UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

IN THE MATTER OF
TRANSAMERICA CORPORATION

REPLY TO PROPOSED FINDINGS SUBMITTED ON BEHALF OF RESPONDENT

J. LEONARD TOWNSEND,
SOLICITOR.

G. HOWLAND CHASE,
ASSISTANT SOLICITOR.

GREGORY O'KEEFE, JR.,
OF COUNSEL.

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The theories underlying the proposed findings submitted by respondent are the same that have been advanced by respondent throughout the course of the hearing. The position of counsel for the Board with respect to these theories was fully stated many times as the hearing progressed and has been reaffirmed in our requested findings and brief. In addition, the Hearing Officer, by his rulings, himself has indicated that he considers irrelevant much of the evidence introduced pursuant to respondent's theories. There is no purpose, therefore, in again discussing such issues as the "national market for credit", "substitutes for the services performed by commercial banks", "non-bank competitors",

"predatory practices" as a test of violation of the Clayton Act, the interstate character of the commercial banking business, etc. However, our failure to deal specifically with each of respondent's proposed findings should not be construed as an acceptance thereof by counsel for the Board.

We do wish to call attention to some of the numerous distortions of fact, half truths, and inaccuracies, as well as to some instances where the findings are not supported by the evidence, in order to demonstrate the generally misleading and unreliable character of the findings proposed by respondent; also to point out that the bulk of the evidence on which they are based is out of the mouths of officers, directors, or employees of one or another of the organizations in the Transamerica group, most notably L. M. Giannini.

1. In respondent's proposed findings* Nos. 3, 7, 8, 11, 19, 107, 152, 156, 157, 158, 161, 162 Transamerica asks the Hearing Officer to find that it has purchased bank stocks solely for investment, that it is a mere shareholder and an investor, that no officer or employee of Transamerica is engaged in the management or operation of any enterprise in which Transamerica owns stock, and that the Transamerica banks do not constitute a single banking group, entity or operation.

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* Respondent's proposed findings will be referred to herein as RF; Board's requested findings as BF; Exhibits to Board's requested findings as BFX.

In this connection we refer the Hearing Officer to the long history of acquisitions by Transamerica for the declared purpose of merging Transamerica banks, including Bank of America N. T. & S. A., into a regional interstate branch banking system (BF 6, 8, 9, 10, 11, 12, 13, 14, 18-23, 26, 56-61, 86, 87). Transamerica's predecessors, Stockholders Auxiliary Corporation, Bancitaly Corporation and Americommercial Corporation, whose major holdings were bank shares, were organized to do things Bank of America N. T. & S. A. was not permitted to do by law (R. 208). One of these things was the acquisition of stocks in banks (BF 9, 10, 11). Transamerica has continued to perform this function of its predecessors (BF 44, 119). As its banking empire unfolded over the five-state area Transamerica performed the same function for other banks in the group (BF 19-23). Donning the disguise of investor for the purposes of this lawsuit is an afterthought incompatible with the facts in evidence.

In so far as the banks involved in this action are concerned Transamerica has not been content with less than control of the banks in which it "invested" (BFX 1). The Hearing Officer's attention is directed to the testimony of Gordon Gray, a director of Transamerica, that "Mr. [A. P.] Giannini in the purchase of banks ordinarily [wanted] a two-thirds interest." (R. 12,470) In the case of the First National Bank in Santa Ana and the First Trust and Savings Bank of Pasadena,

Transamerica's initial campaigns failed to acquire a majority of the shares of the respective institutions. Shortly following the failure of the first attempts Transamerica renewed its efforts to acquire stock, in each case making its proposition more attractive by an increase in price to be paid for the shares and through other special inducements to key persons. Finally, Transamerica acquired majority stock control in the two banks (BX 132, 134, 136, 139; R. 1337-1381; BF 50(a), 48(c)).

As an "investor", Transamerica has taken some unusual steps to protect its "investment". For example, it has selected the directors of the banks comprising the Transamerica group and has taken options on the qualifying shares of the great majority of such directors. In many cases Transamerica made loans to the directors to purchase their qualifying shares. It has selected the principal officers of these banks. It has put into effect uniform methods of operation codified in a manual developed by Bank of America N. T. & S. A. It requires detailed reports from each of the Transamerica majority owned banks on forms supplied or approved by Transamerica. It receives reports of examinations of these banks made by the inspection department of Bank of America N. T. & S. A. and copies of reports of examinations made by various bank supervisory agencies (BF 82-92, 116, 117).

In RF 7, respondent states that no officer or employee of Transamerica is engaged in the management or operation of any enterprise in which Transamerica owns stock. This is not supported by the evidence and is completely untrue. For example, as of December 31, 1947, the most recent date concerning which there is information in the record, many officers of Transamerica were officers and/or directors of many of the Transamerica owned companies and banks.

In that year A. P. Giannini, chairman of the board of Transamerica, was Founder-Chairman of Bank of America N. T. & S. A. and a director of Occidental Life Insurance Company of California;

Sam H. Husbands, executive vice president of Transamerica, was a director and chairman of the board of Allied Building Credits and a director of General Metals Corporation;

James F. Cavagnaro, senior vice president of Transamerica, was a director and vice president of Coast Service Co., a director and vice president of Corporation of America, a director and vice president of Timeplan, Inc., a director of Allied Building Credits, a director of Occidental Life Insurance Company and a director of Pacific National Fire Insurance Company;

W. L. Andrews, vice president and treasurer of Transamerica, was a director and president of Coast Service Co., a director and president of Inter-America Corporation, a director and president of Timeplan, Inc., a director, vice

president and treasurer of Corporation of America and a director of General Metals Corporation;

A. L. E. Ponsford, secretary and assistant treasurer of Transamerica, was a director of Timeplan, Inc., secretary and treasurer of Coast Service Co. and secretary of Corporation of America;

G. M. McClerkin, vice president of Transamerica, was a vice president of Corporation of America and a director of the First National Bank of Arizona;

A. Fenton, vice president of Transamerica, was a director of Allied Building Credits;

M. P. McLellan, assistant secretary of Transamerica, was secretary and treasurer of Timeplan, Inc.

L. M. Giannini is a director and member of the executive committee of Transamerica as well as a director and president of Bank of America N. T. & S. A. Since 1918 he has been identified with the Transamerica group as an interlocking officer and/or director of various banks and companies. He has been a director of the First National Bank of Portland, a director and chairman of the board of Occidental Life Insurance Company, a director and president of Corporation of America, a director of Capital Company, a director of Inter-America Corporation and a director of Pacific National Fire Insurance Company.

E. D. Woodruff, another director of Transamerica, has been a director and president of Capital Company and a

director of Western Merchandise Mart.

(BX 3, 72, 140, 298, 346-a-346-c;
RX 255; R. 1067, 6706, 10,584;
BF 63-66, 68-70, 74, 85, 98)

In answer to the suggestion that the Transamerica banks do not constitute a single integrated banking group, the Hearing Officer is referred to BF 6-22, 56-59, 74-119. From these findings it will be seen that the intent of A. P. Giannini was to create a regional interstate branch banking system. Pursuant to this purpose he caused Transamerica to acquire banks in the five-state area. From the facts disclosed in these findings with respect to the control, operation and management of these banks, it is clear that they constitute a single integrated banking unit, the individual components of which have retained their separate corporate identities only because of their inability legally to combine into a single banking corporation.

In RF 161 and 162 respondent states that the management and operation of many of the Transamerica majority owned banks was not disturbed by Transamerica's acquisition of them. As indicated above, BF 116 and 117 contain numerous instances in which Transamerica has installed in banks acquired by it principal officers drawn from within the Transamerica group. In RF 160 respondent makes special mention of the selection of Belgrano as president of the First National Bank of Portland, by the directors of that bank. The record indicates that Belgrano was selected after his name was suggested by Wente

who then was a senior vice president of Bank of America N. T. & S. A. and a director of the First National Bank of Portland (BF 116(b)).

2. In RF 31 respondent states several reasons for Transamerica's distribution in 1937 of 58% of its Bank of America stock. The primary reason for this distribution was not to relinquish control of Bank of America but to get out from under the burdens of being classified as a holding company affiliate of member banks within the federal banking laws. This was the reason stated by Transamerica in its letter to stockholders dated May 14, 1937. The other reasons imported into evidence by respondent are simply afterthoughts for the purposes of this suit. None of them was advanced in the aforementioned letter written to stockholders at the time of distribution (RX 351; BF 95).

3. RF 38 states that Transamerica has exercised no influence on Bank of America through the proxy machinery of that bank and that Transamerica has never participated directly or indirectly in the selection of the proxy committee. The Hearing Officer is referred to our findings BF 74-76, 99-103, 105-107, wherein it is demonstrated that upon the return of the Giannini management to the Control of Transamerica in 1932, the board of directors of Transamerica by resolution authorized

A. P. Giannini, as chairman of the board of Transamerica, "to designate...the particular person or persons who shall represent" Transamerica on the board of directors of Bank of America N. T. & S. A.; that in the period 1932-1937 A. P. Giannini was enabled to select each member of the board of Bank of America N. T. & S. A.; that the board of directors of Bank of America N. T. & S. A. has selected proxies closely identified with the Gianninis, and that, through this proxy machinery, the Giannini management has been able to perpetuate itself.

4. In RF 42 respondent attempts to play down the importance of L. M. Giannini in the Transamerica organization. The Hearing Officer is referred to our findings BF 63-66, 68, 71, 74, 98 which show the unique role played by L. M. Giannini in the Transamerica organization, including Bank of America N. T. & S. A., since 1918. For example, in a publicity release by Bank of America N. T. & S. A. to all of its branch managers on November 30, 1948, it was stated: "It was Mario [L. M. Giannini] who stood shoulder to shoulder with his father in the battle of the proxies which regained <u>them</u> operating control of <u>their</u> bank and investment company."

5. Respondent asks the Hearing Officer to find in RF 51 that the relations of Bank of America N. T. & S. A. with the

Transamerica majority owned banks do not differ in any way from that bank's relations with other banks in which Transamerica has no interest whatever. The record amply demonstrates that there are a great many intimate and unusual relationships between Bank of America N. T. & S. A. and the Transamerica majority owned banks. Thus, Bank of America N. T. & S. A. sends its inspection department personnel to examine these Transamerica banks, and its operating manual has been installed in them. In numerous instances, officers of Bank of America N. T. & S. A. have been transferred to key positions in the Transamerica banks and, in addition, certain officers of Bank of America N. T. & S. A. -- for example, S. C. Beise, vice president, and Edmund Nelson, vice president -- have been active in the affairs of the banks acquired by Transamerica at or about the time of acquisition. Bank of America N. T. & S. A. has also provided various miscellaneous goods and services for the Transamerica majority owned banks, including stationery supplies, mechanical maintenance and burglar alarm inspection (BF 111, 112, 116, 117, 119, 120; BFX 40; BX 197, 198; R. 1195-1196, 1236-1239, 1264-1267, 1288-1290, 1369-1376, 1550-1551).

6. With respect to RF 53 in which respondent states that the terms and conditions of all business dealings have been negotiated on an arm's length basis since 1937, we invite the

Hearing Officer to compare this statement with the facts set forth in our findings under the heading "Intercompany Relationships between Bank of America, N. T. & S. A. and Transamerica Companies" (BF 118-131).

7. In RF 54-56 respondent states that Transamerica does not, has not attempted and has not the power to control or influence Bank of America N. T. & S. A. These statements are not supported by the evidence. For facts showing that Transamerica can and does control Bank of America N. T. & S. A. the Hearing Officer is referred to our findings BF 95-131. The history of the growth and development of the Transamerica banking group, starting with the organization of the Bank of Italy in 1904, shows that Bank of America N. T. & S. A. has always been the most important single element of the group (BF 1-131).

8. In RF 211 and 212 respondent states that the percentage rate of deposit growth (1938-1948) of Bank of America N. T. & S. A. and the Transamerica majority owned banks was much less than the percentage rate of growth of 62 other banks in California.

Such comparisons are not significant for two reasons. It is not relevant to consider statistics relating to the Bank of America N. T. & S. A. alone or the Transamerica majority owned banks alone. The only relevant figures are those concerned

with the Transamerica group as a whole, including Bank of America N. T. & S. A. Neither is it material to compare Bank of America N. T. & S. A. and the Transamerica banks with other non-group banks in California. We are not concerned here with how fast 62 banks not involved in the complaint grew from the standpoint of deposits. We recognize that all banks experienced a tremendous deposit growth over the period stated. We are concerned with other non-group banks only in so far as it is necessary to show the portion of the market presently occupied by them in relation to the Transamerica group banks.

Notwithstanding the foregoing remarks, we would nevertheless like to point out how the statistics presented are misleading and deceptive.

In the first place, stating deposit increases in terms of percentages ignores the dollar amount of increase involved. For example, an institution with $5 billion of deposits which has had a deposit increase of $1 billion may be said to have only a 20% increase. Another institution with $1 million of deposits which has had a deposit increase of $1 million may be said to have a 100% increase. Now, obviously, the two situations are incomparable. That the rate of increase declines as the base grows larger is shown from the experience of all banks in California outside the Transamerica group. Seventy such banks which had deposits of less than $1 million at the end of 1938 had an increase over the ensuing ten-year period of 474%;

72 banks which had deposits ranging from $1 million to $50 million at the end of 1938 had an increase of 297% in the same period; and 11 banks which had deposits in excess of $50 million at the end of 1938 had an increase of 163% (R. 8080-8082).

As mentioned heretofore, respondent also separates Bank of America N. T. & S. A. figures from those of other banks in the Transamerica group. Actually, the Transamerica group had deposits aggregating about $1,533,500,000 in 1938. At the end of 1948, these banks had aggregate deposits of approximately $5,937,500,000, indicating an increase in the period of $4,404,000,000. All the other banks in California in 1938 had in the aggregate deposits of $2,538,000,000. At the end of 1948 the same banks had $7,299,000,000, representing an increase of $4,761,000,000. Stated percentagewise, the Transamerica group of banks had an increase of 287% as contrasted with a rate of increase of 188% for all the other institutions in California combined.

Respondent has stated the rates of growth of 62 California banks in the period 1938-1948. It is fair to compare with these the rates of growth of 26 Transamerica majority owned banks in the same period; 3 of these banks had increases ranging between 100% and 200%; 10 banks between 200% and 300%; 4 banks between 300% and 400%; 2 banks between 400% and 500%; 1 bank between 500% and 600%; 1 bank between 600% and 700%; 4 banks between 700% and 800%; and 1 bank over 1,000%.

A sampling of the experience of 51 individual branches of Bank of America N. T. & S. A. located over a wide area indicates that in this same period 7 had increases ranging between 600% and 800%; 25 had increases between 800% and 1,000%; 7 had increases between 1,000% and 1,200%; 5 had increases between 1,200% and 1,400%; 4 had increases between 1,500% and 1,800%; 2 had increases exceeding 3,000%, and 1 had an increase exceeding 4,000% (R. 8066-8078; RX 121).

In RF 222 respondent states that in the period 1938-1948 the rate of growth of deposit liabilities of the First National Bank of Nevada was about one-third of the rate of growth of the aggregate deposit liabilities of all other banks in Nevada. The comparative rate of growth for Nevada is as immaterial as that offered with respect to California dealt with above. But again we would like to point out that the comparison stated is not only misleading and deceptive but unsupported by the sources cited.

In the case of the First National Bank of Nevada deposits in 1938 aggregated $28,689,000 and at the end of 1948 aggregated $114,062,000, an increase of $85,373,000 or 297%. There were 3 other banks in Nevada at the end of 1938 and they had deposits aggregating $4,160,000; at the end of 1948 these same banks had deposits aggregating $13,945,000, an increase of $9,785,000 or 235% (RX 125, 136 rev.).

9. In RF 85, 94, and 104 respondent purports to show the percentage of deposit growth of Bank of America N. T. & S. A. attributable to acquired deposits. We do not regard this comparison significant for any purpose. Again we would like to point to the irrelevancy of Bank of America N. T. & S. A. figures alone. Whatever proportion of deposits were acquired, the only relevant inquiry is what portion of the market with respect to deposits is occupied at the present time by the Transamerica group in the area involved as a result of the acquisition of stock in banks.

However, even assuming the relevance of the statistics offered in these proposed findings, they demonstrate the deceptive and unreliable quality of the factual material that is being urged upon the Hearing Officer by respondent. For example, the 1928 deposit figure used as a base in RF 85 is not limited to deposits held by the Bank of America N. T. & S. A. as a legal entity but also includes deposits of Bank of America of California and other banks which were then majority owned by Transamerica and its subsidiaries and which subsequently became part of Bank of America N. T. & S. A. prior to July 31, 1937. This treatment not only presents an inflated figure of deposits for 1928 but also understates the deposits actually acquired thereafter by Bank of America N. T. & S. A., the legal entity. The figures are contrived to present the lowest possible percentage consistent with colorable recognition of the underlying facts. Incidentally, the device of including the

Bank of California figures in the base is typical when the end sought is a percentage favorable to respondent. Note in section 11, page 18, infra, how the opposite is done when the end sought is a high percentage of deposits assumed by a non-group bank.

Moreover, to compare the amount of deposits acquired at some time in the past with the amount of present deposits is ridiculous on its face. Deposits in the five-state area have quadrupled over the period 1938 to 1948 due to war expansion, migration of peoples and facilities and post-war inflation. Hence, to relate uninflated figures of the period of acquisition before 1938 to the inflated figures of the present day is wholly invalid.

Of course, the real significance of acquired deposits is found in the office which the deposits represented. The office acquired with the deposits gave the Transamerica group a place from which to grow; it also gave them the business potential of the old organization at an established banking office in a line of business where the opening of a new outlet in any area is subject to permission by supervisory agencies.

The Hearing Officer will recall that in the cross examination of respondent's witness, D. S. Langsdorf, who presented the testimony on which the aforementioned findings are based, the witness agreed that there were many other ways of measuring the impact of purchased growth than the method relied on in respondent's proposed findings. Among the other methods suggested

were: (1) In recognition of the fact that the deposits of all banks in the area have had an average increase of about 400% in the period 1938 to 1948, to weight the total of deposits acquired to give effect to the likelihood that the banks acquired by Transamerica would have had deposit growth in the period, in common with all banks, if they had retained their unit-bank status; (2) to identify the now existing branches of Bank of America N. T. & S. A. which resulted from the take-over of banks and to compare, as of the present, the deposits of those branches with the total deposits of Bank of America N. T. & S. A.; (3) to compute, as of the beginning date of the period under consideration, the total of deposits of all of the banks subsequently taken over, and compare this total with the deposits of the acquiring institution as at the same date; (4) to compare the total of deposits acquired in a given year with the total deposits of the acquiring bank as at the end of that same year; (5) to compare, year by year, the deposits acquired against the year-by-year deposit growth of the acquiring bank; and (6) to compare the total of deposits acquired by the Bank of America N. T. & S. A. in the period 1928 to 1937 to the total deposits of that bank as of July 31, 1937, which was the date on which its status as a bank majority owned by Transamerica was changed, and which was a date prior to the incidence of the accelerated growth of deposits experienced by all banks as a result of the war effort.

We submit that any of these other methods is a more appropriate measure if the matter is worthy of consideration at all (RX 84; R. 7719-7876, 7754-7778, 7803-7883).

10. Substantially the same criticism applies to the acquisition of deposits in the other states (RF 132, 140, 147) with the additional factor that respondent purports to measure the effect of acquired deposits on banks which themselves were acquired. The latter fact, of course, is not reflected in the figures presented (BX 8; RX 83; R. 7650-7669).

11. In RF 238 respondent requests the Hearing Officer to find that in the period 1928 to 1948 the Security-First National Bank, Los Angeles, assumed deposit liabilities amounting to 16.30% of the total deposit liabilities of the institution as of December 31, 1948. We would like to point out the device by which this unusually large percentage is arrived at. The Hearing Officer will recall that respondent's witness, D. S. Langsdorf, stated that for the purposes of RX 84, on which this proposed finding is based, he treated the consolidation of the Security Trust and Savings Bank and the Los Angeles First National Trust and Savings Bank, which took place in March 1929, as if the Los Angeles First National had acquired the Security Trust and Savings. Consequently, he included as acquired deposits all of the deposits that were in the Security Trust and

Savings Bank at the time of the consolidation. These deposits represented over 99% of the total acquired deposits listed in RF 238 for Security-First National Bank.

As pointed out in section 9, page 15, this treatment is just the opposite of what was done in the case of Bank of America N. T. & S. A. and Bank of California because respondent desired here to develop a very high percentage of assumed deposits for Security-First National. (BX 308-a; RX 84; R. 7776-7785)

A similar distortion with respect to banking offices appears in RF 236 where respondent purports to show the number of banking offices established and discontinued by three California branch banks outside the Transamerica group in the period 1928 to 1948. The proposed finding states that 70 offices were established by the Security-First National Bank. That total includes 55 offices which were operated by the Security Trust and Savings Bank at the time that institution was consolidated with the Los Angeles First National (BX 308-a; RX 85; R. 7950-7955).

12. In RF 258 respondent requests the Hearing Officer to find that the growth of percentages of all banking offices, deposits and loans held by any bank or group of banks is not significant in indicating a tendency to create a monopoly. The testimony of Dr. E. A. Goldenweiser cited by respondent does not support any such finding. What Dr. Goldenweiser stated was that the growth of percentages with respect to offices, or with respect to loans, etc., each taken by itself, was not

significant. In presenting this proposed finding respondent has distorted the testimony of the witness by omitting the qualification "in and of itself" and applying what was said with respect to offices, loans and deposits, separately, to offices, loans and deposits, collectively. In Dr. Goldenweiser's own words:

> "But, you see the emphasis is on in and of itself. It has to be a part of a general set of figures or a general set of presentations and has to be judged in the total background. And I think it is awfully important to recognize all the time, its been my contention always that in economic matters decisions have to be based on a whole complex of facts, and that each item which in itself may appear to be of very limited significance may assume very much greater significance if it is supported by others or presents a part of a general picture, so that when I say that they are not significant, I have used the word partly in the sense, I have used the words in the sense that not in themselves indicative. Whether they are significant or not is a part of a general picture is an entirely different question, and it is very difficult to take each one by itself and determine its specific weight." (R. 12,352-12,353)

(R. 12,327-12,332, 12,350-12,353)

13. RF 257 states that comparisons of the number of banking offices operated by different banking institutions do not measure market occupancy or control because banking offices differ in their characteristics. We agree that the incidental characteristics of banking offices differ. However, whatever these characteristics, they are appropriate to meet the needs of the public in the area in which the office is located (RX 255, Report for 1950, p. 10, Report for 1949, p. 13; R. 10,506-10,511, 10,567-10,569, 10,681-10,683). Moreover,

operating as they do over a wide geographic area, in the largest cities as well as in the very small communities, in agricultural as well as commercial and industrial regions, the banking offices of the Transamerica group represent a cross section of characteristics which make them susceptible to comparison with the other banking offices of the area (BX 257).

Banking offices are the places at which the banking business is conducted and the outlets from which banking services are supplied to the public. They are toeholds for future expansion.

It is therefore appropriate to use banking offices as a measure of market occupancy. This measure, considered with measures of other aspects of the commercial banking business such as loans and deposits -- even number of accounts and number of employees -- does give an indication of the relative saturation of the market by the Transamerica group.

Indeed, respondent itself uses banking offices as a measure of market occupancy in RF 77, 79, 80, 215, 218.

14. RF 173, 174, and 182 are concerned with the nature of commercial banking.

In RF 173 respondent states that the term "commercial banking" is without legal significance. In support it offers evidence of statutes, and regulations, and resolutions of bankers' conventions which are said to give no special connotation to

the term commercial bank. Of course, the regulatory pronouncements referred to are concerned with the protection of depositors, rather than the preservation of the individual enterprise system. From the standpoint of protecting deposits there may be no need to distinguish between commercial banks and other banks which accept deposits. It is another matter to say that because some state statutes do not make this distinction that the Board is foreclosed from singling out an area of the credit market that is being preempted by a banking group acting in contravention of the federal antitrust laws.

RF 174 is an artfully worded statement which suggests something different from what it says. For a full exposition of the nature of the commercial banking business and the unique aspects of it we respectfully refer the Hearing Officer to our requested findings (BF 132-141).

In RF 182 respondent recites certain percentages of total credit extended by commercial banks which purport to show that in certain categories, specifically, the short term credit field, the role of the commercial bank is relatively unimportant. However, it will be recalled that Dr. Jacoby, the witness on whose testimony respondent relies to support this finding, acknowledged that the gross base on which his calculations were predicated included trade credit which he estimated constituted 60 or 65% of the total gross figure. If consideration is limited to short term business credit extended by institutional

lenders, Dr. Jacoby agreed that the percentage of such credit extended by commercial banks would be a major fraction, somewhere in the area between 50 and 80% (R. 9068-9073).

15. RF 86 contradicts the 1930 testimony of James A. Bacigalupi, former president of Bank of America N. T. & S. A., before the House Committee on Banking and Currency. The proposed finding says that the great majority of Bank of America's acquisitions were made necessary by the California de novo rule which would not permit the establishment of branches outside of the city where a bank maintained its head office except by the purchase of assets of, or merger with, an existing bank.

The great majority of the bank's acquisitions had been accomplished prior to the year in which Bacigalupi testified (BFX 6). Concerning these acquisitions, he stated as follows:

> "With the single exception of Sacramento then, the uniform policy of the Bank of Italy has been to enter outside communities only through the acquisition of an established local bank; to convert it into a branch office; ...
>
> "When San Jose was entered, it was reasoned that the prudent way to enter an outside community was to purchase an established bank, because otherwise it could only be hoped, at the outset, to attract a few disgruntled depositors, and before sufficient good business could be worked into, principally that which theretofore could find no accommodation there on account of the smaller capital and limited resources of the local banks, it would be years. Then again, the bank would inevitably be confronted with the necessity of building a brand new local staff for the branch office -- not the easiest thing in modern banking.
>
> "Subsequent experience of the Bank of Italy has amply demonstrated the soundness of this reasoning. By purchasing

a good bank...it acquired a staff, an advisory board, and local stockholders who were interested in the locality and familiar with local people, values, and conditions." (R. 199-200)

Not only was it the stated policy of the Giannini interests to acquire banks in preference to establishing de novos but the numerous acquisitions after the California de novo rule was lifted indicate that the rule's demise did not change at all what had been their previous practice. They continued to acquire banks as before. Thus, for example, in the years 1922-1926, inclusive, while the rule was in effect, the group acquired approximately 115 banks and branches in California. On the other hand, in the period 1927-1931, inclusive, after the California de novo rule had been lifted, the group acquired approximately 320 banks and branches in California. Furthermore, even during the period the California de novo rule and the McFadden Act were in effect, the Transamerica group established 116 de novo branches. With one exception, all of the acquisitions and de novos referred to above are now part of Bank of America N. T. & S. A.

Whatever may have been the relative status of the de novo rule from time to time, it seems to us, as we hope it will seem to the Hearing Officer, that Transamerica counsel have taken a rule, designed to protect the independent banks, virtually as a command to go out and buy up banks and branches. After all, the de novo rule was promulgated to preserve independent banks. It was not designed to provide an excuse for bank acquisitions by those who would destroy them. (BFX 6, 7, 10)

16. We contend that RF 232, 233, 234 are irrelevant and immaterial in any event. As to whether the facts support the conclusions indicated we commend to the attention of the Hearing Officer our findings BF 50(a)(b) which outline the methods employed by Transamerica in acquiring the stock of the First Trust and Savings Bank of Pasadena and the Citizens National Trust and Savings Bank of Los Angeles. Moreover, one of the citations used to support RF 232 is a reference to the First National Bank in Santa Ana, a Transamerica majority owned bank, which Bank of America N. T. & S. A. desires to convert into a branch of its system. We refer the Hearing Officer to the circumstances surrounding the acquisition of this bank by Transamerica in 1943 which show the unusual lengths to which Transamerica went in attempting to acquire it (BX 132, 134, 136, 139; R. 1337-1381).

17. Finally, we address ourselves to the matter of the so-called "rejected opportunities" to buy banks which has been so glibly and gratuitously insinuated into this record by L. M. Giannini.

On the basis of that testimony respondent asks the Hearing Officer in RF 22, 95 and 96 to find that numerous opportunities to buy banks had been rejected by Transamerica and Bank of America and in that connection lists 17 banks which purportedly fall in that category.

To begin with, we do not think the Hearing Officer should believe this witness. His openly hostile, evasive testimony, his continual harassment of the orderly course of the trial, his repeated and obviously malicious attacks on the motives and methods of those responsible, in the performance of their official duties, for the initiation and conduct of this proceeding, coupled with the fact of his personal interest in the outcome of the litigation, raise grave doubts as to his credibility. This conclusion is strengthened when we compare his phenomenal knowledge of the minutest details on direct examination with his studied lack of recollection on cross examination concerning important matters in the affairs of corporations in which he and his father, as principal officers and/or directors, played such dominant roles. We suggest that the Hearing Officer examine the entire testimony of this witness from the standpoint of his credibility as it is our purpose here to deal with it only in so far as it related to the "rejected opportunities" to buy certain of the banks named.

Giannini stated that 17 named banks were at one time or another offered for sale and rejected because they did not fit into a program for a state-wide branch banking system (R. 10,536, 10,537).

At the outset, we should point out that the source of his purported knowledge of a great many of these so-called opportunities is, by his own statement, founded on what other people told him. To develop the true facts of the situations, counsel

for the Board produced with respect to certain of these banks persons most prominently identified with their management and control. In many cases these witnesses testified that there never had been any offer of the institution made. Indeed, far from rejecting opportunities to buy these banks, it appeared in some instances that Transamerica and Bank of America N. T. & S. A. were actively engaged in soliciting opportunities to buy them. In other cases the testimony was to the effect that if there had been any negotiation it was initiated by the Gianninis and broke down on the question of price to be paid (R. 10,781, 10,791, 10,800, 10,834-10,835, 10,837-10,838, 10,843, 12,094-12,096, 12,102, 12,108-12,110, 12,137-12,139, 12,230, 12,380-12,384, 12,487-12,493, 12,506-12,510, 12,517-12,523, 12,747, 12,772-12,773, 12,777-12,781).

Even if we assume there were rejected opportunities, it does not demonstrate that the Transamerica group would not buy those or other banks today. Nor does it establish that banks will be turned down in the future. In this connection, the Hearing Officer will recall the testimony of numerous California and Oregon bankers that in recent years Transamerica or Bank of America N. T. & S. A. have been continuously attempting to acquire their banks. Indeed, the record shows they have even made repeated attempts to acquire banks which Giannini claimed they had rejected (BF 52-55).

CONCLUSION

As indicated at the outset we have not attempted to deal specifically with each and every finding proposed by respondent.

However, we submit that our foregoing comments are sufficiently comprehensive to demonstrate that the proposed findings submitted on behalf of respondent are in general irrelevant, immaterial or unreliable.

Respectfully submitted,

J. LEONARD TOWNSEND,
Solicitor,
Board of Governors of the
Federal Reserve System,
Washington, D. C.

G. HOWLAND CHASE,
Assistant Solicitor.

GREGORY O'KEEFE, JR.,
Of Counsel.