that the figure was nothing like 50.

691 Counsel for Respondent implied that the bankers' manuals indicated that there were about 50 banks merged into the institutions mentioned and asked if the figures shown by the bankers' manuals are wrong. When the witness replied, "Well, it could be", counsel asked whether he would regard the Board's exhibits previously introduced, in so far as they were based upon bankers' manuals, as reliable, and the answer was, "I couldn't say as to that".

694 After considerable sparring as to the meaning of counsel's question, the witness said that it was his information that the three banks referred to currently

695 own 38 banking offices in the states of Utah, Idaho, and Wyoming. Based on counsel's information that 4 of the 38 banking offices were de novo branches, the witness agreed that the remaining 34 offices would have been the outgrowth of acquisitions of banks and that, since all of them became branches of a state member or of a national bank, the Board of Governors would have had full information about the acquisitions.

Page

696 The witness confirmed that, on June 30, 1937, the First Security Bank of Idaho, which then had a branch in the town of Emmett, Idaho, purchased the Emmett assets and took over the Emmett banking office of the Idaho First National Bank in Emmett, thereby reducing Emmett to the status of a one-bank town, and that, on the same day, the Idaho First National Bank, which then had a branch in the town of Rupert, Idaho, purchased the assets and took over the banking office of the branch of the First Security Bank of Idaho which had previously been operating in Rupert. When it was brought to his attention that, as a result of these transactions, two towns in Idaho which previously had two banks, thereafter had only one bank each, the witness said he found nothing improper in a situation of that sort where the size of the town is not sufficient to be able to support two banks, which was the condition in Idaho during the depression.

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The witness said that, at one time, he was president of the First Security Bank of Utah, but could not recall what connection, if any, he had with the First Security Bank of Idaho of which Mr. E. G. Bennett was president. He said that he was president of the First Security Bank of Utah from the time it became the First

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Security Bank of Utah until he went to Washington in November 1934, and that he was at the same time president of the First Security Corporation. He was succeeded as president of the bank by his brother, George Eccles, and by Mr. Bennett as president of the First Security Corporation, Mr. Bennett later being replaced by George Eccles.

699 The witness said that another brother, Spencer Eccles, is a director of the First Security Corporation and that Willard Eccles, also a brother, is secretary and treasurer and director of the First Security Corporation and vice president and director of the First Security Bank of Utah.

700 He confirmed that the First Security Bank of Idaho, the First Security Bank of Utah, and the First Security Bank of Rock Springs, Wyoming, all advertised themselves as members of the First Security Corporation System which refers to itself as the largest Intermountain banking organization.

The witness said that, when he was out home and his brothers asked questions, he advised with them as he does with a great many other bankers about banking, and economics, and financial policies. He said that he

701 does not spend any time in the banks at all and that his

conversations about the banks are about general economic conditions and not about any specific conditions with reference to the banks at all. His conversations with his brothers are mostly with reference to various other companies that he is interested in.

702 When asked again if it wasn't a fact that he is frequently asked for advice by his brothers on their most important banking problems, the witness replied: "No. I am not. They have made expansions and acquisitions and loans and they have never advised or consulted me at all. They have a very adequate staff and organization and I have been almost entirely away from it, out of touch with what is going on in the banking field." He further said that he does not in any way influence their policy situation with respect to the banks and reiterated he advised with them only in a general way with reference to general economic conditions.

704 With reference to the time devoted by him to the First Security Corporation and his private financial interests, the witness said: "I devote no time to the affairs of the First Security Corporation banks and such time as I devote to the other companies is a very limited time. It is nominal."

Page

When asked if he has never had, since becoming a member of the Board, a personal interest in the acquisition of any banks, he said that he has not been advised or consulted on the question of acquisitions, but that he naturally has the ordinary human interest in the success or future of the First Security Corporation, in which his family has a very substantial investment. He said that

705 in becoming a member of the Board, he had complied with the law in disposing of his stock interests in banks and severing his connections as an officer or director of such institutions and that his interest in the Eccles Investment Company was fully explored at the time his appointment to the Board was being considered by the Senate.

707 On further questioning, the witness repeated again that he had not advised with reference to the purchase of a bank, or recommended the purchase of a bank, or influenced the purchase of banks on the part of the First Security Corporation, although he possibly would have some interest in the knowledge that they had acquired a bank.

708 On the matter of long distance telephone calls which might have been made by the witness in connection with his personal affairs during his career with the Board,

he said that such calls have been very few and that the Board had not paid for any of them.

716 Counsel for Respondent stated that it was his information that the First Security Bank of Idaho had approximately 17.7 percent of the total banking deposits in Idaho in 1928 which had now grown to approximately 32.5 percent. The witness said that he could not confirm the accuracy of these figures but that it was reasonable to suppose that there might have been such a growth since about half of the banks in Idaho closed and the banks that were left would, therefore, have had a substantial growth in percentage of deposits. He said that the situation was more true in the case of Idaho than for most states, particularly California, because Idaho had no branch banking and was essentially a livestock and agricultural area and was particularly hard hit after the depressions of 1920 and 1929. He agreed that Nevada might be comparable to Idaho.

717 On the subject of bank failures around the time of the bank holiday, the witness said: "The real failures of the banks came commencing in 1930 and going through 1930, 1931, 1932, and 1933, up to the time of the bank holiday, but the banks that got through to that period were usually reopened."

Page

718 Counsel for Respondent stated that it was his information that the First Security Bank of Utah had 9.8 percent of the total banking deposits in Utah in 1928 and that it now has approximately 24.7 percent of the deposits in that state. The witness said that he was not familiar with the percentages and pointed out that the comparison drawn was not proper inasmuch as the First Security Bank of Utah, as presently constituted, represents several banks which were separately in existence in 1928, and that, to make a fair comparison, it would be necessary to take together the deposits in 1928 of all the banks which were owned by the First Security at that time.

719 The witness either accepted or confirmed the following facts suggested to him by counsel for Respondent: That the Rocky Mountain area comprises the 8 states of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; that the First Security Bank of Idaho, as of June 30, 1948, had deposits of approximately $129,519,000 and ranked third of all the banks in the 8-state area; that the First Security Bank of Utah, as of June 30, 1948, had deposits of $116,449,000 and ranked fourth of all the banks in that 8-state area;

that each of the said banks in Idaho and Utah was larger on June 30, 1948 than the largest bank in the said 8-state area in which Transamerica Corporation had an
721 investment; that the combined total deposits of the two First Security banks of Idaho and Utah, amounting to $253,524,000, was greater as of June 30, 1948 than the deposits of any other bank in the 8-state area including
722 the Valley National Bank of Phoenix, Arizona; that the combined deposits of the two First Security banks of Idaho and Utah, amounting to $253,524,000, was greater than the aggregate deposits of all of the Transamerica banks in the two states of Nevada and Arizona.

Relative to the last item, the witness expressed the thought that, in the case of Nevada, the deposits controlled by Transamerica were over 60 percent of the total deposits in that state whereas, in the case of the First Security Bank of Idaho, it had brought out that it controlled only 32 percent of the state total of deposits.

724 The witness said further that he didn't think that the Board would have brought any action at this time if Transamerica's operations had been confined to,

and if the interests in the states of Arizona and Nevada or the states of Washington and Arizona had been what they are now; and that he didn't think that taking that only into account the Board would have concluded that the operation of Transamerica was tending toward the creation of a monopoly. He said that,

723 even as late as 1940, the Board was not overly critical about the situation as it existed at that time, except the question of capital structure and that, if the growth had been stopped then, he felt sure that no action would have been brought.

724 On the question of tendency to monopoly, the witness refused to let himself be confined to the states of Arizona, Nevada, and Washington, but said that the aggregate of the Transamerica operations covering a 5-state area, particularly California and Oregon, is tending toward the lessening of competition by the continued

acquisition of additional banks and is therefore, in the view of the Board, tending toward the creation of a
725 monopoly. He reiterated that the picture had to be considered as a whole.

726 When asked for his definition of "lessening of competition", the witness said: "If two independent banks exist and they are acquired by the same interest, that certainly, you could say, to maybe a minor extent lessens competition." In defining "tendency to create a monopoly", he said: "Well, to reduce competition to a scale that would be important in an area and you may not question a monopoly having been created. An actual monopoly having been created is one thing and the tendency toward the creation of a monopoly is another." He
727 elaborated by explaining that the Sherman Act contemplates an actual monopoly-in-being but that the Clayton Act deals with the question of a tendency toward the creation of a monopoly.

728 When counsel made an allusion to the fact that only in the case of Transamerica Corporation has the Board determined that it was its duty to invoke the Clayton Act, the witness said: "I would like to say that that is true, the Board, up to this time, has not made such a determination, and one of the reasons in my

judgment the Board has not made such a determination is because there is no other bank holding company which has acquired the stock of additional banking institutions without the approval of the bank's supervisory agencies and without getting what is required under the bank holding company bill, a voting permit to vote that stock, with the exception of Transamerica."

729 He then corrected his statement that the holding company bill requires that a voting permit be obtained and went on to say that, according to his construction of what Congress meant in enacting the law, banks owned by bank holding companies would apply and obtain a voting permit if they met the conditions that the Board was authorized to require. If that were not the case, he said, the act could have no meaning. He agreed that it was not the language of the law that a holding company must obtain a voting permit and, in answering a question whether Transamerica had violated the law in not seeking approval for its acquisitions, he said: "No, I am not implying that it did. I think there is a loophole in it and I think they got out of it."

730 When it was suggested by counsel for Respondent that, in this proceeding, the Board was attempting to do by indirection what the law on voting permits did

not accomplish, the witness said that the Board is merely trying to carry out what it considers its responsibility under the Clayton Act and that, if the Transamerica Corporation is not guilty of any violations under the Clayton Act, it should have nothing to fear since the ultimate decision of the Board in the matter will have to be reviewed by the courts before it can have any force or effect. Counsel made a reference to the witness's
731 philosophy, to which the latter commented: "Whatever my philosophy may be, it should have no bearing on this case for the very reason that I am not going to vote on it for the Board. My vote will not even be a matter, so whatever my philosophy is is entirely unimportant so far as the final decision of the Board is, and whatever the final decision of the Board is, may be very unimportant in so far as the court is concerned."

732 He stated that he voted on the initiation of the current proceeding and that he was presiding as Chairman of the Board at the meeting at which the matter was presented to the Board by counsel for the Board. He also stated that it had been the view of the Board that
733 Transamerica controlled Bank of America, the matter having come up for a ruling when Bank of America applied to the Board for right to vote for a Class A director of

Page

the Federal Reserve Bank of San Francisco.

To counsel's suggestion that the Board's mind was not open on that issue of control, the witness

734 stated: "I think the Board's mind is always open. The Board does not have the view that it is faultless, it cannot be in error, and the Board certainly felt, based upon such information as was available, that in its best judgment that Transamerica did control Bank of America and Transamerica has not produced any evidence to, what seems to me, to change the Board's views."

737 Adverting to the exclusion of the stock of the Bank of America from any contemplated divestment order, as mentioned in the Board's letter to the Comptroller of the Currency written in November 1947 (Board's Exhibit 44), the witness said that that fact was not to be taken as implying that the Board did not consider that any of the activities of the Bank up to that time did not constitute a violation. He summed up various exchanges with counsel on this subject as follows:

739 "I don't recall the discussions at the meeting of the Board. As to whether Bank of America was to be excluded in consideration, certainly whether it was or not at that time does not seem to me to be material because, after the report of counsel was made, after the

Page

investigation and the recommendation to bring this action, the Bank of America was included. What brought about that exclusion in the letter to the Comptroller and what brought about the inclusion in the show-cause action that was filed, I couldn't tell you."

Relative to counsel's question as to how much time he had spent in Utah, Idaho, and Wyoming during the past five or six years, the witness said: "I have been
744 out there from two to three times a year and I have stayed while I have been there anytime, anywhere from a few days to a few weeks." He also said that time spent by him on Board matters averaged very much more than 40 hours a week, and that the record of his attendance at meetings and conferences where his presence is required demonstrated that there had been no neglect of public duty due to any absence from Washington.

745 Relative to the Stoddard Lumber Company, the witness said that the Eccles Investment Company owns 30-odd percent, that he is the president and director of the company, and has held those offices since 1928. The company at the present time has practically ceased operations. The witness personally owns 340 shares out of a total of 9,000, the Browning Company owns about half as much as the Eccles Investment Company, and the balance
746 is widely scattered. Browning Company and Eccles Investment Company together control it.

Respecting the Anderson Lumber Company, the witness said that this is a retail lumber operation which operates mostly in Utah although it has one or two yards
747 in Idaho. The Eccles Investment Company and the members of the Eccles family own about half and the Anderson family, who are the officers and who have run and managed the company since its beginning, own the other half. The Browning interests are not in this company. The witness has been a director of the company since 1913 or 1914.

Respecting the Amalgamated Sugar Company, the witness said that the Eccles Investment Company does not have any interest but that he himself and other members of the family together own an approximate 10 percent interest. Individual members of the Browning family jointly own possibly 2 or 3 percent but generally the stock is very widely held by several thousand stockholders in California and in New York. The witness said he is chairman of the board and a director of the company, which was organized by his father in 1898.

He also stated that he is the president of the Eccles Hotels, Inc.; a director of the Mountain States Implement Company; president and director of the Sego Milk Products Company; chairman of the board and director of the Utah Construction Company; and that he has held

such offices throughout his career as a member of the Board of Governors.

750 He said that his attendance at board meetings of the various companies had been very irregular, maybe one or two meetings per year. He said that the position of chairman of the board in his case is purely nominal and that all of the connections mentioned were established prior to his membership on the Board of Governors and all relate back to a family interest of a very long duration; also that these connections are a matter of public

751 knowledge, having been published in various directories for a good many years.

With respect to the Utah Construction Company, he said that the Eccles family owned about 10 percent of the stock up to two or three years ago, at which time such interest was increased to about 15 percent. The Wallace interest is substantially larger, being about 25 percent, and the Browning Company has 7 or 8 percent, with the balance of the stock being held by a great many people. The business of the company is general contracting and over its life it has had a great many Government contracts.

752 Along with two other companies, it was asked by the United States Steel Corporation to build some of

the foundations and roads and other heavy construction work on the Geneva Steel Plant at Provo, Utah. While the total job exceeded $200 million, the three companies together had about $25 million of the job. This job was not let out on bids because the specifications were not ready, as was true with practically all war work.

The witness said, generally, that the Government brought in every construction company that it could locate and negotiated with those companies for work that it wanted done. The Utah Construction Company's work for the Government prior to the war was all on a competitive bid basis. As to the work in which it had a participation during the war, it did not in any instance solicit such work, and in practically all the participations, it was invited to participate with other contractors.

754 The Utah Construction Company was the successful bidder on the Davis Dam in Arizona which the counsel for Respondent characterized as a $21 million job. On this job, the company had a 20 percent participation, there being seven or eight other contractors.

It also had a participation in the construction of the Norfolk Dam at Mountain Home, Arkansas, in which case its participation was 5 or 10 percent.

This company, along with a number of other contractors, was assigned by the Army engineers a certain part of the work on the Alcan Highway. On this matter, he said: "I recall the bitter complaints of the management, feeling that they had to take that job because it was what they considered an extremely difficult effort and with no profit in it and diverted their organization, but it was like a great many other jobs during that time, they were brought in and asked to do it and they did it."

755 With reference to the part of the Utah Construction Company in what counsel for Respondent characterized as a $20 million contract let by the Army in the Philippines, the witness said:

"There are, I think, three companies. The Utah Construction Company is one of the three. As I understand it -- and the reason I know so much about these is because Mr. Leslie Gould, who I see is writing these stories, has raised all of these questions, so I have taken occasion to be informed on the matter. He mentioned particularly this Army question at least a half dozen times, and the implication was made -- I am glad to have this opportunity to have this question brought up while I am on the stand -- that the Utah Construction Company, through some effort on somebody's part, implied that I

might have had something to do with it, got them into the contract when it was supposed to go to somebody else.

"I inquired about this purposely because I knew nothing about it. I had not even heard that there was such a job or that the Utah Construction Company had any part of it, so I made an inquiry with reference to
756 the facts in this case and I was told by Mr. Corey, president of the company, who runs the company and has been with the company for forty years, that the Army had a great deal of work to do in the Pacific, that they have no plans or specifications, that the work would have to be subject to cancellation at any time, and that they had picked nine contractors in the country who had done a good deal of work during the war period and that they had some experience with, and they, the Utah Construction Company, was one of them.

"The Utah Construction Company did not in any way solicit the work or any opportunity to participate in the work, and the contractors, the two contractors that were made partners of the Utah Construction Company, were two contractors that the Army had picked and they gave these three contractors, including the Utah Construction Company, the Philippine work, three other contractors some other work, and three other contractors some

other work. That is the way the Pacific work was handled.

"I made inquiry as to the basis of this work and I was advised that the fee upon this work was less than two percent, that they were to be paid on the work."

The Philippine contract he said was a cost plus fixed fee contract and was negotiated rather than let by bidding.

757 He said that the foregoing facts were learned from President Corey of the Utah Construction Company right after Mr. Gould's first article on the subject, probably in the first part of 1948 or the late part of 1947.

He said that the company is operated by a management committee composed of the engineers and the technical engineering people, and that his connection is purely nominal and has been like that of other directors of the company who determine the general policy with reference to the company's financing and as to the work to be done. The management committee has complete discretion to handle any and all work.

758 Counsel made reference to a newspaper article by Gould in which the writer said that in response to an

inquiry addressed to Utah Construction Co., inquiring about its Government contracts, in which he mentioned Eccles, the company had wired back a referral to Eccles. The witness commented that this was very natural, since the inquirer had made a reference to him.

A lengthy exchange on the point of the ownership of the First Security Corporation brought statements by the witness that the Browning Company and the Eccles Investment Company each owned approximately 44 percent of the voting stock; neither company owned much of the non-voting stock, this having been paid out or disbursed to the families that owned the (Eccles and Browning)
759 companies; the Eccles family owns possibly 15 percent of the total outstanding "A" and "B" stock; the J. M. Browning and M. S. Browning families owned roughly 12
761 percent of the total "A" and "B" stock. And, without saying so in precise words, he left the impression that
762 the members of the families owned only non-voting stock. He confirmed that there were about 227,000 shares of non-voting stock as against 20,000 shares of voting stock, and that the non-voting stock is senior to the voting stock in liquidation.

He stated that a small amount of non-voting stock was distributed to the organizers of the company

when it was organized and was later increased by some public offerings and by the exchange of such stock for
763 bank stocks purchased. He stated that the Eccles and Browning families and Eccles and Browning companies have just about the same percentage of the voting stock of First Security Corporation as they had when the Corporation was organized in 1922 and the same is true of various other people who have holdings. He agreed with counsel that the control of the banks purchased rested exclusively in the First Security Corporation.

764 At counsel's request, the witness identified M. S. Browning as Matthew S. Browning and said that the middle initial of the latter's son, Marriner Browning, is "A", and that Marriner Browning is a director and vice president of First Security Corporation. The witness further stated that he is no relation whatever of M. A.
765 Browning. He said that he had been associated in various business ventures with the members of the Browning family over a period of years, although there have also been a great many ventures engaged in by either group that the other was not interested in. He stated that M. A. Browning is a director of the Utah Construction Company, a director of Amalgamated Sugar Company, a director of the First Security Bank of Utah, and vice president and director of the First Security Corporation.

Page

766 He reiterated that the Eccles Investment Company owns 44 percent of the voting stock of First Security Corporation and that the Browning Company also owns 44 percent of the voting shares, and agreed with the suggestion of counsel that, so long as the Eccles family and the Browning family continued to work together, it is not necessary for them to solicit proxies in order to control a stockholders' meeting of First Security Corporation. Among other stockholders in the First

767 Security Corporation, he mentioned the Snocroft people and Senator Thomas's heirs and said that probably 2 or 3 percent of the voting stock was as much as is owned by any one other stockholder or group, pointing out that there is only a 12 percent interest outside of the Eccles and Browning interests. When questioned about a voting trust, the witness said that there was some sort of an agreement entered into by his brothers since he came to Washington. He could not give precise information about this agreement but said that it was covered fully in correspondence with Senator Tobey.

768 Relative to the banking services rendered by the First Security banks of Idaho and Utah, the witness said: "Well, I couldn't give that to you specifically, except to say that, while I was connected with the

organization, we used to undertake through the banks to give as complete banking service as was possible with reference to commercial loans and trust business and real estate loans and consumer credit loans, so I would say that, like any progressive banking organization, they are continuing to give the usual complete banking service."

769 The witness said that he would not want to ask any officer who has been associated with any of the First Security banks or the First Security Corporation to testify in this proceeding but that he would have no objection to such officers testifying if they were requested to do so by Respondent, and were willing. But he further expressed the opinion that he felt sure that none of them would want to have any part in this proceeding.

770 Adverting to holding company bills introduced by Senator Glass, particularly a "death sentence" bill in 1938, the witness clarified his position: "I had expressed myself as feeling that the bill was undesirable, that a freeze bill or a regulatory bill would seem to me to be more desirable." It was then brought out that Senator Glass introduced two bills, the first in 1938

771 not reaching even the stage of committee hearings, and the second, S.310, being introduced by the Senator with the statement: "The bill I am now presenting is introduced by request and with reservations."

Page

772 The witness said that he could not recall details of the 1941 bill nor statements alluded to by counsel as indicating that the bill was Treasury-inspired and aimed at Giannini. When asked if he disagreed with Secretary Morgenthau about that bill as he had in a previous instance, the witness said:

"I did not know anything about the bill until after it was introduced ... that bill was prepared by the Treasury and I understood that Mr. Crowley of the F.D.I.C. also was in on the drafting of that bill, but the Board was not, and the bill was introduced without our knowledge and our advice, and without our consent."

773 He agreed that the objectives of the bill were about the same as the earlier bill.

774 As to the implication by counsel for Respondent that Secretary Morgenthau was engaged in a campaign of persecution against Transamerica Corporation, the Bank of America, and A. P. Giannini in the period 1938-1941, the witness replied: "I don't think that he was engaged in a campaign of persecution. I think that the Federal Deposit Insurance Corporation and the Treasury and the Comptroller's office were very much concerned about the expansion of Transamerica and prior to the getting of the new capital in the bank, I think they were very much

concerned about the condition of the bank. I would say that the Board was desirous of getting a holding company bill to curb or to regulate and control expansion of bank holding companies and that the Board was desirous of trying to work out with the other supervisory agencies a satisfactory agreement with reference to Transamerica and particularly the Bank of America, and, as was brought out yesterday, we put forth a great effort at the instigation or request of the Gianninis to intervene and see if a satisfactory arrangement couldn't be worked out."

775 Further on the subject of Mr. Morgenthau's actions, the witness refused to express an opinion as to what the Secretary's intentions were and, when specifically asked if he did not know that the Secretary had handed over to the S.E.C. confidential bank examination reports which became the subject of a well-known law suit, he

777 said: "I had no knowledge whatsoever of the relationship of the Treasury with the Securities and Exchange Commission case which you refer to. The first knowledge that I had that such a case was to be filed was the day before it was filed." He said that this was in 1938.

778 Objections were sustained to further questions of counsel citing alleged instances of actions by the Secretary or other Government agencies adverse to the

Page

Giannini interests until the subject of the controversy between the Comptroller's office and the Bank of America

781 was brought up. On that subject, the witness pointed out that the Comptroller's office was one of the bureaus of the Treasury Department so that the Assistant Secretary of the Treasury and the General Counsel of the Treasury participated in the conferences. He said that Secretary Morgenthau sat in on one or two conferences but he had

782 no recollection that Mr. Morgenthau had, as mentioned by counsel, expressed any suggestion that public funds should be withdrawn from the Bank of America.

783 As to counsel's suggestion that the witness disagreed with Secretary Morgenthau rather constantly on fiscal matters from 1938 on, the witness said that he did have some disagreements but, more specifically, the Open Market Committee, of which he was the Chairman, disagreed with the Treasury with respect to fiscal policy and public debt management and that it was his responsi-

784 bility to have the contacts with the Treasury. But he denied that this had anything to do with the gratification at the successful conclusion of the Comptroller's controversy with the Bank of America, expressed in his letter to L. M. Giannini dated March 22, 1940.

Page

785 As to his expertness on the subject of bank holding companies, the witness said that, as Chairman of the Board and in connection with testimony that he has had to give from time to time in respect to bank holding company legislation, he has given a good deal of thought and study to various types of bills. The witness also acknowledged that he had testified as follows in connection with the hearings on Senate Bill 829 before the Senate Banking and Currency Committee on June 11, 1947: "... and I think I possibly know as much about bank holding companies as anyone, because I organized one of the first in this country and operated it for quite a number of years. Therefore, I claim to be an expert, not because of any theory, but because of practical experience."

786 Counsel introduced documents which he identified as H.R. 2776, introduced by Mr. Spence in the House of

788 Representatives on March 26, 1945, H.R. 6225, introduced by Mr. Spence in the House of Representatives on April 30, 1946, and S. 829, introduced by Senator Tobey on March 10, 1947, and asked the witness if these were not the three bills which were introduced with his approval.

792 After a recess during which the witness was enabled to consult the Board's records, he identified the three bills as legislation which were introduced in

Page

Congress with his approval and upon his recommendation.

802 to 814 Having been prevented by the Hearing Officer's ruling from pursuing a line of questions about the witness's part in proposed legislation, counsel for Respondent made an offer of proof which was over-ruled by the Hearing Officer.

817 to 830 Counsel for Respondent read lengthy excerpts from a speech made by the witness on the subject, "The Dual System of Banking", before the meeting of the National Association of Supervisors of State Banks held in Cincinnati, Ohio, in September 1943. In the speech, the witness advocated limited branch banking. The quoted sections of the speech contained the following:

827 "I believe that the independent unit bank should be protected, however, by a statutory provision prohibiting establishment of any branch in a community already served by a unit bank or by a branch of another bank. The banking authorities could, of course, permit establishment of another bank in a community if the need for it existed, but under the provision I have in mind, a branch could only come into the community by acquiring a unit bank which had been in existence for at least five years. Such an acquisition would have to have the consent of the bank supervisory authorities in order to

Page

prevent monopolistic tendencies. Under such provisions, a market would be provided for the stock of a unit bank in case the stockholders desired to sell because of unprofitable operations or for any other reason. At present, the owners of the smaller unit banks are greatly handicapped in having no opportunity, in most cases, to dispose of their investment, if they wish to do so, at anything like a satisfactory price."

830 Apparently alluding to that excerpt, counsel obtained from the witness a statement that the policy he advocated for the protection of unit banks during the period of transition from the present dual banking system to a unified branch system would permit the development of branch systems only by the purchase of existing unit banks with rare exceptions. And it was brought out that

831 such protection is generally known as the "de novo" rule. On the subject of the de novo rule, the witness said that he thought there were statutes in some states prohibiting a branch banking organization from establishing a de novo branch without the consent of the local banks, and that such prohibition is related to population. He said that he was not familiar with the de novo rule in California,

832 Oregon, and Washington. He reiterated his opinion that the de novo rule bears a relation to the size of the community.

Page

833 He said that he did not think that the status of a de novo rule in Oregon, California, and Washington had anything to do with the matter of his approving the allegations contained in the Board's complaint against Transamerica Corporation.

He agreed that the de novo rule operates to the benefit of stockholders of unit banks and that it provides them with a market for their stock which would

834 not otherwise exist. He also agreed that the branch banking systems themselves, with or without a de novo rule, provide a market for unit bank stocks which would not otherwise exist. At this point, the witness interpolated: "Everyone knows that I have been a public advocate long before I came to Washington and long after I came to Washington of limited branch banking."

He said that no branch banking system could be developed very rapidly without the purchase of unit

835 banks. He said that existing systems have been developed by a combination of purchasing unit banks and converting them into branches, and establishing de novo branches. Relative to the proposal in his speech that de novo branches not be permitted except in unusual cases, the witness said that it would have the effect of protecting the unit banks from competition by branch banks, and he

Page

836 agreed that unit banks need that protection from competition if they are to stay in business, and that unit bankers for years have urged such protection under law.

Relative to the Independent Bankers Associations, the witness said that he did not know the reasons which made them spring up but he agreed that the protection of unit banks from branch banks is one of the principal causes they have espoused. When it was suggested by counsel that this proceeding was for the same purpose,

837 the witness said: "The purpose of the proceeding is to determine, as I stated yesterday, whether more or less an unbridled growth, such as has taken place in the banks of Transamerica, was in violation of the Clayton Act."

840 Counsel for Respondent next adverted to the understanding or gentleman's agreement which the witness had testified he reached with L. M. Giannini in connection with the settlement of the Comptroller's controversy in 1940, to the effect that any further expansion would not be undertaken without approval by the regulatory

841 agencies. The witness confirmed that the agreement negotiated with the Comptroller's office had been reduced to writing and identified a document shown him by counsel as being a copy of said agreement.

Page

In agreeing that the written document itself contained no reference to the understanding or gentleman's agreement referred to, the witness said: "It was discussed. I thought that there should be some way of putting it in that paper, but the attorneys who were discussing the thing didn't think that that was advisable and that it would be inappropriate to do so."

842 In answering counsel's questions, referring to the fact that the Comptroller's agreement was exclusively with the Bank of America and that no officer of Transamerica Corporation was present at the conferences, the witness made the following statements:

"We, of course, discussed the question of Transamerica, and as was indicated, Transamerica was furnishing the capital to carry out the capital requirements for the bank;" and, later,

"We had understood that Mr. Mario Giannini was in constant touch with Mr. A. P. As a matter of fact, from time to time he would report that he would have to take this matter up and discuss it with his associates and with A. P."

Upon counsel's suggestion that Mario was appearing for and representing only Bank of America, of which he was president, the witness said:

Page

"The Comptroller was, of course, the one that had called this conference for the purpose of considering the problems and the question of Bank of America which was the great, large portion of the Transamerica organization."

843 The witness repeated that the Transamerica relationship to the whole situation was constantly under discussion, although only between representatives of the Government and the Bank of America.

844 He confirmed that additional branches of Bank of America which had been opened since the date of the agreement would necessarily have had the Comptroller's approval for their establishment, and that the agreement did not itself impose any requirement on Transamerica's acquisitions of banks, which in any event, would be outside the jurisdiction of the Comptroller. Following this, counsel inquired as to the basis for his reference to an understanding or agreement, and the witness said:

845 "I base it upon a good deal of discussion had between the whole group that met almost continuously for six weeks considering this matter, a basic discussion upon that, that the primary purpose for the Board intervening in a matter that involved the Bank of America was in order to try to come to some understanding with reference to the whole Transamerica operation.

"Had that not been in the background, had it not been the primary consideration, I don't think that the Board, upon the request of Giannini, would have had the same interest in intervening merely to get a temporary arrangement made with reference to the Bank of America that had brought about -- a temporary arrangement made with the Bank of America, the necessity of which was because of the critical attitude of the Secretary of the Treasury and the Federal Deposit Insurance Corporation people. As this record has shown, the desire on the part of the other supervisory authorities to restrain the Bank of America through various means, publishing of the report of the Bank of America, the wire to discontinue the payment of dividends, the indication that they were going to file certain complaints and request the Board to bring about a Section 30 case, all
846 of that was involved in this situation and the Board was willing to intervene with the idea that there be a settlement of these various differences."

He went on to say that the differences were not only related to Bank of America but "involved the whole Transamerica operations and its relationship with Bank of America. I was going to say in connection with certain practices, as I recall, between the Transamerica

and the Bank and the subsidiaries of Transamerica and the Bank."

He said that the agreement came about through general discussion and he could not recall any specific statements by any individuals, and he confirmed that the agreement had not been put in writing.

847 The witness was asked if, on the occasion of his telephone call on the Temple City matter, L. M. Giannini had not categorically denied that there was any understanding or agreement. He did not agree that there was a categorical denial but said that Giannini was not antagonistic and merely indicated that he was sorry that the Board felt the way it did and that he hadn't understood that that was what was expected. At the suggestion that Giannini's understanding might have been different, the witness said:

"If, at the time of the discussion, it wasn't different, if he had the same view that I had at the

848 time, then, certainly, when I talked to him he didn't have that view. I don't know whether he had forgotten the understanding or whether he ever had the understanding. I can't speak for Mr. Mario Giannini."

On the specific matter of the Temple City telephone conversation, he agreed that Giannini made it clear that at that time he did not have the same understanding.

Page

Upon counsel's reference to "your desire to have Transamerica Corporation submit any proposed new acquisitions of banks to the Board for approval" in advance, the witness took exception to the phrasing and stated that it was not his personal desire but rather a Board matter.

As to the legal rights and duties of the Board, the witness said that the Board relied upon the advice
850 of its lawyers and staff people and that the Board knew that it had no legal authority to stop and curb a bank holding company from buying either the stock of a bank or the assets of a bank or to require a corporation to obtain the Board's approval in advance for a purchase of a bank's stock or a bank's assets. He said that the first date on which the Board had sought such authority
851 by legislation was in 1946. He went on to say:

"The Board always felt that the Banking Act of 1933, which, for the first time, recognized the need of regulating bank holding companies, gave to the Board the supervisory authority over bank holding companies and gave them the power to issue or to deny the voting permits, that is, a permit by the holding company to vote stock of the bank, which they acquired. It was expected, anticipated by the Board, and I am sure by Senator Glass, who

sponsored that legislation, the Congress had passed it, that that would be an adequate authority to enable the Board to control the expansion of bank holding companies through the acquisition of stock in other banks. As I have indicated, I think that the Transamerica has been the only bank holding company that has acquired stock in other banks without advising with the Board and to ascertain whether or not it was agreeable or whether or not they would issue or give a voting permit."

As to his awareness at the time of the 1940 negotiations that the Board had no authority to require advance approval by it of bank purchases, he said: "Oh,
853 yes, we had found out by that time that the law had a loophole in it that Transamerica had found and used and no other bank holding company had used it."

He said that the Board had sought additional authority from Congress (re bank purchases) in 1946 or 1947, or at least it was covered in each of the three bills that were identified in the course of his earlier testimony.

Counsel next adverted to the Board's memorandum respecting the conference with A. P. Giannini on February 18, 1943 (Board's Exhibit 39). He inquired of the witness where, in the memorandum, there was any language

Page

854 corresponding to the witness's direct testimony previously "that the expansion program that had been previously undertaken would not be continued and that no further expansion would be undertaken through the acquisition of the stock of other banks without first taking up the matter with the Board". After replying that he did not

855 find in the memorandum the specific language he had used, the witness said further:

"Well, he had referred to situations that they felt some obligation to go through and that he would favor an agreement that there would be no further expansion if such an agreement was entered into with all holding companies. However, he said that he would have to take it up, and as this language says here 'with his boys'.

"That was the only commitment with reference to the question of further expansion."

The witness's attention was called to a statement in the memorandum as follows: "However, when his attention was directed to the facts of the Board's participation in the negotiations leading up to the 1939-40 agreement and to the promises of the Giannini interests

857 in that connection, he had little to say." He said that this was a reference to the understanding reached with Mario Giannini and Mr. Cushing during the 1940 conference.

Page

And he said that it was not only his impression but one that Mr. McKee and all members of the Board had gotten as well as Messrs. Crowley and Delano of the other super-
859 visory agencies. He said also that this was the same impression that L. M. Giannini had disagreed with on the first occasion that it was later brought to his attention, as testified earlier.

An exchange ensued between the witness and counsel about the witness's earlier testimony that Mr. Giannini had said that he had two commitments about which he wasn't at liberty to tell the Board. Counsel tried to make the point that Giannini did not decline to give the Board details of the commitments but that rather the Board had not asked him for details. The witness maintained that the Board had requested additional informa-
861 tion but that Giannini would give no additional details. He said: "We asked him about whether they were substantial institutions or whether they were -- what we asked him, we were trying to ascertain the importance of the commitments and he said that he didn't feel that he was at liberty to tell us and we didn't press him any further."

862 He repeated that this was his recollection, and recalled a conversation with Mr. McKee on the matter at a considerably later time, after which "Mr. McKee rather

laughed about the matter and said that certainly A. P. gave the impression that they were unimportant commitments, and when it turned out to be the Citizen's Bank in Los Angeles with thirty some-odd branches, it proved to be a big shock to all of us."

864 The following extract from the Board's memorandum on the informal meeting with A. P. Giannini was read:

"That confronted with the possibility of 'freezing' or a 'death sentence' for bank holding companies, he was willing to accept some sort of arrangement which would restrict further expansion of the Transamerica group unless requested by the Federal supervisory authorities, provided all the banks which they now have could be retained, together with the two regarding which Mr. Giannini said he had outstanding commitments."

865 He said the statement was an accurate record of what had transpired; that neither the Board nor Giannini made any final commitment. The witness also said that the following two statements, quoted from the memorandum, correctly stated the situation: "At the conclusion of the conference, it was understood that he expected to discuss the possibilities of the situation with his son and others to whom he referred as 'his boys'"; -- "that

the conference ended without any directives, as Mr. Giannini stated he wanted to report the conversations to his associates and it was understood that the Board or a committee of Board members would, likewise, report the discussions to the other Federal supervisory agencies."

866 The witness called attention to another statement in the memorandum: "that in typical A. P. fashion, he wanted to know why, under such circumstances, we didn't take over the banks and run the outfit. He accepted, apparently without reservation, the idea that he was the dominant or controlling figure in the Transamerica group and its banking interests, regardless of any technical or legal question of control and that when he spoke he represented all, any or all of them to which he might be referring." But on the prompting of counsel, he further said that A. P. did make it clear at the end of the meeting that he had to take the matter up with his son and other officers before he could make any commitments.

867 Further, on the subject of the meeting with A. P., the witness said that the principal objective was that there was to be advance approval of acquisitions. Counsel called his attention to Conclusion No. 5 of the memorandum in which it was stated that such an arrangement

was contingent in A. P.'s mind, upon all other bank holding companies being subject to corresponding restrictions. As to whether the witness agreed at the time to undertake to obtain the consent of all other bank holding companies to such restrictions, he replied:

869 "I think that, as I recall, we told Mr. Giannini that we would make such an undertaking, but that inasmuch as all the other holding companies had not undertaken any acquisition of bank stocks without taking it up, that there would be, of course, some question as to why they should enter into such an arrangement, but we would be willing to do so and I think that at least my recollection is that the other bank holding companies should be willing to enter into such an arrangement."

872 Counsel for Respondent introduced for identification a letter dated April 15, 1943, from Charles W. Collins to Governor John K. McKee; a letter from A. P. Giannini to Mr. Collins dated April 13, 1943; a memorandum entitled "Summary Statement of Policy", dated April 6, 1943, by John K. McKee (with whom was Mr. J. P. Dreibelbis, General Attorney of the Board) to Charles W. Collins, counsel for Transamerica Corporation and the Bank of America; and a telegram sent by Mr. Collins to Mr. A. P. Giannini on April 12, 1943. These were marked Respondent's Exhibits for identification, 7-A through 7-D.

Page

873 The witness said he had no recollection of having seen any of the papers. He said that the number of papers coming through his office is very extensive and that he has often left it to his office assistants to read papers and check them unless they felt that it was something that should especially be brought to his attention.

875 Having read the letter dated April 15, 1943, he agreed that it was in effect notice to the Board that A. P. Giannini regarded himself as free of any and all tentative commitments discussed at the February meeting because of the Board's subsequent effort to change the terms of the proposed agreement.

877 Counsel read into the record a letter dated April 13, 1943, addressed by A. P. Giannini, Chairman of the Board of Directors of the Bank of America N.T. & S.A., to Charles W. Collins, Attorney at Law, in which the writer referred to a communication from Collins about alleged "vital changes" in this agreement made at the conference with the Board, and stating especially that it had been his understanding that any commitment on the part of Transamerica Corporation and the bank would be conditioned upon similar commitments by others and that the Board was to present the program to the other supervisory agencies, whereas it later appeared that Governor

McKee assumed that it would be unnecessary to secure commitments from other bank holding companies such as were desired from Transamerica Corporation and from Bank of America.

882 Counsel next referred to the Board's letter to Transamerica Corporation dated February 14, 1942 (Board's Exhibit 35) announcing a joint agreement between the Board, the Comptroller of the Currency and the F.D.I.C. with respect to the acquisition of additional banking offices by Transamerica Corporation, or Bank of America. The witness confirmed that thereafter the Board had

883 refused every application presented to it related to banks or banking offices in California in which Transamerica Corporation had any interest, and also imposed a condition of membership upon the People's Bank of Lakewood Village.

884 In answering a question related to Section 12B of the Federal Reserve Act, the witness sketched the procedure of the Board in processing applications for membership in the System.

885 When counsel suggested that since February 14, 1942, the regular procedure is not followed in the case of applications related to banks in which Transamerica is interested, the witness said: "That would be an

Page

unusual situation and would no doubt be brought to the attention of the Board."

886 There ensued a discussion between counsel whether Section 12B or Section 9 was applicable, after which counsel restated his question and summarized by asking:

888 "That means then, doesn't it, Governor, that by that agreement of the Board of Governors with the two other bank supervisory agencies of the government and

889 notwithstanding the provisions of the Federal Reserve Act and the national banking laws, designating the procedure and factors to be considered upon various kinds of applications, the Board, in effect, agreed with the other agencies that in this particular case, that is, of application affecting banks in which Transamerica Corporation had an interest, it would disregard its duty under the law and deny all such applications regardless of the merits of the application."

890 To this the witness replied: "The letter of February 14th, that Mr. Stewart had me read, seems to me to be an adequate answer to that question and I have nothing further to say." He acknowledged that he was referring to the letter which had been marked as Board's Exhibit No. 35.

Page

Regarding counsel's reference that in June 1943 Transamerica Corporation was preparing to make a
890 public offering of 100,000 shares of Bank of America
892 stock which it owned, the witness first stated that he did not recall the matter, but when he was further informed that one of the investment banking firms which was interested in the issue was the First Boston Corporation, of which Mr. Allen Pope was the chief executive officer, he corrected himself to say that he did have a vague recollection; specifically that Mr. Pope called him up, or called up Governor McKee, and spoke about the relations of the Board and other supervisory agencies to Transamerica. He said that the facts of the situation as they existed at that time were reported to Mr. Pope.
893 However, when counsel suggested that First Boston Corporation had publicly announced its interest in the proposed distribution prior to the Pope phone conversation, and thereafter publicly announced its withdrawal from participation, the witness said he did not recall those circumstances.

Counsel inquired if it isn't customary in all of the bank regulatory agencies for any agency which believes that there has been a violation of any law which it has responsibilities to administer, to notify the

party believed to be in violation and invite informal comments upon the question in advance of the filing of formal charges and initiation of any formal complaint or proceeding. The witness answered:

"It seems to me that this whole record is replete with efforts to come to some sort of an agreement and I certainly would not agree that the Transamerica Corporation and Bank of America was not fully advised and informed, certainly as to the feeling of the Board with reference to this situation and certainly if they didn't expect, and certainly I do not see, in view of the relationships that have been brought out here, that they
894 wouldn't expect the Board to use any powers or authorities that it thought that it had, or to carry out any obligation that it felt that it had under the statute to bring about a condition that was more satisfactory than the condition that existed and if you are referring to the present case, it would seem to me that the Transamerica people over the years have had adequate notice as to the way the Board and other supervisory agencies felt with reference to this continued, unbridled expansion."

895 Counsel repeated his question and the witness said that the instances when the Treasury filed its case with the S.E.C. and when it sent its wire with reference

to the discontinuation of dividends, were instances in which it was not done.

Counsel implied particular treatment of Transamerica and the witness said:

"I would say that no action would be brought against any corporation or individual, for that matter,
896 by government agencies if they felt that without conferring with them and advising with them, if they felt that adequate notice had not been given, that adequate effort had not been made, if they felt the situation called for such consultation in order to be eminently fair and considerate in the matter and I feel in this instance that the Board has been more than fair in giving the Transamerica Corporation adequate notice as to its attitude and as to its desire and as to its effort to either get legislation or to carry out what was the intent of the Congress in existing legislation or to use such other legislation as was available to it."

Further pressed by counsel, the witness said that so far as he knows it is true that the custom of advance notification and opportunity for informal comments by one accused by a bank regulatory agency has been uniformly followed in the witness's experience in Washington, with the exception of the instances mentioned which involved Transamerica Corporation.

Page

897 As to whether the witness or any other members of the Board had discussed the asserted violation of the Clayton Act by Transamerica Corporation with any of the officers of Transamerica Corporation prior to the filing of formal complaint, the witness said he had not so discussed it himself but was unable to say what any other member of the Board, or its staff, may have done.

898 The witness denied that he had given consideration to the possibility of a sale of the First Security banks in Utah, Idaho, and Wyoming to Transamerica Corporation, but said rather that Transamerica indicated that they might be interested in acquiring them. He said that if some of the officers of those banks discussed the possibility of such a sale, it was without his knowledge.

As to whether he had given consideration prior to 1943 to the possibility of accepting a position as an officer of the First National Bank of Portland, the witness said that he had been indirectly importuned to go

899 to that bank. Whether it was by A. P. Giannini, Mr. Bennett, Mr. Ashby Stewart, he could not recall. He further said that he did not recall that he discussed the possibility of his going to the First National Bank of Portland with Mr. Lawrence Clayton at the time the latter was negotiating for an official position in the Bank of America. As to whether the matter came up in 1940 and 1941, he could not recall.

Page

902 Counsel suggested that the witness, on the occasion of one of his appointments from President Roosevelt, had obtained a letter from the President purporting to relieve him of the normal requirement that a Board member who resigns before the end of his term is forbidden to hold any office, position, or employment in any member bank for a period of two years. The witness replied that no President could possibly give any such letter because it would require a special act of Congress to relieve a member of the Board from such an obligation.

904 At counsel's reference to consolidations involving banks in which the witness was interested, the witness stated that there was nothing either improper or unlawful about them. He agreed that every consolidation would have the result of eliminating competition between two banks, by consolidating them into one.

905 Counsel directed the witness's attention to a tabulation entitled "Recent Bank Mergers or Absorptions" appearing in a publication called "Investors' Reader", issue of February 2, 1949. The latter said he could not corroborate the fact of the consolidations and mergers reported in the list but that he

Page

would have no reason to doubt that they had taken place because banks are involved in consolidations right along.

In commenting upon the size of the institutions involved in the consolidations reported in the tab-
906 ulation referred to, the witness made a reference to "five million of deposits" and when this was seized upon by counsel for a further question, he said that he did
907 not regard anything below five million as significant today except in the sense that it would be to any investor or national public interest.

Counsel quoted from the publication mentioned as follows: "Actually the postwar rate of less than 100 mergers and consolidations a year is far below the 300 to 800 consolidation pace of the twenties and early thirties (aside from an even larger number of forced suspensions)", to which the witness expressed agreement.

With reference to the position of banking authorities on mergers and consolidations, counsel quoted
908 this statement: "Thus, they have few objections when smaller banks join forces with stronger institutions which can better resist trouble." On this, the witness commented that it is a question of degree and that he certainly would not want to give a blanket endorsement to a statement of that sort without any qualifications.

Page

The witness endorsed the following statement quoted by counsel from the annual report of the F.D.I.C. for the year ended December 31, 1940, page 19:

"Where corrections do not appear to be possible or likely, the corporation prefers to have the bank closed or merged with a sounder bank, rather than to terminate the bank's insured status, because in the case of a state bank, the bank might continue to operate and be a threat to the integrity of the banking system." And he said that he thought it would be very much better for one bank to take over another bank which might be in
909 financial difficulties rather than have the bank close. He said further that competition in this case would not be a factor, because if the bank closed, it would be eliminated as a competitor any way.

He agreed that where there has been a significant population growth, there must also be a corresponding growth of the banks in the area in order to provide adequate banking service for the expanded population. He thought that Oregon, Washington, and California have been the three fastest growing states in population in the past ten years and that the same thing has also been true in terms of bank deposits in all banks in those states. However, he would not comment on the possible future trend of population in the area.

Page

910 Counsel quoted statements citing the large growth in population in California and predictions for a continuance of that trend, and asked the witness if a California business man was not justified in taking such predictions into account in planning for the future. The witness replied:

"I certainly would think that any business man would be thoroughly justified in planning his business, based upon the possible growth in population or business in any given area, but in the case of the banking business, in the given area, the greater the deposit growth in an area, as a result of population and business growth, the more room there should be for independent banking, and the more room there should be for growth of competitive banking - the greater the population and the greater the resources of an area, in other words, the greater the room for competitive business. For instance, in a

912 sparsely populated state like Nevada, the 33 percent or 35 percent of the deposit business of a state in the hands of one organization would be much easier to justify than, say, such a volume of business in the State of New York and one institution in the State of New York having a third of the business of the State would be formidable. It would be a power of great magnitude. It would be far

less justified than would be the case in Nevada. There are many counties in sparsely populated states where there are no banks. There are other counties where there is only one bank. There are many towns that are not large enough to support more than one institution. It could not be said that a banking institution that owned the only bank in the county was tending towards the creation of a monopoly and neither could it be said that a banking organization in a sparsely populated area, that might have a 25 or 30 percent of the business of a sparsely populated area must be tending towards the creation of a monopoly.

"Your rapid growth in California and Oregon is a justification for an expansion of independent banking."

Counsel suggested that the witness's last statement was applicable to banking in general without the qualification "independent", and the witness said that there would have to be an expansion of banking facilities in an area where there was any such growth as had occurred in the West, to provide adequate banking service to the people.

914 The witness said that he was sure the Board took into account all of the factors referred to in the immediately preceding questioning in connection with its criticisms of Transamerica's expansion policy, and said

that, while he may not have been familiar with specific publications to which counsel had alluded, he and the Board were familiar in a general way with the growth of population and the growth of deposits on the Pacific Coast.

915 With an introduction referring to the Board conferences with A. P. Giannini in February 1943 and subsequent conversations which took place with Mr. Allen Pope, counsel had the witness identify a telegram dated June 16, 1943, addressed to him by A. P. Giannini, in which the latter expressed resentment at statements alleged to have been made by the witness, referred to his statement at the conference that he had two existing commitments, and alleged that the understandings reached at the conference had been wrecked largely because of the witness's attempt to bind Transamerica alone to so-called freezing policies instead of obtaining similar commitments from other holding companies. (This telegram was marked as Respondent's Exhibit 9 for identification, and was read into the record by counsel.)

916 The witness identified his signature on a letter dated July 1, 1938 addressed to A. P. Giannini (which was marked Respondent's Exhibit 10 for identification) and said he still subscribed to a statement therein

that "any supervisory official who feels called upon to carry the torch of unit banking or, for that matter, any particular type of banking, should base his arguments on proved facts and not bare assertions".

917 Counsel then directed the witness's attention to a letter dated November 29, 1941, addressed to him by A. P. Giannini (which was marked Respondent's Exhibit 11 for identification); and the witness's letter of December 20, 1941, addressed to Mr. Giannini (which was marked Respondent's Exhibit 12 for identification). He confirmed that Mr. Giannini's letter inquired if that particular time wouldn't be a good one to see if a deal couldn't be made in the form of a consolidation which would result in practically a Federal Reserve district-wide branch bank with offices in the states of Washington, Oregon, and California. The last paragraph of the letter was read as follows:

918 "I don't suppose a man of your youth and talents is going to spend much more time in that Washington atmosphere, so let's hope this note will make you think of getting back actively into the banking game out this way." As to whether he regarded this as a suggestion of the possibility of his personally participating in such an organization as was suggested, the witness said that

Page

919 he gave it no interpretation at all for the reason that he had no interest in leaving the Washington scene at that time, and he went on to say: "As has been brought out here earlier, no Board member is permitted to go into the banking business until two years after he leaves his position as a member of the Board. I merely took this from Mr. Giannini as a complimentary gesture, as an indication to me, as I understand has been made to many others, that he was favorable to me and his interest seems to me to be an attempt to ingratiate Transamerica organization with me and with the Board during a period when there was a good deal of tension."

Upon counsel's suggestion that the tension had been removed the year before, he said: "The tension had
920 not been removed --" and went on to cite the Temple City National Bank matter, the Pasadena Trust and Savings Bank matter, the application for two branches of the Pasadena bank, the People's Bank of Lakewood Village condition of membership as all being matters under consideration and contributing to a considerable tension between the Board and the Transamerica organization. He pointed out further that the Board's letter of February 14, 1942, stating its views with reference to the entire expansion program of Transamerica, was sent less than 6 days after his reply to Mr. Giannini's letter.

Page

922 The witness read his letter of reply to Mr. Giannini as follows:

"Shortly after receiving your handwritten note, the war broke out and I have been simply covered up. Hence this delay in replying.

"The matter you mentioned is interesting, and as I am leaving home for the Christmas holidays, I may possibly have the opportunity of talking it over with you in person. If not, I shall arrange to call you while in Ogden.

"Although you have likely had the matter checked, I am enclosing some excerpts from the banking laws touching on the problem in question with brief comments thereon."

923 He identified the enclosure as having been a legal statement prepared by one of the Board lawyers, possibly Mr. Dreibelbis, entitled "Right of two national banks to consolidate and status of consolidated institution with respect to branches."

When asked by counsel whether he had suggested to Mr. Giannini that there was anything unlawful or contrary to public policy in the development of the suggested organization, the witness replied that the letter and memorandum were his only reply and that he did not

recall having later telephoned or personally seen Mr. Giannini about the matter.

924 The witness gave approval to the statement that the Board has taken the official position that the charges in this proceeding do not involve any claim of unsafe, unsound, or illegal practices by bank officers or directors or any charge, the publication of which will have any harmful effect upon the banks named in the Complaint or upon banks generally within the area affected.

When it was suggested by counsel that he was pressing the charges, the witness stated that it was a Board matter and called attention to the fact that while he was Chairman when the investigation was initiated, he was not Chairman when the Complaint was filed.

925 Upon counsel's reference to the Independent Bankers Association of the 12th Federal Reserve district and to another similar association with headquarters in Grove City, Minnesota, the witness stated that he did not know but doubted very much that the First Security banks in Utah, Idaho, and Wyoming made any contributions to such associations.

As to whether he knew that one of the principal activities of such organizations has been the instigation

Page

and promotion of legislative and other types of Government restrictions upon the growth and development of

926 Transamerica Corporation, the witness said: "Well, I know that they have been engaged in trying to get legislation, not only against holding companies, but also the growth of branch banking. I think that the growth of Transamerica has been a very important factor in their increased activities, but certainly the independent bankers are not only opposed to the Transamerica organization and its continued growth, but likewise they are opposed to the growth and expansion of holding companies, generally, as well as to the growth of branch banking."

On the matter of contributions to the Independent Bankers Associations, he said that the only information he had that some of the largest contributors have been branch banks which are competitors of Bank of America in California was that contained in Transamerica's own newspaper advertising.

In defining the word, "independent", as used

927 in the title of the bankers' organizations, the witness said: "I think they are a pretty independent group of bankers. I think that their support largely comes from the unit banks. Certainly the membership, as I understand

it, of the two independent organizations, one which exists in the West and the headquarters of the one which is in Minnesota, is composed of independent bankers." He said further that, while branch bank members might have contributed something to the support of the organization, he supposed that unit banks provided most of the support.

928 The witness said that he had not made any study of the background and history of the Board prior to his becoming a member and that what he knew about it was derived from comments made in Board meetings and in conferences with staff people who had been with the Board
929 prior to his becoming a member. He also said that he had not familiarized himself with the history of the Board's relations with Bank of America and its predecessors in that earlier period or the circumstances which led up to the membership of the Bank of Italy in the System.

Counsel for Respondent caused to be marked Respondent's Exhibits 13, 14, and 15, the following documents, respectively: Copy of a letter from A. P. Giannini to Honorable John Perrin, dated September 18, 1917; copy of a letter from A. C. Miller, member of the Federal Reserve Board, to Mr. A. P. Giannini, dated

Page

September 26, 1917; copy of a telegram from Governor Harding of the Federal Reserve Board to Mr. Perrin, dated October 20, 1917. This correspondence concerned and was preliminary to the admission of Bank of Italy to membership in the Federal Reserve System and involved certain assurances as to its branch system which the Bank of Italy was endeavoring to obtain from the Board.

937 Counsel read into the record excerpts from this correspondence. Counsel then inquired whether the

944 Board had taken into consideration the "representations and assurances made by the Board" to the Bank of Italy in the correspondence from which he had quoted, the witness replying: "I don't recall that the Board took that into account, but I would think even if the Board had taken it into account, the action would have been no different."

The witness stated that he did not regard his voluntary disqualification of himself from hearing the case or voting upon the final decision as disqualifying himself from the giving of testimony; and in reply to a question as to whether he expected his testimony would influence the Board's decision, he said: "I would hope that the Board, in making the decision, would take into account not only my testimony, but the testimony of every

witness, including your witnesses." When further pressed for a "yes" or "no" answer, he said: "Yes".

On counsel's inquiry as to whether he would be willing to appear again and give further testimony, the witness answered: "I have no reason to think at this time that I wouldn't be willing. However, I don't want to make a definite commitment as being prepared to appear as a witness at any definite time or any place where this case may be held."