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Remarks of J. L. Robertson, Member of the

Board of Governors of the Federal Reserve System

before the

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"A Long View of the Bank Holding Company Act"

When Public Law 511 was approved by President Eisenhower on May 9, I suspect that most of the people in this room participated in a sigh of relief - and exhaustion - almost without precedent in the annals of American banking. Personally, I was very pleased to see the end of that chapter in the history of bank holding companies, for this year marked the twentieth consecutive session of Congress during which I have worked on at least one holding company bill. How many of you recall the so-called "freeze" bill - S. 3575 - that Senators Glass and McAdoo introduced one cold morning early in 1938? To connoisseurs of holding company legislation that by-gone bill is regarded in much the way lawyers regard the ancient Babylonian Code of Hammurabi - rough and primitive, but understandable and effective.

Often during the intervening years I lost track of the current status of this epic struggle - whether the bill currently "in favor" with this group or that was of the "off-with-his-head" variety or one of the mild administrative regulation type, or one of the dozen hybrids - some of which look like monstrosities, in retrospect - we hatched over the last two decades.

Now that we have the statute, the independent bankers of the country may feel they can breathe easier, but for the Federal Reserve the future appears at least as difficult and laborious as the past. Saddled with the thankless job of administering one important segment of the Act, we are in danger of forgetting just where our part of the work fits into the whole picture. Consequently, it would be of benefit to me - and perhaps to you also - to draw back and view the Bank Holding Company Act in perspective - to summarize briefly and broadly what that statute did with finality and what it left to be worked out through regulation and administration, chiefly by the Board of Governors.

From the point of view of the Board of Governors, life would be much simpler today if Congress had passed old S. 3575. Its basic operative provisions were delightfully simple and would have required little administrative implementation - on the contrary, they would have cut down the work of Federal bank supervisors. Just to make you nostalgic, let me read to you the operative provisions of sections 4 and 5 of that bill:

> "Sec. 4. It shall be unlawful for any company to acquire any capital stock . . . of any insured bank . . . if such company is or upon such acquisition would become a holding company of any insured bank.
>
> "Sec. 5. No insured bank shall establish or operate . . . any new or additional branches while such insured bank is controlled by any holding company."

I have little doubt that some of the more bloodthirsty gentlemen present are at this moment smacking their lips over this reminder of "what might have been"; but they, along with all the rest of us, must turn from the dreams of the past to the harsh realities of the enrolled bill - a bill designed to fill two gaps in the existing law: (1) to prevent undue expansion in the number of banks controlled by holding companies, and (2) to require holding companies to divest themselves of nonbank businesses.

Let me make clear at the outset that the Bank Holding Company Act is not a simple law - it is sufficiently complicated to provide considerable work for the legal profession. In addition, it is far from being a perfect piece of legislation. This is not surprising in view of the complexity of the subject and the fact that the Act represents an attempt to reconcile so many different views. When he signed the bill the President observed, as you well remember, that because of various exemptions and special provisions, it falls short of achieving its objectives. Certainly the statute contains some inconsistencies and some inequities.

For example, the definition of the term "bank holding company" is based on 25% ownership or control of two or more banks. As a result, it does not fully accomplish one of the major purposes of the legislation - the prevention of potential abuses arising from control by a single corporation of both banks and nonbank businesses. In testifying before the committees of Congress, I argued that such abuses could exist as well where a company controlling various business enterprises also controls one large bank as where such a company controls a few small banks. I still believe that the two-bank definition, while adequate with respect to "expansion", falls short of either consistency or equity when applied to the divestment provisions of the Act.

Some of the exemptions in the statute are difficult to justify on logical grounds. A good illustration is the exemption of any company registered before May 15, 1955 under the Investment Company Act. This provision relieves one company, and, as far as I know, only one - from the requirements of the statute, and I can see no rhyme or reason to justify it. It seems obvious that the purposes and requirements of the Investment Company Act are totally different from those of the Bank Holding Company Act, and I cannot understand why a company should be relieved from compliance with the latter merely because it is subject to the former.

There are other exemptions in the divestment section of the Act that clearly were tailored to fit the circumstances of particular cases and to exclude particular companies. Several of these exemptions were added during the closing hours of debate on the bill in the Senate and their justification is, at best, doubtful.

As in other pieces of hard-fought legislation, there are some provisions in this statute which are ambiguous and difficult to interpret. There

are some which, if literally construed, would seem to lead to results contrary to the purposes of the law. There are instances in which it seems the language of the Act will cover transactions which were not intended to be covered, and other instances in which transactions should be covered but are not.

The hard fact, however, is that despite its imperfections and inequities, the statute is now a part of the law of the land. If any of us - in or out of Government - had different views on certain aspects of the legislation before its enactment, those views are now irrelevant, except with regard to suggestions for amending the law at the appropriate time. The Board has a clear responsibility to apply the statute in accordance with its terms and in the light of its general purposes. The Board's job is to administer, not to legislate. In so doing, its sole aim will be to perform its functions as efficiently as possible, and above all, with fairness and impartiality.

Having determined - for good or ill - what is a bank holding company, the Act deals with the crucial question of what those companies may continue to hold - or "get hold of" hereafter - and what they must let go and never again pick up. That's the real meaning, as you know, of what are called, in a dignified way, the "acquisition" and "divestment" provisions of the law.

The so-called Douglas Amendment in effect declares that no holding company may acquire additional banks outside of its own State, except in States that have passed laws that explicitly welcome such acquisitions by out-of-State holding companies. I shall leave it to your prophetic insight to decide how many States may be expected to enact such permissive legislation at their next - or any other - legislative session.

The Holding Company Act also contains a flat prohibition against holding companies' acquiring the stock of nonbank corporations, and requires them to wind up or dispose of their nonbank businesses within the next few years. As usual, there are a number of exceptions to these requirements, but that is the general effect of section 4 of the Act.

We see, therefore, that the out-of-State-expansion provisions and the divestment-of-nonbanking-interests provisions of the Act are basically self-enforcing, although the Board of Governors has duties even with respect to those matters that are likely to develop a number of thorny problems.

Now let us look at the Federal Reserve's principal assignment - which naturally looms very large in my thinking. We are required to pass upon applications by holding companies for permission to acquire additional bank stocks. In doing so, we must be guided by certain standards which Congress has prescribed in the law itself. These standards relate to financial condition;

future prospects; character of management; needs of the community; and restriction of holding company growth within limits consistent with sound banking, the public interest, and the preservation of competition. These are not rule-of-thumb standards. In applying them, the Board must carefully consider all the circumstances of each case that comes before it, weighing one factor against another; and - needless to say - no factor will always weigh the same and no two cases will ever be exactly alike.

The express requirement of the Holding Company Act that the Board consider the effect of a proposed transaction upon the preservation of competition presents problems that call for the wisdom of a Solomon - and there are not many of them around. Whether you fully appreciate it or not, there are some differences between a great metropolitan area - for example, New York City - and my home town, Broken Bow, Nebraska. One can imagine a multimillion dollar holding company acquiring a bank in New York City without unduly upsetting competition there. But if such a corporation acquired one of the three small banks in Broken Bow, the other two might fear that their life expectancy had been shortened. Even a Solomon might have to ponder a while in applying the statute in such different situations.

It is clear that the statute is not intended to prevent bank holding companies from expanding at all. Only if the expansion threatens to go beyond limits consistent with sound banking, the public interest, and the preservation of competition does the Act require that such expansion be restrained. The problem is to determine just where those limits are in a particular case.

It is, of course, impossible to devise mathematical formulas that automatically will determine these limits. For example, it cannot be flatly said that a holding company which controls, say "X" per cent of the bank deposits in a particular area should be permitted to expand further, and that another company which controls "X + 1" per cent should not be allowed to expand. I do not mean that such evidence of concentration should not be considered; it simply is not conclusive. There may be circumstances in which the proposed acquisition of a bank by a holding company would be entirely justified, even though the company already controls substantially all the other deposits in the particular area. Such would be the case, for example, if the bank to be acquired were in a failing condition and its acquisition by the holding company were the most appropriate - perhaps the only - way to maintain its existence.

In addition to problems of this kind, the Board is obliged to consider questions arising in the interpretation of the language of the statute. A number of such questions have already arisen. What, for example, is a "bank" within the meaning of the statute? Despite the seemingly clear statutory definition, the Board at this very moment is trying to determine whether it covers an institution which is engaged in activities that add up to something very close to a banking business. Suppose prior to the

Act a controlled bank made loans secured by stock of its holding company: Must they be called? May they be renewed? May a holding company, having bought up all the banks it wants in the State of its domicile, change its domicile to another State and go on expanding? Or - to take what some holding companies may regard as the $64 million question - what activities are so "closely related to the business of banking" that they may be exempted from the divestment provisions? These may seem to be simple questions; but it is surprising how often the particular facts of a case make it difficult.

Such difficulties in administering the statute are aggravated by the fact that it brings the Board into what for it is a novel and strange field. Rarely in the past, for example, has the Board had occasion to hold formal administrative hearings. The new Act contemplates such hearings. When a bank holding company makes application to the Board for approval of a proposed transaction, the Board must seek the views of the appropriate State bank supervisor or the Comptroller of the Currency. If these views are unfavorable to the proposed acquisition, the Board must hold a formal hearing; and this is mandatory even though the Board also might be inclined to deny the application. On the other hand, if these views are favorable to the proposed acquisition, we may make an adverse or unfavorable determination without having granted a hearing. This may seem illogical, but it is what the law provides.

No hearings have yet been held, but when they are, you can be sure that the rights of all parties will be safeguarded in every way possible. The principals will be permitted - and expected - to file pleadings, present evidence, examine witnesses, submit proposed findings of fact and conclusions of law, and so on. It is quite conceivable that the Board soon may find itself conducting several of these hearings simultaneously in different parts of the country - usually not in person, fortunately, but through trial examiners.

It must be borne in mind that this is a criminal statute and in the final analysis its interpretation will rest with the Department of Justice and the courts. The Board, of course, must interpret the statute to some extent in order to carry out its functions. But, in a large measure, as I indicated previously, the Act is self-executing and requires no action by the Board. For example, a subsidiary bank is prohibited from making "upstream loans" to its parent holding company or "cross-stream loans" to its sister subsidiaries. Whether this provision has been violated in a particular case would be determined by the Department of Justice and the courts, but in all probability we would have uncovered the facts in the course of our supervisory work.

It is not necessary to remind you that besides its new functions under the Holding Company Act, the Board has many other duties that affect banking. Almost daily, under other provisions of Federal law, we

must pass upon applications for branches, mergers, membership in the System, voting permits requested by holding company affiliates, trust powers, and what not. At the same time, we must see to it that member banks are carefully examined and that appropriate supervisory measures are taken to transform "problem banks" into good ones.

In addition, the Federal Reserve System has even more fundamental responsibilities: in the field of credit and monetary policy. It must ever be alert to changing economic conditions and be prepared to determine when and how to exercise the tools of credit regulation - reserve requirements, discount rates, and open market operations - in order to aid in the maintenance of a stable and growing national economy. These are grave responsibilities and the Federal Reserve System must and does take them very seriously.

You will understand, therefore, why the Board has moved with deliberation in carrying out the new duties superimposed by the Bank Holding Company Act upon the many other functions already entrusted to it by Congress. Several months elapsed after the enactment of the Act before we adopted Regulation Y, even though that regulation is largely concerned with the procedures to be followed by holding companies in filing applications. Similarly, standard forms for use under the Act - the registration statement and application forms - were adopted only after weeks of careful study and after they had been published in the Federal Register with an invitation for comments and suggestions from all interested persons. Because of the time consumed by our deliberation, and in the interests of fairness, we extended the registration date for all holding companies until after the first of the year.

By now you will have noticed that I have not attempted to explain in detail the Holding Company Act, or to discuss all its technicalities, or to analyze closely its underlying philosophy. What I have attempted to do is to give you, in a few words, some idea of the task which the Board of Governors faces in carrying out its responsibilities under the new law, and to solicit your aid and cooperation. The enactment of the statute, by itself, is by no means a solution of the "holding company problem"; as a famous Speaker of the House of Representatives said: "One of the greatest delusions in the world is the hope that its evils can be cured by legislation."

In its administration of the statute, the Board will undoubtedly make mistakes, for it is not composed of supermen - a fact of which all of you are only too well aware. Its judgments will not always be perfect. Its decisions will not always be popular; those that independent bankers like may not be relished by holding companies, and those which they like may not be popular among you. But, fortunately, the Board of Governors is not seeking popularity; it is seeking only to carry out its functions under this statute in accordance with the will of Congress. In so doing, it will welcome your constructive criticism; and I hope that you will

maintain a close interest in this subject and feel free at all times to give us your comments and suggestions, as many of you have done in the past. There may be occasions when your suggestions will not be followed - perhaps because the Board will have information not available to you - but that should not preclude you from being critical of our actions; or even from praising us, if you must, when our decisions seem praiseworthy!

Remember that we are working in a new field and under a statute which admittedly contains many imperfections. Within two years the Board is required to report to Congress regarding any obstacles encountered in the administration of the statute and to recommend amendments. We invite your help in seeking to improve and perfect the statute so that its objectives may be accomplished in absolute fairness to all concerned and in the best interests of both sound banking and free enterprise in the banking field. Only with such help can the Federal Reserve System continue to discharge its responsibilities effectively and in accordance with the principle enunciated by Henry Clay: "Government is a trust, and the officers of the Government are trustees; and both the trust and trustees are created for the benefit of the people." And to me, that means all of the people, not any one group - no matter how numerous or how powerful.