

Comptroller to institute a Section 30 case against Bank of America N. T. & S. A. We fail to see how the production of this letter could shed any light upon the issues of these proceedings or contradict in any way the testimony of Governor Eccles on any material point. The reference to the letter came at a time when Governor Eccles was describing for the record the series of controversies which the Giannini management had experienced with the various bank supervisory authorities since Governor Eccles became identified with the Federal Reserve System. It was also a part of the story demonstrating that the Board had attempted in every practical and feasible manner amicably to work out with the Gianninis a satisfactory solution of their problems with the supervisory agencies, including the problem of bank expansion. The evidence also incidentally demonstrated that the Gianninis voluntarily sought the assistance of the Board and of Governor Eccles in working out certain of these problems. Certainly none of these facts can be controverted by exploring the contents of the correspondence passing between the Board and the Treasury Department. It was the fact of the existence of the controversy, and the fact that the Board intervened, and the fact that it did so in part at the request of the Gianninis, that are the important things. Whether the agencies were right or wrong, or what reasons the Board advanced against a certain type of proceeding, is wholly beside the point. We believe that counsel already have been allowed more than reasonable latitude in cross examining Governor Eccles on the incidental phases of the case. Counsel ought not to be permitted to continue indefinitely in attempting to develop further ramifications of a subject that does not bear on the main issues.

2. The second paragraph of the "Demand" seeks production of a memorandum which Governor Eccles said he took with him to a certain meeting with Secretary Morgenthau, during which Governor Eccles outlined to the Secretary the reasons why the Board felt that it had some responsibility in respect to the differences between Bank of America N. T. & S. A. and the Comptroller. The same observations which we made respecting Paragraph (1) are applicable here. The inquiry as to whether Transamerica has violated Section 7 of the Clayton Act will not be assisted in any way by referring to this memorandum. To produce it would simply invite an irrelevant inquiry into the merits or demerits of the Board's reasons for intervening in the 1938 controversy between the Treasury and the Bank of America.

3. Paragraph (3) seeks records about the phone call which Governor Eccles testified he made to L. M. Giannini during the year 1941 in respect to the acquisition of stock of the Temple City National Bank by Respondent. This subject was also gone into at great length in the cross examination of Governor Eccles. In fact, as the Record at page 847 shows, Governor Eccles was even asked by counsel for Respondent about a certain statement which L. M. Giannini was supposed to have made on the occasion of that call. Counsel for Respondent have an obvious and available method for attempting to disestablish the fact of the call or of the conversation which Governor Eccles related took place at that time and in that manner.

4. Paragraph (4) seeks production of any resolutions, memoranda, etc. respecting the Board's authority and jurisdiction to participate in the discussions respecting the differences between the Comptroller and the Bank of America in 1938.

The same observations expressed in respect to Paragraphs (1) and (2) above are applicable here. Exploration at this time as to the Board's authority and jurisdiction for having so participated will not aid in negating the fact of the controversy or the fact of the Board's participation. Again, there is an apparent intent to litigate the merits or demerits of an irrelevant issue. Furthermore, as appears at page 533 of the Record, L. M. Giannini, in a letter to Governor Eccles under date of April 1, 1940, expressed his "sincere appreciation" for the "very constructive work" that Governors Eccles and McKee had done in "bringing about a solution" of the controversy with the Comptroller. Apparently at that time, at least, the Gianninis did not challenge the existence of the Board's authority to participate in those discussions.

5. Paragraph (5) seeks production of any memoranda, correspondence, etc. relating to the investigation by the Attorney General's Committee on Administrative Procedure which preceded the enactment of the Administrative Procedure Act. How this material could be relevant to this case is difficult to see. If it be to establish the absence of the subpoena power in the Board, then it is enough to say that the Solicitor has formally admitted on this record the absence of such power. If it be to establish an absence of asserted power under Sections 7 and 11 of the Clayton Act, it is sufficient to say, as the record in the case shows, that apparently the first official consideration of this question by the Board took place in July 1944 when the Board's then General Counsel wrote a memorandum on the subject (see Record, page 591; Board's Exhibit 43), whereas the work of the Attorney General's Committee was completed and his report was transmitted to Congress in January, 1941.

6. Paragraphs (6) and (7) of the "Demand" may be considered together. They request the production of records showing, since 1938: (a) the number of applications received by the Board for membership in the System, together with the Board's action thereon; (b) the number of applications filed with the Board by state member banks for permission to establish new branches, and the action of the Board thereon; (c) the number of applications filed with the Comptroller for permission to establish new national banks, and his action thereon; (d) the number of applications to obtain federal deposit insurance for new state non-member banks, and the action of the FDIC thereon; and (e) the number of applications to establish branches of national banks and state non-member banks filed with the Comptroller and the FDIC, respectively, and their action thereon. All of this information is sought for the United States as a whole and for each state in the 12th Federal Reserve district individually.

This data seems patently irrelevant. While it is true that the Board's case is largely predicated upon statistical data, nevertheless, such data deals with the actual situation in the five states served by the Transamerica banks. In other words, the number of banking offices alleged to be under the control of the Respondent is compared on a statistical basis with those offices not so controlled. This is to demonstrate that the number of Transamerica banking offices has been progressively increasing through the years and that its ratio of controlled offices to all other banking offices likewise has progressively increased during the period. It does not seem that this inquiry can be assisted in any way by the development of information respecting "applications" for the establishment

of new banks or for admission to the System or for FDIC coverage. Similarly, "applications" to, or authorizations by, the federal bank supervisory agencies respecting the establishment of branches can not change so much as one figure respecting the actual number of offices presently controlled by Transamerica or those not controlled by Transamerica.

For the reasons stated above, the Board's Solicitor respectfully requests that the Board deny Respondent's "Demand" Should the Board entertain any doubts as to the propriety of this action in respect of any of the paragraphs of such "Demand", then the Board's Solicitor respectfully requests that, before acceding to such "Demand" in any particular, the Board first require counsel for Respondent to state the purpose for which the named information is desired.

Respectfully submitted,

/Signed/ J. Leonard Townsend
Solicitor.

September 16, 1949.