To: Members of the Board  

From: Office of the Secretary  

Attached is a copy of the minutes of the Board of Governors of the Federal Reserve System on the above date.

It is not proposed to include a statement with respect to any of the entries in this set of minutes in the record of policy actions required to be maintained pursuant to section 10 of the Federal Reserve Act.

Should you have any question with regard to the minutes, it will be appreciated if you will advise the Secretary’s Office. Otherwise, if you were present at the meeting, please initial in column A below to indicate that you approve the minutes. If you were not present, please initial in column B below to indicate that you have seen the minutes.

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Minutes of the Board of Governors of the Federal Reserve System on

Wednesday, January 14, 1959. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Balderston, Vice Chairman
Mr. Szymczak
Mr. Mills
Mr. Robertson
Mr. Shepardson

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Young, Director, Division of Research and Statistics
Mr. Hackley, General Counsel
Mr. Masters, Director, Division of Examinations
Mr. Shay, Legislative Counsel
Mr. Sammons, Associate Adviser, Division of International Finance
Mr. Solomon, Assistant General Counsel
Mr. Hexter, Assistant General Counsel
Mr. O'Connell, Assistant General Counsel
Mr. Benner, Assistant Director, Division of Examinations
Mr. Hill, Assistant to the Secretary
Mr. Fisher, Economist, Division of Research and Statistics
Mr. Thompson, Supervisory Review Examiner, Division of Examinations

Amendment to Regulation I (Item No. 1). The Board approved unanimously an amendment to footnote 1 to Regulation I, Increase or Decrease of Capital Stock of Federal Reserve Banks, effective January 3, 1959, to eliminate the words "in Alaska or". This technical amendment, like the amendments to other regulations approved by the Board on December 18, 1958, was occasioned by the admission of Alaska to statehood and was made with the understanding that a notice would be published in the Federal Register. A copy of the telegram sent to the Federal Reserve Banks to advise them of the action is attached as Item No. 1.
Letter to Congressman Multer regarding The New York Trust Company (Item No. 2). Pursuant to the understanding at yesterday's meeting, a revised draft of reply to Congressman Multer's letter of January 7, 1959, with respect to the stockholders' meeting of The New York Trust Company being held today and the reported contest being waged for representation on the board of directors of that institution had been distributed to the Board.

After a short discussion, a reply in the form attached as Item No. 2 was approved unanimously.

Mr. Molony, Special Assistant to the Board, entered the meeting at this point.

Section 316 of the "Housing Act of 1959" (Item No. 3). The Bureau of the Budget had requested the Board's views regarding section 316 of a draft of a bill to be entitled the "Housing Act of 1959" which would delete the words "(which obligations shall have a maturity of not more than eighteen months)" where they first occur in paragraph "Seventh" of section 5136 of the Revised Statutes. A proposed reply, which had been distributed to members of the Board, stated that the Board would not object to the deletion if paragraph "Seventh" were further amended to make clear that the exemption allowing national and State member banks to invest without limit in, and to underwrite and deal in, long-term slum clearance obligations would be applicable only where the agreement between the local public agency and the Housing and Home Finance Administrator was such that each installment of interest and principal on the obligations would be paid at the time such installments became due.
In response to questions by Governor Mills, Mr. Hexter confirmed that this amendment would not expand any existing housing insurance program. It would provide only for the deletion of a restriction against unlimited investment by national banks and member State banks in obligations issued in connection with slum clearance and related projects having maturities of more than eighteen months. Local public agencies sometimes had issued long-term slum clearance obligations under loan agreements with the Urban Renewal Administration, a unit of the Housing and Home Finance Agency, pursuant to the Housing Act of 1949, and the proposed amendment was intended to increase the private market for such obligations by making them eligible for purchase by banks.

Governor Balderston raised the question whether the reply to the Budget Bureau should include some general reference to the scope of the housing insurance program. Following some discussion, however, it was the consensus that the particular matter on which comment had been requested by the Budget Bureau was of such a technical nature as to make it doubtful whether an expression of reservations regarding other facets of the insurance program would be warranted.

After agreement had been expressed with an editorial change suggested by Governor Mills, unanimous approval was given to a letter to the Budget Bureau in the form attached as Item No. 3.

Mortgage insurance for nursing homes and land development loans.

The Bureau of the Budget had requested the views of the Board on proposed
draft legislation relating to mortgage insurance for nursing homes and neighborhood development mortgage insurance. Both programs would be incorporated in the proposed "Housing Act of 1959" on which the Board expressed its views to the Budget Bureau in a letter dated December 23, 1958. A suggested draft of reply had been distributed to the Board prior to this meeting along with analyses prepared by members of the legal and research staff in which the nursing home program was described as authorizing the Commissioner of the Federal Housing Administration to insure existing mortgages, make commitments to insure proposed mortgages, and insure advances on mortgages during construction on new or rehabilitated nursing homes. Insured mortgages could amount to as much as $12.5 million each, with a maximum statutory annual interest rate of 5-1/2 per cent. The land development amendment would authorize the Federal Housing Administration Commissioner to insure existing mortgages, make commitments to insure proposed mortgages, and insure advances on mortgages during development and construction for eligible land and improvements in "economically sound" developments. Insured loans, which would cover the financing of land (sites for homes and related commercial, recreational, educational, and other uses) and neighborhood improvements (streets, water, sewerage, and other public facilities) could have maturities up to ten years and would bear interest at such rates as the Federal Housing Administration Commissioner might prescribe.
At the Board's request, Mr. Fisher reviewed the two proposals, basing his remarks on the analyses that had been distributed to the Board. With regard to the program for insurance of neighborhood development loans, he brought out that the information received from the Budget Bureau contained no estimate as to the possible maximum extent of this program except for the general statement that there was a prospective need for ten million or more home building sites in the next decade. Therefore, it appeared the program might grow substantially and involve substantial risks.

Governor Mills suggested that the Board might wish to consider going further in its reply than merely to raise a question about the extent of housing programs involving the guarantee of the Federal Government. He expressed particular concern about the land development program, stating that it seemed somewhat similar to earlier proposals emanating from the savings and loan industry which would have permitted savings and loan associations to advance funds on naked land pending its development for housing projects. The proposed program, he said, was the sort of thing that was conducive to promotional and speculative activity on the part of builders who, if able to obtain guarantees, would be in a position to tempt lenders who might be disposed to finance them.

Governor Shepardson indicated that his views were similar to those of Governor Mills. He also noted that the nursing home proposal provided for a maximum statutory interest rate on insured mortgages
while the land improvement proposal provided that insured mortgages
could be at such rates as the Federal Housing Administration Commissioner
might prescribe. It was brought out in this connection that in its
letter of December 23, 1958, to the Budget Bureau concerning the
proposed "Housing Act of 1959" the Board had indicated that it would
favor the elimination of statutory provisions relating to maximum
interest rates.

Chairman Martin endorsed the suggestion that a stronger letter
be drafted for the Board's consideration. He questioned, however, the
appropriateness of taking a position that under no circumstances should
programs such as those now proposed be permitted. In this connection,
he referred to the critical shortage of adequate nursing homes.

Study prepared for the Senate Finance Committee. Mr. Shay
reported having learned that the Senate Finance Committee had
commissioned for its use a study by a professor at Ohio State
University based on the testimony taken by the Committee during its
1957-58 hearings on the financial condition of the United States.
He said that if and when the study should be released, he would
endeavor to obtain copies for the members of the Board.

Messrs. Shay and Fisher then withdrew from the meeting and
Mr. Hald, Economist, Division of Research and Statistics, entered the
room.
Matter of Old Kent Bank and Trust Company. At the meeting on January 7, 1959, Mr. O'Connell reported having been advised by the United States Attorney's Office that Counsel for the National Association of Supervisors of State Banks had expressed a desire to file an amicus curiae brief on behalf of the Association, that the Justice Department, in accordance with its general approach to such matters, probably would oppose the filing of the brief, and that the United States Attorney's Office concurred. In a memorandum to the Board dated January 13, 1959, Mr. O'Connell stated that prior to any communication of the Board's position in opposition to the motion by the Association to appear as amicus curiae, a copy of the proposed motion, as yet not filed with the court, was received in the Legal Division. This revealed that the questions of law to which the Association's argument would be directed were the same as those brought to issue by paragraphs 13, 14, and 15 of the complaint in this case and sections III, IV, and V of the memorandum of points and authorities filed in response. At a meeting on January 13, attended by representatives of the Department of Justice, the United States Attorney's office, Mr. O'Connell, and Counsel for the Association, Counsel agreed to amend his motion so as to include a full statement on the relationship of the Association to its 1,800 "associate member" banks, the portion of the Association's income represented by dues paid by such banks, and the membership status of Old Kent Bank. It was also agreed, following Counsel's departure, that such amendments would afford the court a better opportunity to evaluate the Association's position in reference to its motion, and the Department of Justice later advised...
that it would favor taking a position of "no opposition" to the appearance of the Association as amicus curiae. The United States Attorney's Office took a similar position. In the circumstances, it was the recommendation of the Legal Division that the Board likewise take a position of "no opposition" to the motion. This would leave the court to decide the motion on its merits and, if the motion should be granted, an answering brief could be filed if thought advisable.

After Mr. O'Connell summarized developments in the matter, Governor Mills commented that, although he did not want to be recorded as voting in opposition to the proposed course of action, he had doubts about it on the ground that any action of the Board which might weaken its position represented in essence a step in abdication of the belief that the Board held in this case. In his opinion, the Board had already made a serious mistake in permitting Old Kent Bank and Trust Company, during the pendency of the case, to transfer a branch to a location formerly occupied by a branch of the institution that was absorbed. He regretted very much any move to weaken the case when the decision on the application reflected, in the Board's mature judgment, a belief that the law which it administered compelled it to take a position. Furthermore, that position was one which, after careful analysis, the Board considered correct.

Asked by Governor Shepardson why he felt a position of no opposition to the filing of the brief would weaken the Board's case, Governor Mills said that, as mentioned during the discussion of the
matter last week, to admit an essentially noninterested party into the proceeding would reflect, at least in a remote sense, doubt on the part of the Board that its decision was appropriate and that the case could be brought to a successful conclusion. Governor Mills added that although the Justice Department and the United States Attorney's Office did not take a position adverse to the admission of the brief, Mr. O'Connell had indicated that they would be willing to accede to any strong desire on the part of the Board to oppose its admission.

In further discussion, Governor Shepardson said it would be his feeling that failure to object to the filing of the brief would indicate confidence on the Board's part, rather than doubt or weakness, for it would suggest that the Board was glad to have anyone bring before the court whatever arguments might be pertinent to the presentation of the case.

Thereupon, Governor Mills' views having been noted, it was agreed to proceed in the manner recommended by Mr. O'Connell.

Gold loan to Haiti (Item No. 4). There had been sent to the members of the Board copies of a memorandum from Mr. Marget dated January 14, 1959, regarding a request by the National Bank of Haiti for a new loan on gold in the amount of $400,000 for a period of 60 days. The officers of the Federal Reserve Bank of New York had recommended and three of the Bank's directors (by telephone) had authorized the new loan, together with renewal for thirty days of the balance of $300,000 on a previous loan due January 26, 1959, if
requested by the National Bank of Haiti. It was recommended in Mr. Marget's memorandum that the Board of Governors approve the new loan and also renewal of the outstanding loan, if requested.

After comments by Mr. Sammons regarding economic developments in Haiti that had given rise to the request, the recommendation contained in Mr. Marget's memorandum was approved unanimously. A copy of the telegram sent to the Federal Reserve Bank of New York pursuant to this action is attached hereto as Item No. 4.

At this point all of the members of the staff except Mr. Sherman and Mr. Hackley withdrew from the meeting.

Application of Firstamerica Corporation (Items 5 through 8, inclusive). Before this meeting there had been distributed a draft of Order and Statement, prepared in accordance with the discussion at the Board meeting on January 9, 1959, that would approve the application under the Bank Holding Company Act by Firstamerica Corporation, San Francisco, California, for prior approval of the acquisition of 80 per cent or more of the voting shares of California Bank, Los Angeles.

At Chairman Martin's request, Mr. Hackley commented on the drafts of Order and Statement. In his comments, Mr. Hackley also said that, as he understood the procedure, the final vote by the Board on the application would be taken today and that the drafts of Order and Statement were, of course, subject to whatever changes might be suggested by the Board as well as to a few minor technical changes that
had been suggested to the Legal Division since the drafts were distributed yesterday.

Governors Mills, Szymczak, and Balderston expressed the view that the drafts of Order and Statement carried out the tentative decision reached by the Board at the meeting on January 9, and Chairman Martin stated that he too thought they were in satisfactory form.

Governor Robertson said that he wished to make a separate statement of reasons why he would vote to deny the application. Such statement had not yet been prepared, but he wished to inform the Board of its general nature and tone. He then read from what he described as rough notes covering the statement he contemplated, at the conclusion of which he said that he would like to have his statement incorporated in the minutes of this meeting when he had had an opportunity to put it in final form. The statement would, of course, be made available to the public.

Chairman Martin stated that inasmuch as Governor Shepardson was not present on January 9 when the Board considered this case and reached a tentative decision to approve the application, he should feel free to refrain from voting if he cared to do so.

Governor Shepardson said that he had read the staff memoranda and, although he had not had the benefit of the discussion at last Friday's meeting, he would reach his decision later today. He also stated in response to Chairman Martin's question, that he had not seen Governor Mills' memorandum of reasons why he would vote to approve the application, but he would read that memorandum also and
would advise the Secretary later in the day as to his position on the application.

Governor Shepardson went on to say that one aspect of this case that bothered him was that a favorable decision on the Firstamerica Corporation application might be inconsistent with the action that the Board had taken last August on the application of First Bank Stock Corporation for prior approval of the acquisition of shares of a bank to be established in St. Paul, Minnesota, to be known as First Eastern Heights State Bank.

Governor Balderston said that his study of the Firstamerica application had led him to the conclusion that the reasons advanced by the Corporation for approval were weak but, despite these weak reasons, the Board independently should reach a decision to approve the application on the grounds that the merits of Firstamerica's application warranted its approval. In effect, while Firstamerica Corporation may not have put forward the best arguments, the fact was that there was little positive argument for not approving the application on the basis of a careful analysis of all of the factors concerned.

Mr. Hackley commented that the reasoning of the Legal Division was along the lines that approval of Firstamerica's application would be warranted because there was a lack of any substantial effect on the competitive situation in the primary areas involved in the proposed acquisition. This was a decisive element that was not present in the St. Paul case.
Chairman Martin expressed the view that, as he had indicated at the meeting on January 9, the decision in this case revolved around the matter of how the Bank Holding Company Act was to be administered. In considering these cases, he had come to the conclusion that if there was no strong argument either for or against approval of an application, it was appropriate for the Board under the statute to give its approval. The Board had found it difficult to reach decisions in these cases because of the lack of specific direction from the Congress, and it would continue to have the same difficulty until the Congress provided a more specific indication of its intent in the bank holding company legislation. In the meantime, it was his view that the Board should follow the procedure of considering all of the factors in each application and, unless the result of this study indicated fairly definitely a basis for rejecting the application on the grounds that it would lessen competition unduly or for some other reason, the Board would be justified in giving its assent.

Chairman Martin then noted that the decision of the Board would be either four in favor of approving the application and two against, or five in favor and one against, and that it thus seemed clear that announcement of the Board's decision should be made this afternoon. The discussion then turned to the procedure to be followed in advising Firstamerica Corporation of the Board's action and making the customary announcement to the press.

At this point Mr. Molony, Special Assistant to the Board, entered the room.
Following a discussion, it was agreed that the statement of the Board's approval should be issued in the form of a press announcement for release today at 4:00 p.m., Eastern Standard Time, and that the Secretary should arrange to talk by telephone with Mr. Oscar H. Keller, President of Firstamerica Corporation, at 4:00 p.m., Eastern Standard Time, for the purpose of informing him of the decision simultaneous with its release to the press.

Secretary's Note: Later in the day, Governor Shepardson informed the Secretary that he would vote to approve the application. Accordingly, the Board's statement for the press, including the Order approving the application and the statement of the majority, was handed to the press at 4:00 p.m., E.S.T., with the understanding that a copy of Governor Robertson's dissenting statement would be furnished later on and that it would be incorporated in the minutes of this meeting.

In addition, at 4:00 p.m., the Secretary informed Mr. Keller, President of Firstamerica Corporation, of the Board's action in this case. Copies of the press release, the Order, the Statement by the Board, and Governor Robertson's dissenting statement are attached to these minutes as Items 5 through 8, inclusive.

The meeting then adjourned.

Secretary's Notes:

Governor Shepardson today approved on behalf of the Board a letter to the Federal Reserve Bank of New York approving the designation of Frank A. Anderson as special examiner. A copy is attached as Item No. 9.
Governor Robertson today approved on behalf of the Board the following letters:

Letter to the Federal Reserve Bank of Cleveland (attached Item No. 10) approving the appointment of Edward W. Kilrain as assistant examiner.

Letter to the Federal Reserve Bank of Kansas City (attached Item No. 11) regarding adjustment of the Board's records pertaining to special assistant examiners at that Bank.
January 14, 1959

To Presidents, all Federal Reserve Banks

In connection with admission of Alaska to statehood and appropriate amendments to regulations, Board has also amended footnote 1 to Regulation I, "Increase or Decrease of Capital Stock of Federal Reserve Banks," effective January 3, 1959, by eliminating words "in Alaska or" as was done in Regulation H. Amendment will be printed here. Please wire number of copies your Bank will need.

(Signed) Merritt Sherman

Sherman
The Honorable Abraham J. Multer,  
House of Representatives,  
Washington 25, D. C.

Dear Mr. Multer:

This will acknowledge your letter of January 7, 1959, with respect to the stockholders' meeting of The New York Trust Company being held today, and to the reported contest being waged for representation on the board of directors of that institution.

It is not usual for advance details of such shareholders' actions to be submitted to the Board in connection with its bank supervisory function, and no details on this specific proposal have formally come to our attention. Also, it is doubtful that it would be appropriate for us in our bank supervisory capacity to intervene in actions of the stockholders of a bank in selecting its directors.

While we appreciate very much your calling this matter to our attention, a special investigation by the Federal Reserve System would not, in all the circumstances, seem warranted at this time.

With kindest regards.

Sincerely yours,

Wm. McC. Martin, Jr.
Mr. Phillip S. Hughes,
Assistant Director for
Legislative Reference,
Bureau of the Budget,
Washington 25, D. C.

Dear Mr. Hughes:

This is in response to your Bureau's communication of January 7, 1959, requesting the Board's views regarding section 316 of a draft of a bill to be entitled the "Housing Act of 1959". The proposal is to delete the words "(which obligations shall have a maturity of not more than eighteen months)" where they first occur in paragraph "Seventh" of section 5136 of the Revised Statutes (12 USC 24).

The provision in question was included in the Housing Act of 1949 in order to make certain that national banks and member State banks of the Federal Reserve System, which were being authorized to invest unusually large amounts in such slum clearance obligations and to underwrite such obligations, could not find themselves in the position of holding defaulted obligations of that class on which neither interest nor principal would be paid until the maturity of the obligation, which might be thirty years or more in the future. At that time it was contemplated that the slum clearance obligations involved would in no case have a maturity of more than eighteen months, so the inclusion of the above-quoted provision would not impede the financing of slum clearance programs and at the same time would protect banks from a potentially dangerous situation.

The explanation enclosed with your communication indicates that at the present time the Urban Renewal Administration sometimes enters into long-term loan agreements with local slum clearance agencies, in connection with slum clearance projects, and URA believes that deletion of the above-quoted provision would improve the market for such obligations by enabling national banks and member State banks to hold such obligations without a statutory limit on amount and to underwrite and deal in such obligations. The Board of Governors sees no objection to this purpose, provided that the banks are protected against the adverse possibility referred to in the preceding paragraph. Accordingly, the Board would not object to the
Mr. Phillip S. Hughes

proposed deletion provided that paragraph "Seventh" of R.S. 5136 were further amended to make clear that the exemption for long-term slum clearance obligations would be applicable only where the agreement between the local public agency and the Housing and Home Finance Administrator was such that each installment of interest and principal on the obligations would be paid at the time such installment became due.

When R.S. 5136 was amended by section 602(a) of the Housing Act of 1959, as described above, a comparable amendment was made by section 602(b) in section 5200 of the Revised Statutes (12 USC 614) by adding exception (11) thereto. The purpose of this was to cover cases in which the obligations of the local public agency constituted "loans" subject to R.S. 5200 rather than "investment securities" subject to R.S. 5136. The Board assumes that consideration will be given to the question whether it is advisable also to amend exception (11) to R.S. 5200 in a manner similar to that proposed with respect to R.S. 5136.

In the explanation of the proposed section 316 of the draft "Housing Act of 1959" that was enclosed with your communication, R.S. 5136 was described as prohibiting a national bank or member State bank from "investing for its own account in obligations of any one issuer in excess of 10 percent of the amount of the bank's stock." It is suggested that the word "stock" be replaced by "capital stock and surplus", in order to accord with the provisions of R.S. 5136.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.
January 14, 1959

EXTER - NEW YORK

Your wire January 13. Board approves, subject to authorization by your Board of Directors, granting of loan on gold by your Bank to Banque Nationale de la Republique d'Haiti of up to $400,000 on the following terms and conditions:

(a) To be made up to 98 per cent of the value of gold bars set aside in our vaults under pledge to us;
(b) To mature in 60 days with option to repay before maturity;
(c) To be requested and made within thirty days of the date on which the Board approves the granting of the loan;
(d) To bear interest at the discount rate of this Bank in effect on the date on which such loan is made. Furthermore in view of the possibility of the Banque requesting a renewal for an additional month of the $300,000 loan which matures on January 26, the Board authorizes such a renewal if requested on the same terms and conditions as the first renewal.

It is understood that the usual participation will be offered to the other Federal Reserve Banks.

(Signed) Merritt Sherman

SHERMAN
Item No. 5
1/14/59

The Board of Governors of the Federal Reserve System

has issued an Order of approval of the application of Firstamerica
Corporation, San Francisco, California, filed pursuant to sec-
tion 3(a) of the Bank Holding Company Act of 1956, for prior
approval of the acquisition of 80 per cent or more of the out-
standing voting shares of California Bank, Los Angeles, California.

Attached is a copy of the Board's Order, together with an
accompanying Statement of the Board of the same date. A dissenting
Statement by Governor Robertson in support of his vote against this
action will be issued at a later date.

Attachments
UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D. C.

Item No. 6
1/14/59

In the Matter of the Application of

FIRSTAMERICA CORPORATION

for prior approval of acquisition of voting shares of California Bank, Los Angeles, California.

DOCKET NUMBER: BHC-46

ORDER APPROVING APPLICATION FOR PRIOR APPROVAL UNDER BANK HOLDING COMPANY ACT

There having come before the Board of Governors pursuant to section 3(a)(2) of the Bank Holding Company Act of 1956 (12 USC 1843) and section 4(a)(2) of the Board's Regulation Y (12 CFR 222.4(a)(2)), an application on behalf of Firstamerica Corporation, a Delaware corporation with its principal place of business at San Francisco, California, for the Board's prior approval of the acquisition of 80 per cent or more of the outstanding voting shares of California Bank, Los Angeles, California; a hearing on said application having been held pursuant to section 7(a) of the Board's Regulation Y (12 CFR 222.7(a)); opportunity having been given all parties to file proposed findings and conclusions; the Hearing Examiner having filed a Report and Recommended Decision in which he recommended that said
application be approved; and all such steps having been taken in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR 263);

IT IS HEREBY ORDERED, for the reasons set forth in the accompanying Statement of the Board of this date, that the said application be and hereby is granted, and the acquisition by Firstamerica Corporation of 80 per cent or more of the outstanding voting shares of California Bank, Los Angeles, California, is hereby approved, provided (1) that such acquisition is completed within three months from the date hereof, and (2) that no action be taken by Firstamerica Corporation, California Bank, or First Western Bank and Trust Company, San Francisco, California, that will result in the termination of the corporate existence of either California Bank or of First Western Bank and Trust Company, San Francisco, California, as a separate functioning banking institution until after 60 days following the date of this Order.

Dated at Washington, D. C., this 14th day of January, 1959.

By order of the Board of Governors.

Voting for this action: Chairman Martin, Vice Chairman Balderston, and Governors Szymczak, Mills, and Shepardson.
Voting against this action: Governor Robertson.

(Signed) Merritt Sherman
Merritt Sherman, Secretary.
UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D. C.

In the Matter of the Application of
FIRSTAMERICA CORPORATION

for prior approval of acquisition of
voting shares of California Bank,
Los Angeles, California

DOCKET NUMBER: BHC-16

STATEMENT

This case involves an application filed by Firstamerica Corporation, San Francisco, California ("Firstamerica"), a bank holding company, pursuant to section 3(a)(2) of the Bank Holding Company Act of 1956 (the "Act"), for the prior approval by the Board of Governors of the Federal Reserve System of the acquisition by Firstamerica of 80 per cent or more of the voting shares of California Bank, Los Angeles, California ("California Bank"). If the proposed acquisition is approved, Firstamerica plans to merge First Western Bank and Trust Company, San Francisco, California ("First Western"), an existing subsidiary of Firstamerica, into California Bank, under the charter of the latter.

Section 3(a)(2) provides that "It shall be unlawful except with the prior approval of the Board * * * (2) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; * * *."
In accordance with section 3(b) of the Act, the Board gave notice of the application to the Superintendent of Banks of the State of California and requested his views and recommendations. In his letter of reply, dated September 3, 1958, the Superintendent of Banks recommended that the application be granted.

In view of the State Superintendent's favorable recommendation, a hearing on the application was not mandatory under the Act. The Board, however, in accordance with section 7(a) of its Regulation Y, ordered that a public hearing be held before a duly designated Hearing Examiner; and such a hearing was held at

2/ "(b) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, and shall allow thirty days within which the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, may be submitted. If the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within said thirty days, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall by order grant or deny the application on the basis of the record made at such hearing."
the Federal Reserve Bank of San Francisco on October 27-29, 1958.
On the basis of the record, the Hearing Examiner in his Report
and Recommended Decision, filed on December 5, 1958, recommended
that the application be approved.

General Background. - Firstamerica is a corporation
organized on September 27, 1957, under the laws of the State of
Delaware, with its principal place of business at San Francisco,
California. Subsequent to its organization, Transamerica Corporation
("Transamerica"), which at that time was a bank holding company,
transferred to Firstamerica all of the stock previously held by
Transamerica in its majority-owned banks in exchange for all of the
stock of Firstamerica and immediately thereafter distributed the
latter stock to shareholders of Transamerica, thereby effecting a
separation of Transamerica's banking and nonbanking businesses in
accordance with requirements of the Act. As a result, Transamerica
ceased to be, and Firstamerica became, a bank holding company on
July 1, 1958. There is no corporate connection between Firstamerica
and Transamerica.

At present, Firstamerica has 23 subsidiary banks located
in 11 western States with total deposits of $2,952 million in
June 1958. It is the largest bank holding company in the country.
First Western is Firstamerica's largest subsidiary bank and its only subsidiary in California. It ranks sixth in size among banks in that State. It has 100 banking offices, all in the State of California. Most of these are in northern California, but 27 are in the Los Angeles metropolitan area (Los Angeles and Orange Counties).

California Bank is the fifth largest bank in California. It has 65 banking offices and, with the exception of one office in neighboring San Bernardino County, all of these offices are in the Los Angeles metropolitan area.

If Firstamerica's application to acquire stock of California Bank is approved and the contemplated merger of that Bank with First Western is consummated, the resulting bank would be the third largest in the State.

Statutory Factors. - In determining whether or not to approve this application, the Board is required by section 3(c) of the Act to consider the following factors:

"* * *(1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking."
Financial History and Condition, and Prospects. - The first two statutory factors may be considered together. Firstamerica itself, because of its recent activation, has only a brief financial history. However, since its principal assets are stock of its subsidiary banks, both its financial condition and prospects may reasonably be regarded as paralleling those of its subsidiary banks; and the record indicates that the financial condition and prospects of its subsidiary banks are satisfactory. The financial history and condition and prospects of California Bank are also satisfactory.

The Board concludes that the evidence relevant to the first two statutory factors is consistent with approval of the application but does not provide substantial affirmative support for such approval.

Character of Management. - Firstamerica and California Bank are presently under capable management. It is planned that, if the stock acquisition and merger are consummated, the board of directors of Firstamerica will be reconstituted with prominent representation by the present management of California Bank. Firstamerica alleges that the result will be to strengthen its management. In his Report (p. 8), the Hearing Examiner concludes that it will "result in an improvement in the strength and depth of management which will inure to the advantage of the depositors and all of the banks involved, including not only those subject to the merger but those constituting units in the bank holding company system."
While it is probable, as alleged, that the acquisition of California Bank would add strength and depth of management to Firstamerica and First Western, it does not appear that such strengthening and deepening of management is so badly needed, or so difficult to obtain through other means, as to make the proposed transaction necessary on those grounds. Considering all aspects of the management of these institutions, it is the Board's judgment that the alleged improvement with respect to management cannot be considered to be of substantial significance as a basis for approval of the application.

Convenience, needs, and welfare of the communities and area concerned. - The extent to which a particular transaction may affect the convenience, needs, and welfare of the area concerned is a matter of degree, and determination of its effect must involve exercise of judgment. It seems clear, however, that contribution to the "needs" of the public would have greater significance than contribution to the "convenience" of the public and that the former would have greater impact than the latter upon the "welfare" of the communities and area concerned.

In the present case, the evidence is not such as to demonstrate that the proposed acquisition is necessary to meet the "needs" of the public. Firstamerica concedes that existing banks in California are not presently "failing in any general sense to
provide adequate banking services to the businesses and residents of California", and that in the areas most directly affected there are available the customary range of banking services.

Firstamerica contends, however, that the proposed stock acquisition and subsequent merger of California Bank and First Western would provide several benefits to the "convenience" and "welfare" of the public.

One such benefit claimed is that the merged bank would have larger lending limits and consequently greater serviceability to the public. This public benefit can be claimed, to some extent, for any merger of two banks, since the two banks together will necessarily have a larger loan limit than either would have separately. The resulting benefit to the public in such cases can easily be overestimated, and the possibility of such an overestimate is particularly great when the banks to be merged are already of considerable size, such as the two banks here involved, each of which has about $1 billion of deposits. When banks have attained such size they already have loan limits large enough to enable them to meet, without assistance from other lenders, the credit needs of fairly large businesses. Those still larger businesses that the merged bank would be able to service without assistance usually are better able than other borrowers to tap a large number of alternative sources of credit, and thus are
usually less dependent on any one or a few sources. Hence any benefit to them is likely to add little to the facilities that are, in practice, already available to them.

It is also to be remembered that credit needs can be satisfactorily met even though they exceed the loan limit of a particular bank. One of the functions of correspondent banking arrangements is to take care of such situations; participations by several banks in a single line of credit are not only entirely practicable but also of common occurrence. The record in the present case does not demonstrate there have been demands for large loans that could not have been satisfactorily met by an existing California bank, including California Bank and First Western, either alone or on a participation basis.

Another benefit to the public "convenience" and "welfare" is claimed to flow from the wider coverage of the State of California that would be afforded by the proposed merged institution. Firstamerica and the State Superintendent of Banks assert that in all the communities in which California Bank and First Western now have offices, the public for the first time will have available through the new combined bank a source of state-wide banking services other than that now afforded by Bank of America National Trust and Savings Association ("Bank of America") and that the existence of two such sources of state-wide services would benefit the public. Thus, the State Superintendent of Banks expressed the
opinion that the ability of the combined bank to furnish more effective competition on a state-wide basis would serve "the best interests of all citizens of this state", and that the "combined institutions, without lessening competition, would better serve the convenience, needs, and welfare of the communities of the entire state." Among the advantages said to result from a state-wide banking system are those which would be afforded particularly to customers with state-wide business interests. The Hearing Examiner stated in his Report (p. 10), that these advantages include availability of a state-wide collection service, more rapid check clearance, expediting credit and credit information, and transfer of savings accounts without loss of interest, and that, through a state-wide banking system like Bank of America's, banks outside of California "can cover the state with a single correspondent account and obtain immediate or facilitated credit for checks drawn anywhere in the State".

State-wide services can, however, be offered not only by an institution that is itself state-wide, but also through correspondent arrangements among different banks. The record fails to show that adequate banking services are not now being provided on a state-wide basis by existing banks either alone or through participation with correspondent banks. The record also indicates that First Western is not totally deficient in state-wide coverage. Although it operates principally in the northern section of the State, it has 100 offices in 30 of the State's 58 counties; and it has 27 offices in the Los Angeles area now served by offices of
California Bank. In addition, it has pending applications for 35 de novo branches of which 10 would be in the Los Angeles area. Thus, while First Western admittedly does not have complete statewide coverage, it can alone or in conjunction with correspondents offer state-wide services alleged to be presently available only through Bank of America. Other banks in California can also offer state-wide services in conjunction with correspondents.

It appears that the merged bank would have a more balanced loan and deposit structure and therefore greater adaptability to the varying needs of individual localities; that it would have a broader geographical coverage that would enable it more readily to meet variations in seasonal demands and local economic fluctuations; and that it would have the advantage of the specialized experience of both banks in particular lending activities that would provide an increased range of services over a broader area of the State. These benefits are also available to some extent through correspondent relations. However, it may be somewhat more difficult for such correspondent relationships to convey these benefits to the public as fully as those previously discussed. As hereafter indicated, it appears that First Western concentrates principally on savings deposits and mortgage and installment loans, while California Bank predominantly specializes in deposits and loans of a commercial character. An extension of both types of specialized operations to the offices of both institutions might to some extent increase the availability of such services
and thus, to some extent, serve the "convenience" and "welfare" of the public.

Considering the various aspects of the public "convenience" and "welfare", the Board concludes that the proposed transaction would to some extent serve such "convenience" and "welfare", but that its contribution in this respect would not be a strong ground for approval of the application.

The Fifth Statutory Factor: Effect of Size and Extent. -

The Act specifically directs the Board to consider the "size or extent" of a bank holding company system. It is important to bear in mind, however, that the statute does not require the Board to consider the size and extent of a bank holding company alone; the mandate of Congress is to consider whether or not the effect of a specific stock acquisition would be to expand the size or extent of the holding company system beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking. This distinction is especially significant in the present case in view of the size and extent of the holding company system involved.
Firstamerica is by far the largest bank holding company in the country. As of June 1958, it had 23 subsidiary banks with 322 banking offices (excluding facilities at military reservations), located in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The aggregate deposits of its subsidiary banks amounted to about $2,952 million, representing 11.13 per cent of the offices and 9.27 per cent of the deposits of all commercial banks in the 11-State area. As compared with these indications of size and extent, the second largest bank holding company in the country, as of December 31, 1957, had subsidiary banks with 158 offices and aggregate deposits of about $1,961 million, all located within a single State; and the third largest holding company, as of the same date, had subsidiary banks with 98 offices and aggregate deposits of about $1,689 million, located in 7 States.

If the proposed acquisition and merger are consummated, the number of banking offices and deposits in the Firstamerica system as of June 1958 would be increased to 387 and about $4 billion, respectively, an increase of about one-fifth in offices and over one-third in deposits. In the 11-State area, Firstamerica's percentage of commercial bank offices would be increased from 11.13 to 13.37, and its percentage of deposits from 9.27 to 12.55.
Within the State of California, Firstamerica's present subsidiary, First Western, as of June 1958, had 100 banking offices (6.6 per cent of total offices) and deposits of $906 million (4.33 per cent of total deposits). The proposed acquisition and merger of California Bank and First Western would cause Firstamerica to control 165 offices (10.89 per cent of the State total) and deposits of $1,949 million (9.31 per cent of the State total).

The largest bank in California (and in the world) is Bank of America National Trust and Savings Association which, as of December 31, 1957, had 618 offices (excluding facilities at military reservations) located in 56 of the 58 counties in the State and total deposits of over $9 billion. As of the same date, Bank of America had 41.87 per cent of banking offices (excluding facilities at military reservations) and 44.93 per cent of total deposits in the State of California. The next 3 largest banks in the State are Security-First National Bank, American Trust Company, and Crocker-Anglo National Bank, with 13.08 per cent, 7.26 per cent, and 6.55 per cent, respectively, of total deposits. California Bank, which Firstamerica proposes to acquire, ranks fifth in size, with 4.6 per cent of the State's total commercial bank deposits. First Western, Firstamerica's present subsidiary, is sixth, with 4.23 per cent of the State's total deposits. If the proposed acquisition and merger were consummated, Firstamerica's California subsidiary bank would rank
third in the State, with 8.83 per cent of total deposits. It would control 11.11 per cent of the State's commercial banking offices.

**Effect upon Adequate and Sound Banking.** - With respect to the first of the three elements of the fifth statutory factor, there is no evidence in the record that the expansion in the size and extent of Firstamerica resulting from the proposed transaction would be inconsistent with "adequate and sound banking." The Board concurs in the Hearing Examiner's conclusion (p. 13 of his Report) that the transaction "will not expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking in California."

**Effect upon the Public Interest.** - Since the Act does not explicitly condemn the absolute size or extent of a bank holding company as contrary to the public interest, the question of the effect upon the public interest of the expanded size and extent of Firstamerica as a result of the proposed transaction must, in the Board's opinion, depend upon the relationship of that transaction to "adequate and sound banking" and "preservation of competition in the field of banking", taking into consideration any offsetting favorable effects upon the public interest that might ensue in the light of the first four statutory factors. As heretofore indicated, it does not appear that the evidence would strongly support approval of the application as far as the first four factors are concerned. On the other hand, there is no indication that it would
in any way be inconsistent with those factors or with adequate and sound banking. The decisive consideration in this case, therefore, is the relation of the proposed transaction to preservation of competition in the field of banking.

**Effect upon Preservation of Competition.** - Although Firstamerica's subsidiary banks cover 11 western States and while the effect of the proposed transaction upon competition in that area will be considered later, it is clear from the record in this case that, in determining the effect of the transaction upon preservation of banking competition, the principal area to be considered is the Los Angeles metropolitan area in which all but one of California Bank's 65 offices are located.

As minimizing the extent to which competition would be eliminated, Firstamerica contends that the two banks are engaged in different and complementary types of business. It appears that historically First Western has been primarily a savings institution and that California Bank has been engaged largely in a commercial banking business. Of First Western's total deposits of individuals, partnerships, and corporations (IPC deposits), only about 37 per cent are demand deposits, whereas 69 per cent of California Bank's IPC deposits are on a demand basis. This difference in types of deposit business, while less marked, exists in the Los Angeles metropolitan area in which offices of both banks are located. In that area, in June 1958, 55 per cent of First
Western's IPC deposits were demand deposits. Where the primary market areas of the offices of the two banks overlap, as hereafter described, California Bank's total demand deposits were 70.3 per cent of its total deposits, whereas First Western's corresponding percentage was 48.6 per cent. Of the total loans of all offices of California Bank involved in the overlap areas, commercial loans were 71 per cent and real estate and installment loans were 29 per cent, whereas similar percentages for First Western's offices involved were 27.1 per cent and 72.9 per cent, respectively. These differences between kinds of loans may in some respects be more representative of the different nature of the businesses than the figures on demand and time deposits. In the Board's judgment, while the banks cannot be said to be engaged in entirely different types of business, there is a difference in emphasis which should be taken into account in appraising the effects upon competition.

Without regard to the difference in types of business, however, Firstamerica contends that no substantial competition would be eliminated by the proposed transaction. As previously indicated, all but one of California Bank's 65 offices are located in Los Angeles and Orange Counties which comprise the Los Angeles metropolitan area; the one other office is in neighboring San Bernardino County in which there is no office of First Western. While most of First Western's
100 offices are in the northern section of the State, it has 27 offices in the Los Angeles metropolitan area. Consequently, it is primarily within that area that any competition between the two banks presently exists.

Firstamerica asserts that a proper measure of the effect of the acquisition and merger in eliminating competition is the fact that it is contemplated that only \( \frac{1}{4} \) offices of the 2 banks would be closed following the merger. It is believed, however, that a better measure of competition between the 2 banks is to be derived from consideration of the extent to which the primary market areas of offices of such banks overlap and of the deposits of particular offices originating in those areas. For this purpose, one indication of the primary market area of an office may be considered to be that from which it derives about 75 per cent of its deposits. (This is one of the standards suggested in Footnote 3 to the application form prescribed by the Board under Regulation Y.)

It appears that there are \( \frac{1}{4} \) such overlapping primary market areas, involving 29 offices of California Bank and 23 offices of First Western. California Bank derives \$238 million (about 26.6 per cent) of its total IPC deposits from these "overlap" areas; while First Western derives \$86 million (about \( \frac{1}{4} \)7.6 per cent) of its IPC deposits in the Los Angeles area from the same overlap areas. These facts suggest that in dollar volume the amount of competition that would be eliminated by the proposed acquisition of California Bank would not be insignificant. That some potential competition would also be eliminated is suggested by the fact that First Western has 10 pending applications for additional branches in
the Los Angeles area and that California Bank has 5 pending applications for branches in that area. As a further factor in the competitive situation the Board has also considered the effect in the Los Angeles area of the over-all size and market power of First-america.

The significance of the foregoing adverse considerations, however, is considerably lessened by the number of banking offices, the total volume of deposits, and the existence of a large number of alternative sources of banking services in the Los Angeles metropolitan area. There are 45 banks with head offices in that area. These banks, together with banks having head offices elsewhere, operate a total of 559 offices in the area. In that area, in June 1958, California Bank had 11.5 per cent of total offices and 12.5 per cent of deposits; First Western's percentages of offices and deposits are 4.8 and 2.8, respectively. Consequently, the bank resulting from the proposed merger would have 16.3 per cent of offices and 15.3 per cent of deposits. In the same area, however, Bank of America had 37 per cent of total offices and 40.9 per cent of total deposits; and Security-First National Bank has 23.8 per cent of offices and 27.4 per cent of deposits. Moreover, in the 14 overlapping primary market areas of California Bank and First Western, California Bank's $238 million and First Western's $86 million of IPC deposits, previously mentioned, represent only 3.3 per cent and 1.2 per cent, respectively, of the total IPC deposits of all banking offices in the Los Angeles metropolitan area.
These considerations relating to the relatively small proportion of banking offices and deposits affected and the remaining relatively large number of alternative sources of banking services substantially ameliorate any adverse effects on banking competition in the area primarily concerned.

In the course of the hearing, Mr. Harry Harding, representing the Independent Bankers Association of the Twelfth Federal Reserve District and the Independent Bankers Association, Sauk Centre, Minnesota, contended that approval of the proposed transaction would be tantamount to an invitation to Firstamerica to broaden its hold on banking assets in California and would create a scramble on the part of southern and northern California banks to expand in order to meet the increased competitive advantage resulting from the proposed merger. This possibility has been given careful consideration in view of the potential ability of Firstamerica and other institutions to expand through acquisitions of banks within the State. Any such future expansion, whether through bank mergers or stock acquisitions by bank holding companies, would of course be subject to approval by the appropriate supervisory authority. To the extent that such expansion would be subject to the jurisdiction of this Board under the Bank Holding Company Act, the decision as to whether it would adversely affect competition would have to depend
upon all relevant circumstances at that time, including the extent to which the proposed expansion would give the holding company a dominant position in any area or result in a substantial reduction in alternative sources of banking services.

While The Bank of California, National Association, San Francisco, did not contend that the proposed transaction would itself adversely affect that Bank's competitive position, it objected at the hearing to the use by the resulting bank of any name containing the words "Bank" and "California" on the ground that its position in northern California would be affected by the similarity in names. To the extent that the name of the resulting bank might be similar to that of Bank of California and might therefore lead to confusion it would not, in the Board's opinion, be consistent with the public interest. However, the State Superintendent of Banks has indicated that the name of the resulting bank must be approved by him and that the name "California Bank" will not be available for its use. Recognizing the jurisdiction of the State Superintendent in this matter, the Board assumes that the name finally approved will reflect due consideration by the State Superintendent of the Bank of California's objection.

There remains for consideration the question whether the proposed transaction will in any way be inconsistent with preservation of banking competition in the 10 other western States in which Firstamerica has subsidiary banks.
In his Report (pp. 21, 22), the Hearing Examiner pointed out that 21 of the 22 subsidiary banks of Firstamerica in the 10 States other than California have correspondent balances with First Western, but that in dollar volume their deposit balances with Bank of America are greater than those with First Western, and that California Bank does only a small portion of its business in those 10 States. Nevertheless, it is probable that the proposed transaction and the subsequent merger of California Bank and First Western would increase the ability of Firstamerica to compete for the business of large customers and banks in the 10 States involved. It also seems likely that the increased size of the holding company and the greater resources at its disposal would serve indirectly to strengthen the position of its subsidiary banks in the 10 States, with consequent effect upon the future competitive position of independent banks in those States. These are admittedly adverse considerations, but the record does not support the conclusion that the proposed transaction would bring about any substantial lessening of competition in the communities in those 10 States in which Firstamerica's subsidiary banks are located. While the transaction here proposed might so increase the resources of Firstamerica as to further its ability to expand in the 11-State area (including California) through the absorption of other banks by mergers, it may be noted that in its Report to Congress of May 7, 1958, the Board recommended that mergers of subsidiary banks of bank holding companies be brought within the coverage of the Bank Holding Company Act.
In connection with the competitive effect of the proposed stock acquisition, the Board has considered whether it would substantially lessen competition or tend to create a monopoly so as to violate section 7 of the Clayton Antitrust Act. Attention has been given to the standards applied in a recent Federal court decision, in the case of United States v. Bethlehem Steel Corporation and The Youngstown Sheet and Tube Company (D.C.S.D.N.Y., decided November 20, 1958). In the Board's judgment, however, the situation involved in that case is to be distinguished from that here involved. As in that case, the plan here proposed would result in the elimination of one source of the relevant services, but the distinguishing aspects of the present case are the fact that the bank being absorbed holds a substantially smaller portion of the entire relevant market than did the company to be absorbed in the Bethlehem case and the fact that in the relevant market areas there would remain a greater number of alternative sources of supply than would have remained after the absorption proposed in the Bethlehem case. In the Board's opinion, therefore, the proposed acquisition would not be such as to lessen competition substantially or to tend to create a monopoly within the meaning of section 7 of the Clayton Act.
Conclusion. - After weighing all relevant facts contained in the record in the light of the factors stated in section 3(c) of the Act, it is the Board's judgment, for the reasons herein indicated, that the proposed transaction would be consistent with those factors, and the Board therefore concurs in the recommendation of the Hearing Examiner that the application be approved. It is so ordered.
DISSENTING STATEMENT

OF

GOVERNOR J. L. ROBERTSON
Dissenting Statement of Governor J. L. Robertson

The decision of the Board in approving the application by Firstamerica Corporation is not, in my judgment, supported by the weight of evidence in the record, nor is it compatible with the intent of Congress in enacting the Bank Holding Company Act.

Firstamerica seeks approval of the acquisition of 80 per cent or more of the outstanding voting shares of California Bank for two reasons. First, it wishes to merge its subsidiary, First Western Bank and Trust Company (a billion-dollar bank with 100 banking offices), and California Bank (a billion-dollar bank with 65 offices). Thus, Firstamerica asserts, the resulting bank will be enabled to compete more effectively with Bank of America National Trust & Savings Association, the world's largest commercial bank. Secondly, it seeks to obtain, through the acquisition and subsequent merger, better bank management for First Western - a rather startling admission to come from a billion-dollar banking institution and a three-billion-dollar holding company that controls 23 banks in 11 states.

The Applicant, of course, has not stated its purposes in this bald manner. To justify the proposed acquisition and merger, Applicant asserts that the public convenience, needs, and
welfare will be better served. These assertions will be discussed later, but for the present suffice it to say that the reasons asserted as purporting to justify approval of this application are familiar indeed, since they are asserted in connection with nearly every proposed merger and bank holding company acquisition.

Under section 3(c) of the Act, the Board is required to consider, in passing upon the present application, the following factors:

"* * *(1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking."

As to the first two statutory factors, financial history and condition, and prospects of the company and banks concerned, I concur in the conclusion reached by the Board that "The evidence relevant to the first two statutory factors is consistent with approval of the application but does not provide substantial affirmative support for such approval."

With regard to the third factor, character of management, the Applicant's assertions have been placed in proper focus in the Board's opinion. Clearly, the record does not sustain the Applicant's
Position that Firstamerica and First Western are to any measurable degree in need of additional strength or depth of management. To the extent that there is a genuine need for better management in First Western, such talent would appear to be available within the present holding company system, or through ordinary personnel recruitment and training programs.

The validity of this conclusion is fully supported by the fact of the successful operation of each of Firstamerica's 23 subsidiary banks and the resource status of Firstamerica's group, approximating $3 billion. I am quite satisfied that an abundance of top-flight managerial talent, possessing every specialty skill alleged to be presently wanting, could be obtained for a fraction of the sum that Firstamerica proposes to pay as a premium to California Bank shareholders—$15 million above the adjusted book value of their stock.

The Board has concluded that the alleged improvement with respect to management cannot be considered to be of substantial significance as a basis for approval of the application. It is my judgment that the Applicant's representations in this respect, viewed in the light of the evidence adduced, constitute absolutely no support for a favorable determination.

Passing to the fourth factor, requiring Board consideration of the convenience, needs, and welfare of the communities and area
concerned", Firstamerica has conceded, and the Board has found, that the communities and area concerned do not "need" the institution proposed under this plan. Firstamerica has stated on the record that the customary range of banking services is presently being provided to California businesses and residents.

As to alleged benefits to the "convenience" and "welfare" of the public within the area concerned, the Board's opinion, as I read it, makes a negative disposition of these allegations, compelling a conclusion similar to that reached as to "needs". For example, in reference to the claim that the merged bank would have larger lending limits and consequently greater serviceability to the public, the Board concluded that banks of the size involved in this application "already have loan limits large enough to enable them to meet, without assistance from other lenders, the credit needs of fairly large businesses", and that as to still larger businesses seeking sources of credit, their ability "to tap a large number of alternative sources of credit *** [makes them] usually less dependent on any one or a few sources".

As to credit needs exceeding the loan limit of a particular bank, the Board concluded, and I concur, that "The record in the present case does not demonstrate there have been demands for large loans that could not have been satisfactorily met by an existing bank, including California Bank and First Western,"
either alone or on a participation basis." The instances cited by Firstamerica as evidencing some form of public clamor for credit service on a nonparticipating basis constitute, in my judgment, isolated instances of customer preference, not properly characterized as legitimate instances of public need.

The majority statement has also refuted, it seems to me, Applicant's assertion of a second major benefit that will flow from approval of the proposed plan, namely, the availability of a second banking institution furnishing state-wide services resulting in more effective competition on a state-wide basis, thus serving "the best interests of all citizens of this state". As to this, the Board concluded that the record reflects (1) that adequate state-wide banking services are presently available through existing banks alone or through participation with correspondent banks, and (2) that First Western, while not having complete state-wide coverage, can presently offer, either alone or in conjunction with correspondents, state-wide services.

That First Western is presently in a position to offer state-wide services is substantiated, as the Board found, by the number and location of First Western's 100 banking offices in the state and the fact that First Western now has pending applications for 35 additional branches. The disingenuous argument that First Western is not presently a state-wide organization, and that this merger will make it so, is refuted by a glance at a map of
California showing the location of its banking offices and those of California Bank. The only improvement in First Western's present state-wide position that can result from approval of this application is that which in reality is sought by Applicant - to increase its size and concentration of banking power in California. Such a result might serve the "convenience, needs, and welfare" of Firstamerica, First Western, and California Bank, but, in my judgment, it would adversely affect the public interest and the convenience, needs, and welfare of the communities and area concerned. The latter consideration, not the former, was the subject of Congressional concern in enacting the Bank Holding Company Act. It takes more imagination than I possess to see how approval of this transaction favorably affects the welfare of the people of California or the areas in which the banks operate.

In considering this fourth factor, the Board concluded that the contribution of the proposed transaction "would not be a strong ground for approval of the application". I go further and conclude, as heretofore indicated, that the proposed acquisition and merger are wholly inconsistent with each element of that factor.

However, even if the fourth factor could be said to be "neutral", the evidence adduced relative to the fifth factor should preclude the approval of the application, because the effect of such approval would be to expand the size and extent
of Firstamerica's system beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Here we have a bank holding company which already owns a billion-dollar California bank (in addition to 22 banks elsewhere) seeking to acquire an additional billion-dollar bank in California. The banks here involved are not small retail banks serving isolated communities. They are big banks. Each of these banks is actively striving to obtain as much banking business as it can handle, whether large or small, wherever it can find it. In so doing, it is competing against all other banking institutions seeking the same business. It is obvious, therefore, that approval of this application will eliminate substantial banking competition, present and potential, and deprive the public of a major alternative source of banking facilities and credit.

In this case, we have, in addition, an actual overlapping in the Los Angeles metropolitan area – California Bank operating 64 offices there and First Western 27 – and this means that even under the narrowest possible construction of this factor of the Bank Holding Company Act competition unquestionably is being eliminated and consequently is not being preserved.

This Board has previously taken the position that "the question whether the size or extent of the proposed holding company system would be consistent with 'adequate or sound banking' or with
the 'public interest' must depend largely upon findings as to its
effect upon 'preservation of competition in the field of banking'. "1/
Applying this principle to the present proposal, I can reach only
one conclusion: to the extent that the proposed acquisition and
merger eliminates existing and potential competition and thus further
concentrates banking power, to an equal extent the adequacy and
soundness of banking will be imperiled and the public interest
jeopardized.

Such jeopardy to the public interest results where, as
in this case, a substantial dollar volume of competition between
First Western and California Bank, both present and potential,
will be eliminated in the Los Angeles area. The record discloses
that 29 offices of California Bank derive approximately $238 million
of deposits from areas in which 23 offices of First Western derive
approximately $86 million of deposits. Thus, depositors represented
by at least $324 million, this figure being conservative, would be
deprived of an alternative banking facility by approval of this
plan. Further, as the Board found, there would also be the
elimination of potential competition between these two banks in
this area, evidenced by the pendency of applications by each
bank for additional branches in the area, ten by First Western
and five by California Bank.

1/ In the Matter of the Applications of First New York Corporation
Even more significant, however, is the effect of the plan on banking in the entire Los Angeles area, with bank deposits of over $8 billion, the largest volume of any metropolitan area or section in the western half of the country. In this major center, the plan would deprive the public, borrowers as well as depositors, of one of the competing sources of banking accommodation heretofore available to it.

I cannot agree with the Board that there exist important differences in the types of business conducted by these two competitors that "should be taken into account in appraising the effects upon competition". The intimation that First Western is principally a savings institution as contrasted with the basically commercial character of California Bank is refuted by the fact that approximately 55 per cent of First Western's deposits in the Los Angeles metropolitan area are demand deposits. I cannot see any significant distinction between the types of business sought and obtained by these two banks.

In my opinion, the adverse effects of approval of the proposed plan on banking competition in the Los Angeles area are not overcome by other considerations such as the total number of banking offices in the area, the total volume of deposits, or the existence of a number of alternative sources of banking services. These considerations were felt by the Board to "substantially ameliorate" the adverse effects on banking competition in this
area. But in the absence of important offsetting benefits (practically conceded by the majority Statement), the proposed elimination of substantial present and potential competition in this area by the proposed acquisition and merger is clearly inconsistent with the public interest and welfare that the Bank Holding Company Act was designed to protect.

More difficult to measure arithmetically, but, as I view it, equally inconsistent with adequate and sound banking, the public interest and preservation of competition, is the effect to be anticipated throughout the State of California as a result of this acquisition and merger. Most of the banking business in California is handled by a few large banks. Of the more than 120 banks operating in the State at the close of 1957, six held 77 per cent of the State's total banking offices and more than 80 per cent of its deposits. In June 1958, California Bank ranked fifth in deposits and sixth in number of offices of all California banks; First Western ranked sixth and fourth, respectively. The resulting bank would rank third in both deposits and offices. The practical result will be that instead of having to compete against one multi-billion state-wide institution, the smaller banks in the State of California, about 100 in number, will now face the competition of two state-wide Goliaths. When most of the bank deposits and offices within a state are already concentrated in the hands of a small number of very large banks, any proposal that would further increase the
degree of concentration will not make the lot of the hundred or more smaller banks any easier, but may reduce their ability to grow with their communities and provide the kind of banking services expected of banking institutions. Therefore, the proposal should not be approved in the absence of a strong showing that the public interest and welfare will be served.

In spite of the banking concentration evidenced by the above figures, a sizeable number of smaller banks are presently surviving the impact of large-bank competition in California. That fact, however, does not justify encouragement of further concentration. Under the impact of such concentration, the desire on the part of smaller competing banks to survive in some form could arouse the same, or even greater, necessity for merger or bank holding company affiliation that allegedly impelled the present application. Thus, the proposed plan portends a result similar to that foreseen by the Court in the case of United States v. Bethlehem Steel Corporation and The Youngstown Sheet and Tube Company (D.C. S.D.N.Y.), decided November 20, 1958, in which a proposed merger in the steel industry was disapproved under section 7 of the Clayton Acts:

"The merger offers an incipient threat of setting into motion a chain reaction of further mergers by the other but less powerful companies in the *** industry."
The possibility of a substantial reduction in competing banking facilities available to users or potential users thereof, with a simultaneous concentration of economic power in the hands of a few large banks, is the precise condition envisioned by Congress as jeopardizing a sound banking system and being inimical to the public interest.

Furthermore, in reference to the other ten states in which Firstamerica controls banks, we must also be concerned with the effect of the expanded size or extent of this holding company on adequate and sound banking, the public interest, and the preservation of competition. In six of these states, Firstamerica's banks held, in June 1958, a large proportion of total bank deposits: Arizona, 38 per cent; Nevada, 76 per cent; New Mexico, 14 per cent; Oregon, 41 per cent; Utah, 20 per cent; Wyoming, 17 per cent. One cannot close his eyes to the fact that the present competitive potential of Firstamerica's subsidiaries in the states in which they now operate will be strengthened as a result of an increase of one billion dollars in the commercial bank deposits controlled by that holding company.

My conclusions in this regard are not altered by the testimony of Applicant's principal officer to the effect that few advantages, if any, would be realized by Firstamerica's other 22 subsidiaries for the reason that the parent holding company exerts a minimum of control over its banks and renders little or
no assistance in the way of procuring business, improving internal operations, or interfering with internal administration or management.

To attach validity to this assertion one would have to assume that a holding company itself serves no purpose other than to hold bank stock as an investment, and that no functional relationship exists between or among its subsidiaries. The history and growth of Applicant's predecessor alone makes this assumption impossible and the assertion incredible.

In view of my conclusion that this application should be denied in the light of the standards stated in the Bank Holding Company Act, it is unnecessary for me to inquire into whether the proposal would involve violation of section 7 of the Clayton Act, which forbids any corporation to acquire the stock of another "where in any line of commerce in any section of the country, the effect of such acquisition * * * may be substantially to lessen competition * * *" The following observations, however, raise substantial question as to the legality of the proposal under the Clayton Act.

As stated in the Bethlehem Steel case, cited above, a major purpose of section 7 is to ward off the anticompetitive effects of increases in the degree of economic concentration resulting from corporate mergers and acquisitions. The record in this matter evidences that consummation of Applicant's plan will produce a marked increase in banking concentration in the State of California.
The ultimate result of this concentration will be to make more difficult the maintenance of effective competition on the part of smaller California banks. Furthermore, in the Los Angeles metropolitan area the proposed acquisition and merger will not only eliminate entirely the present and potential competition between First Western and California Bank, but will also eliminate from the general competitive picture a substantial independent alternative source of bank credit and banking facilities.

Under the judicial interpretation of the Clayton Act in the Bethlehem Steel decision, one must reject the contention that the increased size of Applicant's California bank will contribute to the preservation of competition among banks in that State. Furthermore, like the Youngstown Company in the Bethlehem Steel case, both First Western Bank and California Bank are operating profitably and there is no basis for assuming they will not continue to do so; consequently there is no threat to present or future position of either that would remove the proposed merger from the scope of the antitrust laws. Finally, even if the merger offered significant benefits in such areas as strength of management and convenience of the communities concerned, as I read the Bethlehem Steel decision such benefits are irrelevant and afford no defense if the merger will substantially lessen competition and thereby violate the Clayton Act.

Returning to the Bank Holding Company Act, experience gained in more than a quarter century of supervision of banks and bank holding companies has taught me that it is preferable to
anticipate a problem and act accordingly, rather than wait until it may be too late to deal with it effectively. This principle—prophylaxis now rather than surgery later—is the foundation of both the Clayton Act and the Bank Holding Company Act. Approval of the application in the face of the record in this case will make extremely difficult the task of dealing hereafter with proposed absorptions of banks by holding companies where the adverse circumstances may be far less weighty than they are here. Specifically, the Applicant itself may be expected to push the resulting bank further along the path of expansion on which First Western has already embarked so successfully. In this regard, I again call attention to the fact that at the time this application was filed, Firstamerica's First Western had pending applications for 35 additional branches. This does not indicate a disinclination to expand—quite the contrary.

The majority statement, while it concedes that the proposed acquisition might further Firstamerica's ability to expand throughout the 11-state area through the absorption of other banks, points out that the Board has recommended that mergers of additional banks into a holding company system via acquisition of assets rather than stock should be brought within the coverage of the Bank Holding Company Act. But that is not the law today, and there is no assurance that the Board's recommendation will be adopted by Congress. Admittedly, expansion can (and does) take place through such mergers into
holding company system banks, over which the Board may have no jurisdiction. However, limitations on the Board's jurisdiction in these respects do not require the Board to close its eyes to reality in exercising its unquestioned jurisdiction to permit or prohibit acquisitions by bank holding companies through the purchase of bank stocks.

As the majority Statement points out, the Holding Company Act requires the Board to consider, not the size or extent of a bank holding company in vacuo, but rather whether the proposed expansion would be inconsistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking. Board judgments reflecting adherence to this standard would result, in my opinion, in effectuating the intent and aim of Congress evidenced in its enactment of the Act - namely, that bank holding companies should not be absolutely precluded from expanding, but rather that expansion should be permitted only where the public interest will be served thereby.

I read the Holding Company Act as empowering the Board of Governors to approve an application, in a case where the acquisition will be adverse to "the preservation of competition", only if this unfavorable factor is outweighed by benefits under one or more of the other four factors. In this case, a reading of the majority decision reveals that the Board has determined that the reasons for approval advanced by the Applicant are generally without merit, but nevertheless the Board proceeds to approve the application.
More specifically, the decision seems to determine that the first four factors are "neutral" and then finds that under the fifth factor, although competition will be reduced, the diminution is not sufficiently great to warrant disapproval. That reasoning is not in accord with my view of how Congress intended the Board of Governors to exercise the authority and responsibility vested in it by the Holding Company Act.

When Congress in 1956 vested in this Board responsibility "to control the future expansion" of bank holding companies, it certainly did not intend - did not for a moment anticipate - that within three years thereafter the largest holding company in the world (the offspring of Transamerica Corporation, whose hasty buying-up of banks in several states while the bill was pending did much to bring about the passage of this restrictive Act) would be permitted to absorb an additional 65-office one-thousand-million-dollar bank in California.

After carefully weighing all the evidence, I conclude that since, under Applicant's proposal, banking competition both present and potential will be substantially reduced without any significant offsetting contribution to the public need, convenience, or welfare, I must dissent from the Board's decision.
Mr. John F. Pierce, Chief Examiner,
Federal Reserve Bank of New York,

Dear Mr. Pierce:

In accordance with the request contained in your letter of January 12, 1959, the Board approves the designation of Frank A. Anderson as a special examiner for the Federal Reserve Bank of New York, effective January 15.

The original appointment of Mr. Anderson as an examiner for the Federal Reserve Bank of New York has been cancelled as of January 15, 1959.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.
Mr. Paul C. Stetzelberger, Vice President,
Federal Reserve Bank of Cleveland,
Cleveland 1, Ohio.

Dear Mr. Stetzelberger:

In accordance with the request contained in your letter of January 8, 1959, the Board approves the appointment of Edward W. Kilrain as an assistant examiner for the Federal Reserve Bank of Cleveland. Please advise us as to the date on which the appointment is made effective.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.
Mr. D. W. Woolley, Vice President,
Federal Reserve Bank of Kansas City,
Kansas City 6, Missouri.

Dear Mr. Woolley:

In accordance with the request contained in your letter of January 8, 1959, appropriate notations have been made in our records of the names to be deleted from the list of special assistant examiners, leaving a total of 80 employees whose designation as special assistant examiners for the Federal Reserve Bank of Kansas City has been approved by the Board.

In view of the fact that The International Trust Company, Denver, Colorado has merged with The First National Bank of Denver, our records have been changed to indicate that the 80 special assistant examiners are now authorized to participate in examinations of Commerce Trust Company, Kansas City, Missouri, only.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.