

Before the
BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

In the Matter of:

TRANSAMERICA CORPORATION

Place of Hearing: Washington, D. C.

Date of Hearing: February 15, 1949

Pages 948 to 1011

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C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
James C. Smith	949			
John C. Horbett			990	991

E X H I B I T S

<u>FEDERAL RESERVE BOARD'S</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Exhibit No. 45	990	991
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UNITED STATES OF AMERICA

BEFORE

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

: IN THE MATTER OF :
: :
6 TRANSAMERICA CORPORATION :
: :
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Room 1202,
Federal Reserve Board Building,
Washington 25, D. C.,
Tuesday, February 15, 1949.

The above-entitled matter came on for further hearing pursuant to adjournment at 10:30 o'clock a. m.

BEFORE:

RUDOLPH M. EVANS, Member, Board of Governors of the Federal Reserve System, Hearing Officer

APPEARANCES:

J. LEONARD TOWNSEND, Solicitor, Board of Governors of the Federal Reserve System, Washington, D. C., and
G. HOWLAND CHASE, Assistant Solicitor, Board of Governors of the Federal Reserve System, Washington, D. C., appearing on behalf of the Board

SAMUEL B. STEWART, JR., and
HUGO A. STEINMEYER, 300 Montgomery Street, San Francisco, California, appearing on behalf of Transamerica Corporation.

P R O C E E D I N G S

1
2 THE HEARING OFFICER: The hearing will come to
3 order, please.

4 MR. TOWNSEND: Mr. Smith, will you take the stand,
5 please?

6 JAMES C. SMITH

7 having been heretofore called as a witness on behalf of the
8 Federal Reserve Board, and having been previously duly sworn,
9 was recalled and testified further as follows:

10 DIRECT EXAMINATION (Continued)

11 BY MR. TOWNSEND:

12 Q Mr. Smith, when we left off with your testimony last
13 week, we left off at the point where you were telling us
14 certain facts concerning your examination of the business
15 of Transamerica Corporation in 1943 and in that connection you
16 were discussing the acquisition by Transamerica Corporation
17 of the stock of the Temple City National Bank. I believe we
18 had finished introducing into the record such excerpts from
19 letters and ~~letters~~ relative to that acquisition which concerned
20 the participation of officers or employees of the Bank of
21 America N. T. and S. A.; is that right?

22 A That is correct.

23 Q Resuming on the Temple City acquisition, Mr. Smith,
24 did your examination of the records of Transamerica disclose
25 when the stock of the Temple City was acquired by Transamerica

1 Corporation?

2 A Yes, sir.

3 Q Will you state for the record what your examination
4 disclosed in that respect?

5 A The books of account of Transamerica Corporation
6 and related records indicated that there are two major --

7 (Discussion off the record.)

8 BY MR. TOWNSEND:

9 Q You made transcripts, did you, from the records of
10 Transamerica?

11 A That is right.

12 Q From what records did you take the transcript from
13 which you are about to read?

14 A From Transamerica Corporation investment ledger.

15 Q Will you state for the record what those records
16 show?

17 A It shows there were two major acquisitions of stock --

18 MR. STEWART: I object to the characterization
19 of "major," sir.

20 THE WITNESS: I think that will be developed.

21 MR. STEWART: Then, develop it factually. There
22 were two acquisitions.

23 May the word "major" be stricken, sir?

24 THE HEARING OFFICER: Will you read the question,
25 please?

(Question read.)

1 MR. STEWART: I move to strike the word "major".

2 THE HEARING OFFICER: Strike the word "major", then.

3 THE WITNESS: At this point I might make it more
4 clear and state that there were outstanding in the Temple City
5 National Bank 250 shares of common stock and 200 shares of
6 preferred stock. On May 16, 1941, Transamerica records
7 indicated that 100 shares of common stock and 40 shares of
8 preferred stock were bought from one J. M. Duvall.

9 Another entry on June 17, 1941, described the pur-
10 chase of 133 shares of common stock and 160 shares of pre-
11 ferred stock from a group of stockholders who entered into
12 a joint offering of the stock.

13 BY MR. TOWNSEND:

14 Q Do your notes show the price per share paid for
15 the two separate purchases, Mr. Smith?

16 A Yes, sir.

17 Q Will you state for the record what your notes show
18 in that respect?

19 A In both instances the preferred stock was set up
20 at \$62.50 per share. The common stock in the case of the ac-
21 quisition from Mr. Duvall was at \$180 per share and the ac-
22 quisition from the other stockholders of the 133 shares of
23 common stock averaged about \$301 per share.

24 Q Did you give the dates to show the times at which
25 the two acquisitions were made?

1 A I did, yes. The first was in May, May 16, 1941,
2 and the second June 17, 1941.

3 Q Was there a commission paid on the acquisition of
4 the Temple City stock?

5 A Yes, there was a commission paid to Nelson, Douglass
6 & Company.

7 Q Do your notes show whether, subsequent to the acquisi-
8 tion of the shares of the Temple City, various of the shares so
9 acquired were transferred to directors?

10 A Yes, there were 50 shares sold to directors.

11 Q At what time?

12 A On June 17, 1941.

13 Q In connection with the shares to directors, at
14 what price were the shares sold to the directors?

15 A At \$50 per share.

16 Q Is it fifty at one hundred fifty dollars?

17 A I beg your pardon, 50 at \$150.

18 Q How many directors were those shares sold to?

19 A There were five directors, each of whom acquired
20 10 shares.

21 Q In connection with the acquisition by the directors,
22 was there an option to purchase given Transamerica?

23 A Yes, sir. I have a memorandum that each director
24 executed an agreement with Transamerica, giving it an option
25 to repurchase the stock at the director's purchase cost, plus

1 5 per cent interest.

2 Q Following the acquisition of the Temple City, I
3 will ask you whether an officer or former officer of Bank of
4 America became identified with that institution.

5 MR. STEWART: If he knows.

6 THE WITNESS: One of the directors who purchased
7 the stock to qualify as a director was a Mr. G. Lumsdon,
8 who, I understand, became an officer of that bank about that
9 time.

10 MR. STEWART: Officer of what branch?

11 THE WITNESS: Temple City National Bank.

12 BY MR. TOWNSEND:

13 Q Turning your attention now to the acquisition by
14 Transamerica of the stock of the Central Bank of Oakland, Mr.
15 Smith, I will ask you whether, in connection with your
16 investigation in 1943, you examined the records of Trans-
17 america in connection with that acquisition?

18 A Yes, sir.

19 Q What records did you examine in that connection?

20 A In that connection, I examined the records of the
21 stock purchases, as shown in the Transamerica Corporation
22 investment ledger and, also, correspondence in other documents
23 which were submitted to me at my request in connection with
24 that acquisition, at the office of Transamerica Corporation.

25 Q Will you state for the record what your notes show

1 as to the time which was covered by the acquisition of the
2 stock of the Central Bank?

3 MR. STEWART: Now, if the Hearing Officer please, I
4 object to that question as improper in form. If the witness is
5 going to give testimony as to what his notes show, the proper
6 way of doing it is to produce the notes and let them be examined
7 and let them be marked. If he is testifying from recollection,
8 then, I am entitled to see what it is that he is using to re-
9 fresh his recollection. What he is purporting to do is to
10 give testimony, during which he is reading from a sheaf of
11 papers I haven't seen, which have not been identified and
12 we have no assurance as to what they are.

13 MR. TOWNSEND: Mr. Hearing Officer, this witness
14 has testified that he is one who participated in an
15 examination of Transamerica Corporation in 1943. In that
16 connection, he examined books and records of Transamerica
17 that he was there given access to, that he made transcripts
18 of those records from which he is now giving his testimony in
19 chief. The records that he is talking about are all records
20 which are in the files of Transamerica Corporation and the
21 truth or accuracy of Mr. Smith's statements may, therefore,
22 be conveniently checked by Mr. Stewart without great difficulty.

23 MR. STEWART: Of course, sir, I can check the
24 statement of Mr. Townsend, having a memorandum he prepared
25 making the allegations. What I object to is the pretense of

1 testimony here, when it is nothing but reading some memorandum
2 prepared for the purpose into the record, and, as I looked
3 over Mr. Smith's previous testimony last night in the tran-
4 script, it is apparent that it is going to create a most mis-
5 leading impression on the record unless we straighten it out
6 at this time.

7 All I am asking is this: that it be made to appear
8 clearly what it is the witness is testifying about. If all
9 he is doing is reading papers, then, we ought to have the
10 papers marked and know what they are. If he is testifying
11 from recollection, without reading papers, then he shouldn't
12 have this file of papers in front of him with his eyes on them
13 constantly, as he testifies.

14 MR. TOWNSEND: It is ^a perfectly normal type of
15 testimony given many, many times in courts under similar
16 circumstances under similar states of fact.

17 MR. STEWART: I have never seen the witness doing
18 it without showing the papers to opposing counsel.

19 MR. TOWNSEND: I have no objection to your examin-
20 ing the papers, Mr. Stewart, no objection whatever. Mr.
21 Smith will take out from the file each and every one of the
22 papers from which he is testifying and set them on the table.
23 I am perfectly willing that you should have access to them.

24 THE HEARING OFFICER: Mr. Stewart, the witness is
25 testifying to what he saw at the time of regular routine ex-

1 amination of Transamerica's records. Since the answer itself
2 that he gives can be checked by the access to files of Trans-
3 america, the statements he is making in his capacity as an
4 examiner will be admitted as evidence, and will be checked
5 as to their accuracy at the proper time and proper place.

6 MR. STEWART: If the Hearing Officer please,
7 before we leave the point, I should like to make one additional
8 objection to this line of testimony, and that is that we have
9 here evidence which is obtained, apparently with a conceal-
10 ment of the purpose for which it was used. Apparently this
11 witness went in to make what the Hearing Officer has properly
12 referred to as a routine examination of the corporation. It
13 also is apparent that the information was assembled and then
14 reworked for the purpose of continuity evidence in support
15 of a charge of this Board which was not disclosed to the
16 corporation at the time that the examination was made. That,
17 it seems to me, sir, is an improper use of evidence, illegally
18 obtained, and I object to its introduction on that ground.

19 MR. TOWNSEND: Of course, Mr. Hearing Officer, I
20 have to make a statement in reply to that on the record.
21 Mr. Smith has testified that he was employed in the regular
22 examination of Transamerica Corporation in 1943. I take it
23 there is no question but that under the statute the Board has
24 the power of visitation of Transamerica Corporation and that
25 in the exercise of that power the Board was perfectly entitled

1 to examine into each and all of the affairs of Transamerica
2 which the Board considered relevant to the job of doing its
3 duty under the statute.

4 Furthermore, in these particular instances, the statute
5 specifically provides that the examination by the Board shall
6 be of such a nature as to disclose fully the relations between
7 the holding company affiliate and each of its subsidiary or-
8 ganizations, including banks. Therefore, any suggestion by Mr.
9 Stewart that the examination by this witness or of the exam-
10 iners by the Board in the 1943 examination was for an improper
11 purpose or had an ^{improper} object and improper view is far from
12 borne out by the facts in this record.

13 MR. STEWART: Mr. Townsend has indicated the very
14 points I am talking about in my objection. The Board does
15 have a visitation power in pursuance of its duties under the
16 banking power and Federal Reserve Act. There is no visita-
17 tion power under the Clayton Act, even if the Board has any
18 power under the Clayton Act which I don't deny that it has.
19 The use of evidence obtained in that manner for the purpose
20 of enforcing a penal provision -- and it is penal when the
21 Board is seeking the divestment of stock, the deprivation
22 of property under the Clayton Act -- is, I submit, an illegal
23 use of evidence illegally obtained.

24 THE HEARING OFFICER: On the basis of my former
25 statement, the objection is overruled.

BY MR. TOWNSEND:

2 Q Mr. Smith, as we go along on this examination, I will
3 suggest that you remove from your file each of the documents
4 to which you refer in giving your answers and set them on the
5 table, so that Mr. Stewart and his associate may have an op-
6 portunity to examine them.

7 Resuming your examination on the question of the ac-
8 quisition of the Central Bank, I will ask you to state for the
9 record during what period of time the acquisition of the
10 stock of the Central Bank tookplace?

11 A Prior to 1936 Transamerica Corporation or one of
12 its subsidiaries had a small stock interest in that bank.

13 Q Do your notes show how much that interest was?

14 A Yes, sir, 598 shares.

15 Q How many shares were outstanding in the bank?

16 A 20,000 shares.

17 Q Very good, sir. Now, will you resume your answer?

18 A I think the answer I just gave of 20,000 shares
19 was incorrect at that particular date.

20 Q If you don't have it readily at hand, we can skip
21 that for the moment. Go right ahead with the answer to the
22 question.

23 A In 1936 there were numerous stock acquisitions
24 beginning with the first one recorded in the ledger as of June
25 30, 1936, amounting to 2334 shares.

1 Q Do your notes disclose at what price they were set
2 up on the books of Transamerica Corporation?

3 A Yes, sir. That was a combination of one acquisition
4 of 2314 shares at \$117.50 per share and another acquisition
5 of 20 shares at \$117 per share.

6 Q And that was on June 30, 1936?

7 A Correct.

8 Q Then, when, thereafter, did the Transameric records
9 disclose the acquisition of additional shares?

10 MR. STEWART: Mr. Hearing Officer, I assume that
11 without interrupting each time, I may have an exception to this
12 entire line of questions for the reasons previously stated.

13 THE HEARING OFFICER: Yes.

14 THE WITNESS: In June and July or, rather, in July
15 and August, particularly, of that year there were several
16 miscellaneous acquisitions totalling around 1800 shares,
17 which were acquired at \$450 per share.

18 (Discussion off the record.)

19 BY MR. TOWNSEND:

20 Q Directing your attention to the month of December,
21 1936, I will ask you whether your notes show any acquisitions
22 in that month, and between that month and March of 1937.

23 A There were several acquisitions of stock in the per-
24 iod beginning December 17, 1936, which, however, were recorded
25 in the note account of one Kernan Robson.

1 MR. STEWART: I move to strike that out, if the
2 Hearing Officer please. It is unresponsive to the question.
3 There were acquisitions of Transamerica Corporation and the
4 witness gives an answer about some acquisitions by Kernan
5 Robson.

6 MR. TOWNSEND: I will connect it up in a few min-
7 utes.

8 MR. STEWART: It should be connected up before on
9 that kind of testimony.

10 THE HEARING OFFICER: Proceed.

11 BY M R. TOWNSEND:

12 Q First, Mr. Smith, tell us about the note account to
13 which you have referred. Where is that account maintained?

14 A That account, also, is maintained at Transamerica
15 Corporation and was carried at that time on the books of one
16 of its subsidiaries, Tranamerica Service Corporation.

17 Q And the account to which you referred, is it not the
18 account of Kernan Robson?

19 A Correct.

20 Q When is the first entry in that account, Mr. Smith?

21 A The first entry of record is dated December 17, 1936.

22 Q And over what period of time are other notations
23 thereon?

24 A They run through March 8, 1937.

25 Q Does the note account demonstrate the use to which

1 the money, which was being advanced by Transamerica Service
2 was being put?

3 A Yes, sir. That money was being used to acquire
4 stock of the Central Bank of Oakland.

5 Q And how many shares were acquired in that manner?

6 A 7,019 shares.

7 Q At what total advancement by Transamerica Corpora-
8 tion?

9 A Approximately \$2,800,000.

10 MR. STEWART: I would like to see the papers from
11 which the witness has just read the last several answers.

12 Where are the entries that you read there?

13 THE WITNESS: Here is a record of the notes of Kernan
14 Robson beginning with the first date, December 17, 1936, and
15 indicating the note numbers and stock delivered in connection
16 therewith as collateral.

17 MR. STEWART: And where in the record that you examined
18 did you find the indication that the proceeds of these notes
19 were used to purchase Central Bank of Oakland stock? Is
20 there anything in the account that says that or is that just
21 your inference from the fact that it was delivered as security?

22 THE WITNESS: No, sir, there is an option agreement
23 which I have on my papers which described the reasons for
24 these acquisitions.

25 MR. STEWART: I would like that produced, please.

1 MR. TOWNSEND: It will be produced and put in the
2 record. If the Hearing Officer please, I suggest that, in
3 conformity with your previous ruling, that I be allowed to
4 proceed with this witness and demonstrate in its entirety the
5 relation of each and every one of these acquisitions to the
6 over-all program and Mr. Stewart can cross examine in due
7 course over the entire proceeding.

8 THE HEARING OFFICER: The witness may proceed,
9 Mr. Stewart, and you can cross examine the witness.

10 MR. STEWART: At the moment, it is only that I am
11 trying to see in the papers, what they say what he says they
12 say and it is very difficult to understand from the papers I
13 have examined.

14 THE HEARING OFFICER: We want you to have full and
15 complete information at all times.

16 MR. STEWART: I am not getting it, sir.

17 MR. TOWNSEND: What was the last question I had,
18 please?

19 (Question read by the reporter.)

20 BY MR. TOWNSEND:

21 Q And the total number of shares covered by those
22 advancements amounted to 7,019 shares?

23 A That is right.

24 Q And that was at an average cost of \$400 a share;
25 is that right?

1 A Correct, yes, sir.

2 Q Do your papers contain an option agreement covering
3 the shares covered by the note account of Mr. Robson?

4 A Yes, sir, they do.

5 Q Will you produce that, please? The paper that you
6 have handed me contains, among other things, the copy of the
7 option agreement; is that right?

8 A Yes, sir.

9 MR. TOWNSEND: I show Mr. Stewart the copy of the
10 agreement.

11 (Document handed to Mr. Stewart.)

12 BY MR. TOWNSEND:

13 Q Now, before I ask you to read the option into
14 the record, Mr. Smith, I will ask you if, in connection with
15 the same acquisition by Mr. Robson, there was an agreement
16 entered into between Mr. Robson and the Transamerica Corpora-
17 tion.

18 A No, sir. That agreement was not between Transamer-
19 ica Corporation and Mr. Robson, if you have reference to
20 an agreement between Mr. Robson and the stockholders
21 representatives who made the sale of the stock.

22 Q That is right. Do you have a copy of that agreement
23 in your possession?

24 A Yes, sir, I do.

25 Q Will you produce it, please?

MR. TOWNSEND: I show that document to Mr. Stewart.

(Document handed to Mr. Stewart.)

BY MR. TOWNSEND:

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1 Q Mr. Smith, I am asking you to read into the record,
2 please, your transcription of the document which you have
3 last identified, which, as I see, bears the date December 3,
4 1936.

5 A "In consideration of the sum of \$10 in hand paid
6 by Ira Abraham, Crelin Fitzgerald and James K. Moffitt as
7 the representatives of certain holders of the common stock
8 of Central Bank of Oakland, Oakland, California, receipt
9 whereof is hereby acknowledged, the undersigned, Kernan
10 Robson, hereby agrees with said representatives and all
11 holders of said common stock of said Central Bank of Oakland
12 as follows:

13 "1. To purchase and pay for, at the price of \$400
14 per share, on tender of the endorsers, all shares of the
15 common stock of said Central Bank of Oakland tendered to him
16 at the Bank of America, No. 1 Powell Street, San Francisco,
17 California, or at the Bank of America, 12th and Broadway,
18 Oakland, California, within a period of three months from and
19 after the date that said Kernan Robson is notified in
20 writing by the president or a vice president and the cashier
21 of said Central Bank of Oakland that all certificates of
22 such common stock, which have been endorsed as follows: 'The
23 stock evidenced by this certificate is subject to the terms,
24 covenants and restrictions of a certain agreement dated July
25 22, 1936, between certain shareholders of Central Bank of

1 Oakland, and the stock evidenced by this certificate cannot
2 be sold except as therein provided. A copy of said agreement
3 is lodged with the Bank and is available for the inspection
4 of any interested party' -- can be sold to him under the
5 terms of this agreement and that the same will be duly and
6 regularly transferred upon the stock books of said Central Bank
7 of Oakland, free and clear of any restrictions whatsoever,
8 if purchased by said Kernan Robson under the terms hereof
9 when presented by him or his duly authorized agent properly
10 endorsed by the record holder thereof.

11 "2. All stock transfer taxes are to be paid by the
12 undersigned, Kernan Robson

13 "3. This agreement shall, ipso facto, end and terminate
14 unless the written notice in Paragraph 1 provided shall be
15 delivered for said Kernan Robson not later than 12 o'clock
16 on December 10, 1936, at the second floor at No. 1 Powell
17 Street in the City and County of San Francisco, State of
18 California.

19 "4 This agreement shall, likewise, ipso facto, terminate
20 unless at least one thousand five hundred shares of common stock
21 of said bank shall be tendered to said Kernan Robson for sale
22 under the provisions hereof on or before December 15, 1936.

23 "5. This agreement is made for the benefit of all holders
24 of common shares of said bank.

25 " The undersigned agrees to purchase at said price all shares

which may be tendered to him hereunder. It is intended hereby to grant to all of said holders of the common stock an irrevocable option, subject to the terms hereof, to sell their stock to the undersigned as herein provided.

"Signed, Kernan Robson."

And added at the foot of the agreement is another paragraph as follows:

"Full performance of all the terms, covenants and conditions hereof by Kernan Robson to be performed, is hereby guaranteed by the Undersigned, Transamerica Corporation, a Delaware corporation, this third day of December, 1936.

"Signed, Transamerica Corporation; by A. P. Giannini and W. L. Andrews, assistant secretary."

Q I show you the document which you first identified, Mr. Smith, as being the option agreement, and I ask you to read that into the record, please.

MR. STEWART: Mr. Hearing Officer, before the witness reads this document I would like to make a suggestion which, it seems to me, would not only make for accuracy in this record, but also shorten it.

When Mr. Smith was on the stand the last time, he read for more than half a day copies of papers and excerpts from papers which he said he took from Transamerica files.

He now appears to be about to embark upon the same procedure for I don't know how much longer.

1 I would like to make this suggestion: That if counsel
2 will hand me, or read into the record, a list of the papers
3 from Transamerica files which he thinks is important for him
4 to provide, I will undertake to get accurate copies of them--
5 which there won't be any question about--produce them, and he
6 can offer them in evidence; and if they are in the files
7 of Transamerica, I will concede it.

8 It seems to me utterly unnecessary to have the witness
9 read a lot of copies of copies when we can get the accurate
10 information without any trouble at all if counsel will only
11 tell me what he wants.

12 MR. TOWNSEND: I submit, Mr. Hearing Officer, that
13 we are, of course, entitled to put our case in as we see fit.
14 We are doing it in a perfectly regular, and, I think, quite
15 orthodox manner. And I suggest that in the interest of time,
16 if Mr. Stewart is anxious to conserve it, that when letters
17 which are related to the transcripts of Transamerica records
18 are referred to and he is willing to have the originals go in,
19 that he certainly ought not to object if this witness puts them
20 in subject to his later objection.

21 MR. STEWART: Of course, sir, my objection and my
22 reason for making the suggestion is that they are not being
23 done in the regular way and counsel is not entitled to do it
24 as he sees fit, in spite of his repeated efforts to do things
25 as he sees fit, contrary to the rules.

1 All I am trying to do is to get some accurate information
2 which we won't have to take weeks of checking to determine the
3 accuracy of.

4 I submit, sir, that, as the Hearing Officer has overruled
5 all of my objections on the basis of the normal rules as to
6 hearsay, and so forth, the least he can do is give me an
7 opportunity to see that these things are accurate, without
8 all of this waste of time.

9 THE HEARING OFFICER: The opportunity you request,
10 Mr. Stewart, will of course be available to you at the proper
11 time. The objection is overruled.

12 BY MR. TOWNSEND:

13 Q Will you read the document, Mr. Smith?

14 A "Whereas the undersigned, Kernan Robson , owns 2,399
15 shares of the common stock of Central Bank of Oakland, Oakland,
16 California, and anticipates that he will acquire a large
17 number of additional shares by virtue of a certain contract,
18 dated the third day of December, 1936, in and by which the
19 said Kernan Robson has agreed to purchase from Ira Abraham,
20 Crelin Fitzgerald and James W. Moffitt, as representatives of
21 certain holders of the common stock of Central Bank of Oakland,
22 Oakland, California, all the stock tendered by them.

23 "Whereas, Inter-America Corporation, a Delaware corporation,
24 desires to purchase from the said Kernan Robson an option to acquire
25 not only the shares of stock of the said Central Bank of

1 Oakland now owned by said Kernan Robson but also all shares
2 to be hereafter acquired by him.

3 "Now, therefore, for and ⁱⁿ consideration of the sum of
4 \$10 in lawful money of the United States of America, to me in
5 hand paid, the receipt whereof is hereby acknowledged, I,
6 Kernan Robson, hereby grant to Inter-America Corporation, a
7 Delaware corporation, an option to purchase from me all stock
8 of Central Bank of Oakland which I now own or which I may
9 subsequently acquire by reason of that certain contract
10 dated December 3, 1936, in and by which I agree to purchase
11 from Ira Abraham, Crelin Fitzgerald and James W. Moffitt,
12 as representatives of certain holders of the common stock
13 of Central Bank of Oakland, all stock which they may tender
14 me under said contract.

15 "The price at which the said Inter-America Corporation
16 may exercise said option is the sum of \$400 per share. The
17 said option shall be exercised by the said Inter-America
18 Corporation by serving upon me a writing stating that the said
19 option is exercised as to all or any part of the stock of said
20 Central Bank of Oakland owned by me, and within 10 days
21 thereafter tendering to me the purchase price fixed in this
22 option. Upon the exercise of the option in the manner aforesaid,
23 I agree to deliver to the said Inter-America Corporation the
24 number of shares specified in said notice of exercise of
25 option, duly endorsed in blank so as to make said stock

1 transferable on the books of said Central Bank of Oakland
2 to the said Inter-America Corporation or to its nominee.

3 "Notice of the exercise of this option shall be complete
4 if the written notice of the exercise thereof is left at
5 my office at No. 912 De Grounge Building, San Francisco,
6 California, and the tender of the purchase price shall be
7 sufficient for all purposes if the amount of said purchase
8 price is tendered at my above-named office.

9 "This option shall continue for a period of two years
10 unless extended in writing by the respective parties hereto.
11 During the continuance of this option, or any extension thereof,
12 I hereby agree not to sell any of the shares of the said
13 Central Bank of Oakland which I now own or which I may
14 subsequently acquire by means of the contract aforesaid; and
15 I hereby further agree not to hypothecate or pledge the
16 said shares, or any interest that I may have therein, with
17 any person, firm or corporation other than Transamericab
18 Service Corporation, a California corporation.

19 "The stock referred to in this option shall be the common
20 stock of Central Bank of Oakland as presently constituted, and
21 shall include any stock dividend that may hereafter be declared
22 on said shares of stock, and, in the event that any corporate
23 change shall be made by Central Bank of Oakland which shall
24 change the value of said stock as presently constituted, the
25 purchase price herein fixed shall be changed accordingly. In

1 short, this option refers to the common stock of Central
2 Bank of Oakland as presently constituted or its equivalent
3 after any change in said stock is made.

4 "It is agreed that this option shall bind my heirs,
5 executors, administrators, assigns and may be exercised
6 by the successors or assignees of Inter-America Corporation.

7 "Dated this 14th day of December, 1936.

8 "/Signed/ Kernan Robson."

9 Q Mr. Smith, I will ask you whether in March, 1937,
10 qualifying shares were issued to directors of the Central
11 Bank of Oakland and whether your notes disclose at what price
12 such shares were issued.

13 (Discussion off the record.)

14 THE WITNESS: No, sir; I don't see any sales to directors
15 in March of 1937.

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1 Q Will you check your records to see if you have a
2 copy of an agreement entered into with the directors respect-
3 ing the subject of qualifying shares?

4 A Yes, sir, I have an agreement, a copy of an agree-
5 ment.

6 Q Did you make the transcription?

7 A I did, yes, sir.

8 Q Agreement between whom?

9 A I have it identified as an agreement relating to
10 directors' qualifying shares.

11 Q Where did you find the original of that document?

12 A It was handed to me at the offices of Transamerica
13 Corporation.

14 Q In any particular file?

15 A In that respect, it is rather difficult for me to
16 always identify the particular file because when we were in
17 the offices of Transamerica Corporation, it was necessary
18 for us to ask the officers, either Mr. Andrews or Mr. Ponsford,
19 for any particular letters or documents that we wanted, and
20 they would hand them to us in a folder. Now, I have no way
21 of knowing whether that was the entire file, original file
22 or what have you. It was simply given to me in the particular
23 connection for which we requested it.

24 Q And this original of the document from which you
25 made the transcription was handed to you in that fashion?

1 A That is correct.

2 Q Will you state for the record --

3 A I find that I can answer one of your other questions
4 as to between whom that agreement was made.

5 Q Will you state what the record shows?

6 A March 18, 1937, between Intercontinental Corporation
7 and C. Fitzgerald, T. A. Crelin,, L. E. Hardy, R. W. Kinney,
8 H. H. Whiting, J. P. Maxwell, C. P. Howard, W. A. Starr, and
9 C. F. Wente.

10 Q Will you read into the record, Mr. Smith, the option
11 agreement which you have just identified.

12 A "It is mutually understood and agreed by the under-
13 signed that the 10 shares of stock of Central Bank of
14 Oakland, California, owned and held by --" in that case it
15 would be the particular name of the owner "-- may be disposed
16 of as follows: First, at any time that --" name left blank
17 " -- desires to assign and make delivery of said shares to
18 Intercontinental Corporation, said corporation will purchase
19 and pay for the same on the basis of \$240 per share.

20 "Second, at any time that said Intercontinental Corpora-
21 tion requests the delivery of said shares, the same will be
22 assigned and delivered to said corporation upon its written
23 request and the payment therefor on the basis of \$240 per
24 share.

25 "It is further mutually understood and agreed that the

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1 said price of \$240 per share is the price for said 10 shares
2 as now constituted and that should said 10 shares be increased
3 in number by stock dividends, stock split or in any other
4 manner, such shares additional to said 10 shares and emanating
5 therefrom shall be considered as part of said 10 shares, and
6 without further payment be assigned and delivered to
7 Intercontinental Corporation, simultaneously with the delivery
8 of said 10 shares."

9 Q Will you state for the record whether the note ac-
10 count of Kernan Robson discloses the transfer of any of the
11 Central Bank shares to the directors who executed this option
12 agreement?

13 MR. STEWART: If the Hearing Officer please, I
14 have been seeking this morning to determine the purpose
15 and the relevancy of this testimony, so far without success.
16 I object to the question as being irrelevant and any further
17 questions along this line as irrelevant in the absence of a
18 statement by counsel as to his purpose in this line of testi-
19 mony and a showing of its relevancy to the issues in the case.

20 MR. TOWNSEND: I am perfectly willing to make that
21 statement, Mr. Hearing Officer. We are now engaged in the
22 process of developing for the record the methods pursued
23 by Transamerica Corporation over a considerable period of time
24 in its acquisition of the stocks of the various banks which
25 are involved in this case, so that on that basis, alone, as

1 background evidence, it would be admissible. However, I have
2 no hesitation in further advising counsel that we will
3 attempt to demonstrate, in the course of these questions, the
4 fact that various personnel officers, directors of the Bank
5 of America, N. T. and S. A., have been used or have partici-
6 pated, to a certain extent, in these matters, all generally
7 going to demonstrate the fact that neither before the trans-
8 fer of 58 per cent of the stock of Bank of America by
9 Transamerica Corporation in 1937 nor after that date has there
10 been any change in the manner in which the entire organization
11 has continued to function. As I believe I mentioned here the
12 other day, I expect^{to show} by a whole mound of such instances and
13 other related instances that Bank of America today is as
14 integral a part of this entire banking setup in the Trans-
15 america picture as ever it was prior to the time of the
16 divorcement, so I think those two reasons are sufficient
17 basically to justify the introduction in evidence of this
18 line of testimony.

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1 MR. STEWART: Now, sir, on the basis of counsel's
2 statement, I press the objection to the question as irrelevant
3 as it is not shown to be related to any allegation which
4 speaks as of 1948 and not as of 1937.

5 THE HEARING OFFICER: Objection overruled. The
6 witness may proceed.

7 BY MR. TOWNSEND:

8 Q Mr. Smith, does the ^{note} account of Kernan Robson disclose
9 the transfer of any of the shares of the Transamerica stock
10 collateral to the account of the directors in March of 1937?

11 A No, sir; it doesn't. However, I found a letter in
12 the files of Transamerica Corporation which indicates the
13 sort of transaction that occurred at that particular time.

14 MR. STEWART: I object to that and move to strike
15 it out as a characterization of the witness' state of mind
16 and conclusion as to what is indicated as to a character of
17 of transaction.

18 MR. TOWNSEND: May it please the Hearing Officer,
19 I suppose nothing could be more--

20 I will withdraw the statement.

21 BY MR. TOWNSEND:

22 Q Do you have the letter, Mr. Smith?

23 MR. STEWART: That is the way to do it. Do it that
24 way and I won't object.

25 May I have the last answer stricken, sir?

1 THE HEARING OFFICER: Yes.

2 (Discussion off the record.)

3 BY MR. TOWNSEND:

4 Q Did you make a typewritten transcript of this?

5 A I don't recall that I did.

6 Q This is the letter that you have just identified,
7 and that is your handwriting?

8 A It is; yes.

9 Q And taken from the letter that you referred to in the
10 files of Transamerica?

11 A Yes.

12 Q Will you read it into the record, please?

13 MR. STEWART: Objected to as irrelevant, sir. There
14 is no showing of its relation to any issue in the case.

15 THE HEARING OFFICER: Objection overruled.

16 THE WITNESS: This was a letter addressed to D. W.
17 Henderson, cashier, Central Bank of Oakland, California, by
18 W. L. Andrews, vice president of Transamerica Service
19 Corporation. It was as follows:

20 "We enclose eight demand notes, all dated March 18, 1937,
21 drawn in favor of Transamerica Service Corporation as detailed
22 below:

23 "T. A. Crelin, \$2,400;

24 "Crelin Fitzgerald, \$2,400;

25 "Lowell E. Hardy, \$2,400;

1 "Charles P. Howard, \$2,400;

2 "R. W. Kinney, \$2,400;

3 "John P. Maxwell, \$2,400;

4 "Walter A. Starr, \$2,400;

5 "H. H. Whiting, \$2,400.

6 "Please deliver these notes to the respective holders
7 against payment of \$2,400.

8 "This has reference to our telephone conversation of
9 this afternoon. Please acknowledge receipt of the enclosures
10 by signing and returning the attached copy of this letter."

11 BY MR. TOWNSEND:

12 Q Did your examination of the Transamerica files at
13 that time disclose whether or not the notes that were
14 referred to in that letter were received by Transamerica
15 Corporation?

16 A I have no recollection of that particular item.

17 Q In connection with the Central Bank acquisition, Mr.
18 Smith, I will ask you if there came a time in October, 1937,
19 when, from your examination of the records of Transamerica
20 Corporation, you could say whether or not any shares of the
21 Central Bank of Oakland were acquired by Mr. Wente?

22 A Yes. The books of account of Intercontinental
23 Corporation show that on October 18, 1937, there was a sale
24 to C. F. Wente of 10 shares of stock for \$2,400.

25 Q Does the record show whether or not an option was

1 taken to re-purchase the shares from Mr. Wente?

2 MR. STEWART: When you say "the record" I assume
3 you mean the witness' notes.

4 MR. TOWNSEND: That's right.

5 THE WITNESS: He was a subscriber to the option
6 agreement that I read a little earlier, dated March, 1947.

7 BY MR. TOWNSEND:

8 Q He was one of the subscribers at that time?

9 A That's right.

10 Q Did there come a time when the stock of the Central
11 Bank of Oakland was increased by a stock dividend?

12 A Yes. There was a stock dividend recorded in Mr.
13 Robson's account on March 19, 1937.

14 Q And how much of an increase took place at that time?

15 A It increased his holdings from 7,019 shares to
16 11,698 shares.

17 Q That was an increase of roughly 66-2/3 per cent?

18 A That is correct; yes.

19 Q Did there come a time when the shares collateralizing
20 the Kernan Robson account were taken over by Transamerica
21 Corporation?

22 A The ledger of Intercontinental Corporation records
23 an entry dated October 25, 1937: "bought from Kernan Robson,
24 11,698 shares of stock."

25 Q And that was the entire number of shares that had been

1 up as collateral to the Robson account?

2 A Yes.

3 Q Did there come a time, after the Transamerica Corpor-
4 ation took over the shares from Kernan Robson, that the Central
5 Bank of Oakland was liquidated?

6 A Yes. It appears that the Central Bank of Oakland
7 was liquidated in November of 1937.

8 Q And it was then merged with another institution?

9 A That is my understanding; yes.

10 Q And it is now known as the Central Bank?

11 A Of Oakland.

12 Q Does your record show what, if anything, was done
13 with the residual assets remaining in the Central Bank of
14 Oakland prior to its ultimate dissolution

15 A Yes. I have a memorandum on that. Do you want me
16 to develop that further?

17 Q Would you, please?

18 MR. STEWART: Before you develop it, will you
19 indicate what you are reading from and what its source is, Mr.
20 Smith?

21 THE WITNESS: These are my work papers, which I
22 referred to at the beginning of my testimony the other day,
23 that I made at the time that I was in the offices of Transamerica
24 in connection with the examination we have been discussing.

25

1 MR STEWART. The source of the material that you
2 are about to put in the record is what?

3 MR. TOWNSEND: Mr. Hearing Officer, is this a
4 convenient time to have a 10-minute recess?

5 THE HEARING OFFICER: Yes. We will recess for ten
6 minutes.

7 (Short recess taken.)

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1 THE HEARING OFFICER: The hearing will come to
2 order, please.

3 BY MR. TOWNSEND:

4 Q Were you able to find the source of that material,
5 Mr. Smith?

6 A Yes. I find that there was an agreement executed
7 on October 22, 1937 between Central Bank of Oakland, seller,
8 and Central Bank, purchaser, whereby the latter, that is, the
9 Central Bank, agreed to purchase all of the assets except certain
10 particular assets which were listed in the schedules attached
11 to that agreement.

12 Q You have a list of those assets, do you, Mr. Smith?

13 A Yes sir.

14 Q Without stating each and every one of them, unless
15 Mr. Stewart wishes it that way, would you just describe what
16 the assets were, in a general way?

17 A Out of a total of \$5,490,000 of assets, which were
18 not included, U. S. and municipal bonds were put in at
19 \$4,798,000, so it is obvious that they were the bulk of the
20 assets.

21 Q What else was included?

22 A There was cash and stock in the Federal Reserve Bank.

23 MR. STEWART: Could you clarify, were those items
24 which were included or excluded?

25 THE WITNESS: The assets of which were not included.

1 BY MR. TOWNSEND:

2 Q All of which were not included, including the
3 Government's.

4 A That is right.

5 Q To what organization were the bonds sold?

6 A The majority of those bonds were delivered to
7 Inter-Continental Corporation as a liquidating dividend and
8 they were, in turn, sold to the Bank of America N. T. & S. A.
9 on November 2, 1937.

10 Q Will you take out the various papers that you have
11 used in your examination on that bank, please?

12 A Including those letters that have already been
13 exhibited?

14 Q That is right.

15 Now, Mr. Smith, directing your attention further to
16 the examination that you made or participated in in 1943,
17 I will ask you if your notes disclose any of the facts relating
18 to the acquisition by Transamerica Corporation of the stocks
19 of the First National Bank of Arizona, Phoenix, Arizona, and
20 the Phoenix Savings and Bank Trust Company, Phoenix, Arizona?

21 A I have some information on those banks, yes.

22 Q Will you refer to your notes on those banks, please?

23 (Discussion off the record.)

24 BY MR. TOWNSEND:

25 Q Will you state for the record, Mr. Smith, at what

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1 time the Transamerica companies appear in connection with the
2 acquisition of the stock of those banks?

3 A In April, 1937.

4 Q From what source did you find that information?

5 A That was developed from the note records of Trans-
6 america Service Corporation in account with one G. M. McClerkin.

7 Q At that time, Mr. Smith, do you know, have you deter-
8 mined whether or not Mr. McClerkin was an officer of the Bank
9 of America National Trust and Savings Association?

10 MR. STEWART: I will stipulate that at that time
11 Mr. McClerkin was vice president of the Bank of America. In
12 fact, maybe I could shorten the whole thing by giving you a
13 stipulation on what I think you want to prove.

14 MR. TOWNSEND: Maybe you could. You go ahead and
15 stipulate and I will see whether that satisfies me, Mr. Stewart.

16 MR. STEWART: Very well, sir. I offer to stipulate
17 that in 1936 Transamerica Corporation agreed to finance the
18 acquisition by G. M. McClerkin, who was then a vice president
19 of Bank of America National Trust and Savings Association,
20 of stock of the Phoenix National Bank and its affiliated bank,
21 Phoenix Savings Bank and Trust Company, and that pursuant to
22 that understanding, Mr. McClerkin did borrow money and purchase
23 stock in those banks, which stock was pledged to secure such
24 loans; and I further offer to stipulate that Transamerica Cor-
25 poration subsequently purchased stock from Mr. McClerkin and

1 reported the acquisition of the stock to the Federal Reserve
2 Board and the Securities and Exchange Commission.

3 MR. TOWNSEND: I am afraid that stipulation doesn't
4 go quite far enough, may it please the Hearing Officer.

5 MR. STEWART: If you will tell me what else you want,
6 maybe I will stipulate that, too.

7 MR. TOWNSEND: I want it stipulated that Mr. McClerkin
8 was both before 1937 and after 1937 utilized by Transamerica
9 Corporation as, in effect, a bank buyer; that during those
10 years, both before and after 1937, Mr. McClerkin purchased
11 in the same fashion as he purchased the stocks of the Arizona
12 banks numerous other banks which will be identified for the
13 record; that in none of those transactions was Mr. McClerkin
14 acting for himself, but was acting at all times with the under-
15 standing that he was purchasing the stocks of the banks for the
16 Transamerica interests; that he had no intention at any time
17 of becoming the actual owner of the shares of these banks
18 and that it was so understood in connection with each and every
19 one of the purchases that he negotiated; that Mr. McClerkin,
20 in connection with the stocks of the Phoenix banks, as well as
21 the others that can be identified, executed pledge agreements,
22 received no profit on the transactions, Transamerica agreed
23 to take the dividend payments on such stock, whatever they
24 might be, in lieu of interest on the so-called note account,
25 and that all of such banks were subsequently taken into the

1 Transamerica banks, including the Bank of America N. T. & S. A.,
2 although I understand that Mr. Stewart could not stipulate
3 that subsequent to 1937 the Bank of America N. T. & S. A. was,
4 in fact, a Transamerica bank within the meaning of this case;
5 that in connection with the acquisition of the Arizona banks,
6 a payment of one hundred thousand dollars was made to the then
7 president of the Phoenix National Bank and the Phoenix Savings
8 Bank and Trust, the two companies being identified in interest,
9 over and above the payments made to him for the purchase of
10 the shares; that the total proceeds paid by Transamerica in the
11 acquisition of the Phoenix Banks was \$1,359,880; that the
12 pledge agreement used by Transamerica Corporation, in connection
13 with its various advancements, in connection with the acqui-
14 sition of the stocks of various banks, contained a provision
15 which permitted Transamerica Corporation to cause the stock to
16 be transferred at any time to the names of any nominee of
17 Transamerica Corporation and, therefore, could have been voted
18 at any time under the terms of such pledge agreement.

19 I will amend that request to include that at a
20 certain date--and I am not sure, myself, what date that is--
21 the pledge agreement used in the Transamerica accounts respect-
22 ing the acquisition of bank stocks was changed to eliminate
23 that provision.

24 (Discussion off the record.)

25 MR. STEWART: If the Hearing Officer please, it is,

1 of course, obvious that I do not have the material here from
2 which to check many of the statements that counsel made in his
3 suggestion. It is also obvious that the statement was indefinite
4 in many respects. He referred to various banks and certain
5 banks and so on, and the stipulation would have to be definite
6 in terms rather than carrying those vague connotations.

7 It is, also, obvious that to the extent that counsel
8 by a few words, perhaps inadvertently, included in his statement
9 some of the conclusions of law which must be made by the Board
10 in this case, I could not stipulate to them.

11 To the extent that he wants to prove facts as to
12 who made purchases of certain stocks at certain times, where
13 the money came from with which those purchases were made,
14 where the stocks ended up, I will be glad to get out the
15 records and show them to counsel and stipulate the exact
16 facts, but it is when we get into characterizations that we
17 get into trouble.

18 I don't know whether that offers counsel a basis on
19 which he thinks he can save some time here or not.

20 MR. TOWNSEND: It is perfectly obvious, Mr. Hearing
21 Officer, that time could be saved by a stipulation of facts
22 and certainly I would be most willing to attempt to enter
23 into such a stipulation, particularly in the interim between
24 the time we recess these hearings in Washington to the time
25 we go to resume them in California. However, I would not want

1 Mr. Stewart to be under any misapprehension. I am sure he
2 isn't in any event.

3 Our position has got to be in this case that the
4 "purchase" of banks by various persons were not individual
5 purchases for those persons at all, but that they were, in
6 fact, acting under instructions and with the intention of
7 acting as agents for Transamerica.

8 I can understand that on certain phases of the law,
9 Mr. Stewart's client might not be willing to stipulate that
10 they were agents, in which event it becomes necessary for me
11 to prove by a great number of instances, which demonstrate
12 the same type of conduct over and over again, that they were,
13 in fact, agents within the meaning of this proceeding, even
14 though that meaning could be, possibly, quite different from
15 those which would concern Mr. Stewart's clients.

16 I am certainly willing to do this: If the Hearing
17 Officer is agreeable, I am perfectly willing to attempt to
18 sit down with Mr. Stewart and Mr. Steinmeyer and my associates
19 in the interim to see how close we would get in attempting a
20 stipulation that would satisfy my requirements and, at the
21 same time, not be of a nature that Mr. Stewart just couldn't
22 agree to.

23 I might say, further, for the record, that there is
24 a great amount of this material to come, both through this
25 witness and others, that will consume a considerable period

1 of time. I am perfectly willing to tell Mr. Stewart in
2 an informal conference everything that we want to prove
3 and that we expect to prove, and if on that basis he could
4 stipulate it, why, I am sure it would save a good deal of
5 time.

6 MR. STEWART: My position on that, sir, is just as I
7 have stated before, and I am very glad to have counsel's
8 offer to tell me what he proposes to prove, because that is what
9 I have been trying to get for six months. Anything that is
10 factual, insofar as he wants to build up a series of instances,
11 with names of people who did certain things and the factual
12 statement of what they did, I am glad to try to stipulate
13 with him. Anything that is argument or inference from those
14 facts, I think it is not feasible to stipulate, and it seems to
15 me that when he has the facts with a concession of their
16 accuracy, he is probably in a better position to make his
17 arguments than if we try to mix up arguments and inferences
18 with facts in the fashion in which we have been proceeding here,
19 so I think that counsel's suggestion is probably a good one,
20 if he understands what my attitude is as I have just stated it.

21 MR. TOWNSEND: I am quite sure that as long as any-
22 body is talking on the record, that there are going to be
23 reservations and expressions of a technical nature brought
24 from Mr. Stewart's standpoint and my own.

25 MR. STEWART: Perhaps this is a good time to go off

1 the record.

2 MR. TOWNSEND: That will suit me fine.

3 (Discussion off the record.)

4 MR. STEWART: I understand that Mr. Smith is now
5 being excused without completing his direct examination.

6 MR. TOWNSEND: So understood.

7 MR. STEWART: There is, therefore, no stipulation
8 necessary respecting cross examination at this time.

9 MR. TOWNSEND: Right.

10 (Witness temporarily excused.)

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1 MR. TOWNSEND: Let the record show that Mr. Horbett
2 resumed the stand.

3 JOHN C. HORBETT
4 was recalled as a witness by and on behalf of the Federal
5 Reserve Board, and, having been heretofore duly sworn,
6 testified further as follows:

7 REDIRECT EXAMINATION (Continued)

8 BY MR. TOWNSEND:

9 Q When you were last on the stand, Mr. Stewart
10 asked you on cross examination if you would prepare for him
11 the list of sources of the material that went into preparation
12 of Board's Exhibit No. 13 and Board's Exhibit No. 16.

13 MR. TOWNSEND: Will the stenographer please mark
14 these Board's Exhibits 45 and 46?

15 (The documents referred to were
16 marked Federal Reserve Board's
17 Exhibits 45 and 46 for
18 identification.)

18 BY MR. TOWNSEND:

19 Q I hand you what has been marked for identification
20 Exhibit 45, and ask you if that is the source material that
21 was used by you in the preparation of Board's Exhibit 13.

22 A That is correct.

23 Q And I show you what has been marked Board's
24 for identification No. 46 and ask you if that is the source
25 material used in the preparation of Board's Exhibit No. 16.

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1 A That is correct.

2 MR. TOWNSEND: I offer them in evidence.

3 MR. STEWART: No objection.

4 (The documents referred to here-
5 tofore marked Federal Reserve
6 Board's Exhibits 45 and 46
7 for identification were re-
8 ceived in evidence.)

9 RECROSS EXAMINATION

10 BY MR. STEWART:

11 Q I will ask you to refer to your copy of Board's
12 Exhibit 46 which has just been put in evidence. As I under-
13 stand that list, you have used 28 classes of source material,
14 which you have listed in separate numbered or lettered para-
15 graphs in that exhibit; is that correct?

16 A You can regard them as 28 classes or sub-classes.
17 As a matter of convenience, I think that they may be regarded
18 as nine different classes with some breakdowns. For example,
19 all the call reports is one class, let us say.

20 Q I counted each one that you put into a subparagraph
21 and as I counted there are 28 of them.

22 A I haven't counted them that way, but it is quite
23 possible.

24 Q Also, as I understand your memorandum, only five
25 of those 28 classes are public information?

A In every case I have marked whether they are or
are not. I have not counted them, but if you have, I am quite

1 sure you are probably right.

2 Q That is accepting your statements in the memorandum
3 as to the public or non-public character of them. And the
4 other 23 categories are statistics which are available only
5 inside of the bank supervisory agencies or inside the Federal
6 Reserve Bank of San Francisco; is that correct?

7 A Just let me look at this a moment, please. If you
8 count each of these items as a separate class, I think that
9 is correct.

10 Q And in order for me to obtain comparable data,
11 county by county and community by community as to the
12 competing branch banking systems and the states in question,
13 it would be necessary for me to have access to the same con-
14 fidential sources listed by you, wouldn't it?

15 A I know of no other place from which you can get the
16 data.

17 Q Yes. Now, look for a moment, if you will, at your
18 copy of the list which has been marked Board's Exhibit 45.
19 That list contains 10 categories of source material, of
20 which three are not publicly available, doesn't it?

21 A That is correct.

22 Q And in order to prepare comparable data upon
23 the other and competing branch banking systems in the five
24 states in question, it would be necessary for me to have
25 access to those unpublished sources, as well, wouldn't it?

asc4

1 A I don't know of any other place that you can get
2 the data, other than the banks, of course, themselves, the
3 individual banks.

4 Q Yes. Our competitors.

5 A That is correct.

6 Q I hand you Board's Exhibit 16, Mr. Horbett, and
7 ask you if any of the data shown on Exhibit 16 for the years
8 1924, 1926, and 1928 are available to the public or in pub-
9 lished form.

10 A For the particular dates that are shown in here, I
11 don't believe that you could recompile the figures from
12 published sources covering all of the banks in the given
13 county. You could get the amount of deposits in the number
14 of national banks, for example, for 1926 and for 1928 from
15 a published document.

16 Q Which columns are those?

17 A That would be Column -- the first column of figures,
18 the number of banks there and the deposits which are shown in
19 the third column from the end. You could compile those fig-
20 ures covering national banks from supplements published by
21 the Comptroller of Currency to his annual reports.

22 Q In other words, that answer refers to two of the ten
23 columns on the exhibit?

24 A For the moment I am merely talking about those two
25 years. For the year 1924, you cannot do that because it hap-

1 pens that the Comptroller published a supplement, not as of
2 December 31, but as of a date in October, as I recall it.

3 Q So that actually for one reason or another I cannot
4 get any of that data from published sources, can I?

5 A You mean for the year 1924.

6 Q For the years 1924, 1926, or 1928.

7 A You cannot get these particular figures from the
8 published sources. You can get part of them, as I said,
9 covering some of the banks.

10 Q Yes. Mr. Horbett, why did you skip from 1928
11 to 1933, an interval of five years, compared to the two-year
12 intervals which you seem to have followed elsewhere in this
13 exhibit?

14 A We were unable to obtain reports from branches in
15 California, or, to be exact, from branches of non-member banks
16 in California for the period December, 1929, until, I
17 think, December of 1935. I will explain presently how we
18 did get the figure for 1933 and 1935, but the reports of
19 branches, compiled by non-member banks with the State
20 Banking Department for the period 1929 to 1935 apparently have
21 been destroyed by the State Banking Department in accordance
22 with the routine schedule for destruction of old records.

23 Now, to explain how we managed to get figures for 1933
24 and 1935 --

25 Q Yes.

?????

1 A -- the Federal Reserve Bank of San Francisco, about
2 10 years ago, in cooperation with the State Banking Depart-
3 ment, made a special compilation of deposits of all banks,
4 member and non-member, national and state, by counties.

5 We learned of that compilation and we used that as the
6 basis of our own compilation. In so far as the state bank
7 figures are concerned, or, rather, the non-member bank fig-
8 ures in that combination, they were obtained from the
9 branch reports which at that time were available at the State
10 Banking Department.

11 Q As a matter of fact, Mr. Horbett, you know, from
12 your own experience and expertness in this field, don't you,
13 that that period from 1928 to 1933 was one of numerous bank
14 failures all over the country and constitute rather substan-
15 tial increases in percentages of deposits held by those that
16 were left by the time 1933 came around?

17 A That is correct, broadly speaking. Of course,
18 as you know, there were many less failures in some states
19 than in others.

20 Q Oh, yes, but that was a pretty general condition
21 during that five-year period, wasn't it?

22 A That is correct, and I think that that is indicated,
23 or the point that you have in mind is indicated in the
24 state figures which show in the other exhibit, but we were
25 unable to compile county figures.

1 Q Yes. Now, are any of the data from Exhibit 16
2 for the year 1933 or the years 1935, 1937, and 1939 avail-
3 able to the public in published form?

4 A Some of the data that entered into those tabula-
5 tions are available, but I don't believe that you can compile
6 the completed figures here, covering all banks.

7 Q That is what I mean.

8 A From public sources.

9 Q Now, Mr. Horbett, at page 376 and page 377 of the
10 record, in answer to one of my questions, you testified --
11 and I might say you previously testified to substantially
12 the same thing on your direct examination -- that Mr.
13 Townsend's instructions to you, when you started upon your
14 assignment in this matter, "were of a general character to
15 develop statistical data that would show the relative growth
16 of the Transamerica Corporation, so-called, and the general
17 banking structure and it was expected of me, I think, in
18 view of my experience here, that I would be able to discover
19 what sort of data, pertinent data, were available, that might
20 be used on that subject."

21 Mr. Horbett, just what did you mean by the phrase
22 "relative growth of Transamerica Corporation"? Relative to
23 what?

24 A Relative to the growth of the entire banking struc-
25 ture, that is, all banks and branches in the areas in which

quotes?

1 the Transamerica banks and branches are in operation.

2 Q That is, those which have been given to you as the
3 Transamerica banks and branches? You did not, yourself, under-
4 take to determine what were so-called Transamerica banks and
5 branches, did you?

6 A That was not a part of my responsibility, no.

7 Q Correct. Now, did you, also, consider the relative
8 growth of other large banks and their predecessors in each
9 state and county and in those counties where there are no
10 banks in which Transamerica has an interest, but in those
11 five states?

12 A I think so. The relative growth of the other banks
13 and branches, that is, all of them combined, is reflected
14 here, too, as I see it.

15 Q That is in the aggregate, but did you consider the
16 relative growth of those banks individually as compared
17 with the relative growth of what you have called the
18 Transamerica banks?

19 A I did not.

20 Q In other words, you were instructed to dig up some
21 statistics that would prove a conclusion that Transamerica
22 had had a relative growth, related to the whole, and that is
23 what you did; is that correct?

24 A I wouldn't put it that way.

25 Q Well, how would you put it?

1 A not to prove anything, but to determine the rate
2 of relative growth of the Transamerica banks and branches,
3 as compared with the total banking structure.

4 Q I haven't examined this exhibit in any detail, Mr.
5 Horbett, but I am told by one of my associates that in
6 Multnomah County, Oregon, page 75, apparently, you show in
7 Exhibit 16 that in Multnomah, Oregon, Transamerica banks
8 in 1933 had 33.6 per cent of the total deposits and 14
9 years later, in 1947, had 42.4 per cent of the total deposits.

10 Isn't it a fact, Mr. Horbett, that some other bank could
11 have increased its percentage of total deposits in that
12 county from even as low as 5 per cent to as high as 50 per
13 cent in 1947 without that fact appearing from your exhibit,
14 as it is prepared?

15 A I don't know it to be a fact.

16 Q I know. I don't, either, but that could be the fact
17 and your exhibit wouldn't disclose it, would it?

18 A Let's see. You say one bank that had --

19 MR. TOWNSEND: I will stipulate that that is the
20 fact as Mr. Stewart has said.

21

22

23

24

25

1 MR. STEWART: All right.

2 BY MR. STEWART:

3 Q And you didn't investigate that situation or that
4 possibility in any of the areas covered by the exhibit, is
5 that correct?

6 A I did not.

7 Q From the basic sources which you used to develop
8 the information presented in the Board's Exhibits 13 and 16,
9 is it possible to develop similar comparisons for other banks
10 and their predecessors?

11 A You have in mind individual banks?

12 Q Yes sir.

13 A It is not possible.

14 Q It is not possible?

15 A That is right. You cannot determine the relative
16 growth of any individual bank--

17 MR. TOWNSEND: He is not talking about this exhibit,
18 he is talking about the source material that you used, Mr.
19 Horbett.

20 BY MR. STEWART:

21 Q Let me repeat the question, Mr. Horbett.

22 A I am sorry.

23 Q If the basic sources which you used in preparing
24 Exhibits 13 and 16 were available, as they are to you, but
25 not to me, wouldn't it be possible to develop the information

1 comparable to that presented in Exhibits 13 and 16 with
2 respect to other competing banks in the same area?

3 A I am sorry I misunderstood your question. It is
4 possible, from the basic sources.

5 MR. STEWART: Mr. Hearing Officer, I should like at
6 this time to say that the charges in the complaint filed in
7 Transamerica here includes the terms "to substantially
8 lessen competition," "to restrain commerce," and "to tend to
9 create a monopoly," and on the basis of the testimony that Mr.
10 Horbett has given, I wish to point out the following facts:

11 First, that a large portion of the data on which
12 Board's Exhibits 13 and 16 are based--and that includes
13 Exhibits 14, 15, 17, 18 and 19, which, in turn, are based
14 upon the first two exhibits--are not matters of public record
15 and are not available to Transamerica Corporation.

16 Second, Mr. Horbett has admitted that although
17 exhaustive county-by-county tabulations were made to show the
18 relative growth of Bank of America and the banks in which
19 Transamerica has an investment, no attempt was made to con-
20 sider the relative growth and development of other branch
21 banking organizations within the counties in which they operate
22 in the five western states, which are referred to in the
23 complaint.

24 Third, that none of that branch or county data on
25

1 banking offices and deposits for other branch banking organi-
2 zations and their predecessors are available to me or to
3 Transamerica Corporation, except from the same sources which
4 Mr. Horbett used, which are under the control of the super-
5 visory agencies and not publicly available.

6 Now, sir, on the basis of those facts, I wish to
7 suggest that if the Board is interested in having an unbiased
8 survey and analysis of the situation, and if it is insistent
9 upon keeping in the record these exhibits prepared by Mr.
10 Horbett, which were admitted over my objection and which at
11 this time I would like to move to strike out, that if that motion
12 to strike is denied, the Board must have comparable statistics
13 upon the growth and development of other branch banking
14 organizations in the same area, otherwise, the Board's
15 evidence will lead to the irresistable inference that the
16 Board arrived at the conclusion, first, and then set out
17 to prove it by devious and incomplete statistical methods.

18 In view of those facts, I, at this time, demand
19 and move in the alternative either that Exhibits 13 to 19,
20 inclusive, be stricken from the record on the grounds stated
21 in my previous objections, or that the following exhibits
22 or at least the unpublished source material from which they can
23 be prepared, as may be requested by me, be assembled and
24 prepared by the staff of the Board and be made available to
25 Transamerica Corporation at a reasonable time prior to the

reconvening of the hearings in San Francisco.

2 The exhibits I request are exhibits comparable to
3 Board's Exhibits 13, 14, 15, 16, 17, 18, 19, and 20 for each
4 of the following banks and their predecessors, for each location
5 in which they operate, together with the county totals:

6 1. Security First National Bank of Los Angeles
7 and its predecessors,

8 2. American Trust Company of San Francisco and its
9 predecessors,

10 3. Anglo-California National Bank of San Francisco
11 and its predecessors,

12 4. Citizens National Trust and Savings Bank of
13 Riverside and its predecessors,

14 5. Valley National Bank of Arizona and its pre-
15 decessors,

16 6. United States National Bank of Portland and its
17 predecessors,

18 7. National Bank of Commerce, Seattle, and its pre-
19 decessors,

20 8. Seattle First National Bank and its predecessors.

21 MR. TOWNSEND: May it please the Hearing Officer,
22 let's talk about this in the order in which Mr. Stewart dis-
23 cussed it. I freely concede that a good bit of the statistical
24 material that has gone into the record is based upon infor-
25 mation which is not generally public material. However,

1 anticipating the desire of counsel for Transamerica to be
2 assured of the correctness of the statistics reflected in
3 these various exhibits to which he has referred, I am prepared
4 to make the following offer: Mr. Horbett is right now engaged
5 in the task of personally verifying each and every one of
6 the figures that appear in the various exhibits which were
7 introduced while he was on direct examination.

8 I, therefore, offer to permit any statistician or
9 assistant that Mr. Stewart may have to go with Mr. Horbett
10 over each and every one of the sources of material that have
11 been used in the compilation of these exhibits, to sit with
12 him in the checking of all of these totals, so that Mr.
13 Stewart can be assured of the correctness of the figures that
14 are there included.

15 That process, as Mr. Horbett indicates, will take
16 several weeks, but I had hoped that it could be completed
17 between now and the time that the hearing is to be resumed
18 in San Francisco. That, it seems to me, is required out of
19 fairness to Mr. Stewart, so that the figures represented here
20 can be checked as to accuracy.

21 Point Number 2: Mr. Stewart says that he would
22 like to have material prepared by the Board concerning the
23 growth and development in their respective areas of some
24 eight or nine banking institutions. I don't believe that
25 this is the time for the Hearing Officer to rule on the question

1 of the relevancy of such statistics, and I think that the
2 appropriate time for that to take place would be when Mr.
3 Stewart is engaged in the presentation of his own case.

4 At that time I think that if the Hearing Officer,
5 upon a demand by Mr. Stewart, should conclude that such sta-
6 tistics are relevant in this case and should be used in con-
7 nection with the presentation of the Respondent's defense in
8 this case, then I, too, would join with Mr. Stewart in a
9 request of the Board to make that information available.

10 I do not believe, however, that now is the time to
11 cross that bridge.

12 I would make no secret of the fact that if and when
13 such a request is made at an appropriate time, that I probably
14 would conceive it my duty to object to the entire subject
15 matter as irrelevant. It may be that at that time more ex-
16 tensive argument would be in order, but certainly at this time
17 we are concerned solely with the accuracy of the documents
18 which we have introduced and with their relevancy in establish-
19 ing the charges which are contained in the complaint, and so
20 with the offer respecting the checking of Mr. Horbett's material
21 and the objections to the Hearing Officer considering at this
22 time what might be an appropriate method of presenting a
23 legitimate and relevant defense on the part of Transamerica,
24 I shall conclude.

25

1 MR. STEWART: Mr. Hearing Officer, I have three
2 comments to make about what counsel has just said.

3 In the first place, as to the present relevancy of the
4 material, I think it is quite clear, as indicated in my
5 previous statement, that the material is relevant now with
6 respect to the exhibits that Mr. Horbett has prepared and put
7 into evidence. It is not merely a matter of affirmative
8 defense--although I freely concede it will be useful when we
9 get to that point, too--but it is a matter of testing whether
10 these exhibits, even though truthful in the form in which
11 set up, and even though my checks, which Mr. Townsend has
12 offered to make possible, may show them to be truthful in the
13 form in which set up,-- the question whether, in spite of
14 that, the exhibits are misleading because of other facts
15 respecting other comparable banking situations which are
16 varied in totals in the exhibits as now prepared. That is my
17 position as to the present relevancy.

18 As to the second point, why wait? Why wait? Mr. Horbett
19 has testified to the magnitude of the preparation of these
20 exhibits, and the time and effort that went into their prepara-
21 tion.

22 I have no desire to hold up these proceedings to have
23 these things prepared, Even if counsel were correct that
24 they would be primarily relevant in any affirmative case,
25 isn't now the time to set the wheels in motion and get them

1 in the process of preparation.

2 And, third, I have anticipated that counsel might say
3 that there was a question as to whether this was a matter
4 that would have to be referred to the Board. I don't know
5 what the Hearing Officer's view of that is, but just so that
6 we can cover that as well as making the application I have
7 already made to the Hearing Officer, I have prepared, and
8 would like now to file, a demand addressed to the Board for the
9 production and preparation of this information which is
10 available only through the Board. I should like to file that
11 demand at this time.

12 It is, in substance, similar to the statement which I
13 made orally on the record. I will give counsel two copies.

14 And may I just say this, sir: On the question of
15 relevancy, the Hearing Officer has already ruled that at least
16 one of the banks mentioned in my list, here, is relevant, that
17 having been made during the testimony of Mr Eccles.

18 THE HEARING OFFICER: The question I was going to
19 ask you, Mr. Stewart, was: Did you comment on Mr. Townsend's
20 offer to make the records available to a statistician?

21 MR. STEWART: I didn't think that required any
22 comment, sir. He has made the offer, and naturally I would
23 like to avail myself of the opportunity. I think there are
24 some mechanical problems that I can best work out with counsel
25 off the record.

1 MR. TOWNSEND: Mr. Hearing Officer, I do object
2 to your ruling on the relevancy of these questions. I don't
3 think that they are an appropriate part of the case, and the
4 best way to illustrate it is as follows: The question at
5 the conclusion of the Board's case will be whether or not
6 the Board has sustained the burden of proof which it has
7 in establishing the allegations of the complaint.

8 I fully anticipate that at the conclusion of the Board's
9 case counsel for Transamerica will make a motion to dismiss
10 for failure of proof. At that time it will be your duty
11 to assess the relative weight of the evidence that has been
12 introduced into evidence by me to determine whether or not,
13 in your judgment, a prima facie case has been established.

14 At that time it is the Board's evidence which is to
15 be considered, presumably. I have been making these arguments
16 to you on a number of occasions. The matters that normally
17 rest in the domain of defense testimony would not, then, have
18 appeared in the record.

19 If the exhibits which have been introduced in evidence
20 by ^{vi} Mr. Horbett and by myself are of a kind that, themselves,
21 suggest distorted meanings, then this Hearing Officer will,
22 I am sure, ignore those reports if they do not contribute
23 at all to the determination of the motion to dismiss.

24 Consequently, it is only after the decision on the Board's
25

1 question that this matter of what they want to show by way
2 of rebuttal of the Board's testimony logically should follow.

3 Suppose you rule that the Board has not established a
4 case on its own material. Then, certainly, the preparation
5 of the documents which Mr. Stewart has requested would
6 become moot and unnecessary. Therefore I most respectfully
7 suggest, sir, that this is not the time to rule on that
8 question. These documents are in the record for what they are
9 worth. Mr. Horbett knows nothing about his own admission.
10 Anything concerning the growth and development of any of the
11 banks which Mr. Stewart has asked him about--he prepared no
12 such information.

13 Therefore, the present production of those documents
14 cannot possibly elicit another word or a line from Mr. Horbett
15 at present; and that, I think, confirms more than any other
16 factor that this is not the time for a ruling on that question.

17 MR. STEWART: If the Hearing Officer please, without
18 withdrawing anything I said before, I would just like to
19 make one comment on counsel's speech; and that is that if
20 everything he said were true, there is at least going to be
21 a tremendous delay involved in the preparation of this material
22 at a later time unless the preparation is commenced now; and
23 I want the record to be clear, and the Hearing Officer to
24 understand, that I am making the suggestion now, in part in
25 order to avoid that delay, and that if that delay should become

1 necessary later by reason of the Board's refusal to go
2 ahead on my demand at the present time the delay will not
3 be one for which I can accept any responsibility.

4 THE HEARING OFFICER: It is assumed that counsel
5 have agreed that statistical help be available to check
6 the accuracy of the information referred to in these
7 exhibits. Therefore, the motion to deny to strike that
8 evidence from the record.

9 On the second demand of counsel for Transamerica, you have
10 made your demand to the Board of Governors.

11 MR. STEWART: I made it both ways, sir. I made it
12 to you, in case you thought you could pass on it, and to the
13 Board in case you thought you couldn't.

14 THE HEARING OFFICER: Coming that way, I think I
15 would have to refer this matter to the Board. But I want to
16 say this for the benefit of both counsel and the director: That I
17 want to transmit to the Board the arguments that have been
18 made as to the expediency, and so forth, in connection with
19 this, and I will do that.

20 MR. STEWART: I think, sir, if you will note in
21 the formal demand which I handed up I stated that it is
22 based upon the testimony of Mr. Horbett and the exhibits, so
23 that I believe, pursuant to that, that the transcript of all
24 of Mr. Horbett's testimony and those exhibits should be
25 before the Board when it considers this matter as well as the

1 statements made by counsel this morning.

2 THE HEARING OFFICER: The Board will have complete
3 information on the subject, and I think that is probably
4 the best way to leave it.

5 MR. STEWART: That is all I have for Mr. Horbett
6 at this time, sir, subject to the right of detailed cross
7 examination upon the exhibits after the information has been
8 checked, as we previously stipulated upon the record.

9 (Discussion off the record.)

10 MR. TOWNSEND: May it please the Hearing Officer,
11 in the light of the developments I now point out that it
12 would be a convenient place to break until we resume in
13 San Francisco.

14 On that subject, I would say that we had a meeting of
15 counsel yesterday afternoon and various dates were suggested
16 and the one that turned out to be agreeable to both sides
17 was the date of Monday, March 28. I respectfully request
18 that the hearings be recessed today to Monday, March 28, to
19 be resumed at the office of the Federal Reserve Bank at
20 San Francisco.

21 Meanwhile, however, I also would like to point out that if
22 the Board acts in the interim on the demand by ^Mr. Stewart
23 recently argued, that Mr. Stewart should be promptly notified,
24 even though the hearings are not in progress.

25 THE HEARING OFFICER: The 28th is the earliest date?

1 MR. TOWNSEND: There were other dates discussed,
2 earlier, Mr. Hearing Officer, but it just turned out not to
3 be acceptable to counsel, and I would rather not put the
4 blame on either side. I think it was a matter that we worked
5 out to the best of our abilities.

6 MR. STEWART: If the Hearing Officer please, just
7 so that the record will be clear on it, Mr. Townsend suggested
8 the need for his being in certain other activities between
9 now and then--a need which I can appreciate and understand
10 and which occurs to all lawyers on one occasion or another--
11 and I am not disposed to push him any harder than he wants
12 to be pushed on it and so I acquiesced in the March 28
13 suggestion upon the theory that Mr. Townsend is not yet
14 resting his case and is still presenting ^{his} affirmative case.

15 Of course I do want it clear that my agreement to that
16 date is without prejudice to my application, if I may deem it
17 wise, for such additional time as may be necessary for me,
18 at a later date, to prepare my material for my affirmative
19 case.

20 THE HEARING OFFICER: We certainly shall accord you
21 exactly the same treatment, Mr. Stewart.

22 The hearing will then recess until Monday the 28th day
23 of March at 10:30 in the morning in the Federal Reserve Building,
24 San Francisco, California.

25 (Whereupon, at 1:05 p. m., the hearing adjourned to
Monday, March 28, 1949, at 10:30 a.m., in the Federal Reserve
Building, San Francisco, California.)