

December 11, 1940

PERSONAL AND CONFIDENTIAL

Mr. Ira Clerk
Federal Reserve Bank of San Francisco
San Francisco, California

Dear Ira:

I was very glad indeed to receive the snapshot of yourself astride a riding horse evidently out for a morning's canter on one of the graveled roads in the vicinity of Stanford. I certainly agree with you that such activity is much better than riding herd on banks although unfortunately we have too much of the latter and too little of the former.

I see by the press and by the clippings you have sent on here that the S. E. C. and our friends at 1 Powell Street are again going round and round. Each side will indulge in a lot of extraneous charges and counter-charges and whether the net result of the contest will be of any benefit to the public is extremely doubtful to my mind. I still think that if the Gianninis would make a sincere effort to compose the issues the whole thing could be settled in a very short time. One thing that interferes with such a solution, I suppose, is the unfortunate development in connection with the report of the Committee on the B. of A. premises. Under ordinary conditions the question whether the write-down should be \$1.5 million or \$5.5 million would be purely a question of book-keeping since more than sufficient reserves have already been set aside for the purpose. Against the background of S. E. C. charges against Transamerica, however, a \$5.5 million write-down would fairly substantiate some of the charges where a \$1.5 million write-down would not.

Since I am writing this letter on a purely personal basis I am going to ask you to enlighten me as to the meaning of the language in the agreement providing for the Committee mentioned above. As I read paragraph 5, the Committee is to consider two things in arriving at the estimated cost amount of each premise. These two things are included in the first sentence of the second paragraph under 5 and are (1) the fair value of each premise at the time of acquisition and (2) the special conditions which had to be met in fixing the price paid. The next sentence says, "From these considerations, the Committee shall determine etc." This language, unless greatly modified by understandings extraneous to the agreement

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itself, leaves the Committee a considerable discretion in fixing the value of each premise. No doubt in many cases a fair value of the premise at the time of acquisition would call for a drastic write-down, whereas a consideration alone of the special conditions which had to be met would justify the present carrying value. Suppose a premise is on the books at \$1 million. The Committee might find that the fair value at the time of acquisition was \$500,000. It might also find that in order to acquire the bank it was necessary to pay \$500,00 more than the asset value. Conceivably the language of the agreement would permit the Committee to fix a value anywhere from \$500,000 to \$800,000 but it would not necessarily have to be \$800,000. In discussing this matter with Governor McKee, however, he would take the position in the example cited that \$800,000 would be the required figure. He appears very positive that the "special conditions" is controlling. If, on the other hand, there is the discretion which it seems to me the language of the agreement imparts to the Committee, there is no basis for a charge that the Committee is not living up to the agreement or that the final figure must be arrived at in Washington since the agreement clearly says that a majority of the Committee shall be binding. The only ground on which the Committee might be charged with departing from the meaning of the agreement would be one that it had entirely ignored the "special conditions" and had based its findings solely on the fair value at time of acquisition. In the file of correspondence between yourself and Messrs. McKee and Dreibelbis I do not find that this matter of discretion is recognized. I note from your wire of October 9 that in your opinion the Committee have not developed sufficient information to establish the current values, etc. This of course would subject the Committee to a charge of violating its instructions but on an entirely different ground from the matter of how it shall treat information once it has been developed. I am mentioning all this to you as I am fearful that the position taken by yourself and Mr. West, with which I am in full sympathy, cannot be defended solely on the basis of the language in the agreement, whereas I fear that the position of the majority of the Committee can be so defended, providing, of course, they can show that they had developed the necessary information before exercising their discretion in establishing the estimated values.

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As it is near the Yule season I wish to take this opportunity to wish you and Mrs. Clerk a very merry Christmas and a happy new year. And may I add that I hope that 1941 brings you more and better horseback rides on that handsome mount.

Yours sincerely,

Lawrence Clayton

LC/frl