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MEMORANDUM

From: Max Lowenthal
To: Senator Norris

The receivership of the St. Paul Railroad continued from 1925 to 1928. The receivership was begun on Wednesday, March 18, 1925. On the preceding Sunday, the bankers' lawyers were in conference in their New York office with Ralph M. Shaw, Chicago lawyer of the firm Winston, Strawn & Shaw. Shaw went to Judge Wilkerson to ask him if he would be willing to take on the receivership, and to suggest to Judge Wilkerson who the receivers should be. Judge Wilkerson appointed those receivers.

The bankers were Kuhn, Loeb & Company and National City Company (affiliate of the National City Bank) of New York. Their attorneys were Cravath, DeGersdorff, Swaine & Wood. The judge--knowing that Shaw had been brought into the case by the bankers, appointed him as attorney for the receivers.

The Kuhn, Loeb plan for reorganization of the St. Paul was put through in 1928, at a total expense for bankers, lawyers' fees, etc., of about seven million dollars. The plan was so poor that within seven years the road wax back in bankruptcy, and the bankruptcy receivership (begun in 1935) was also taken charge of by Judge Wilkerson.

The Kuhn, Loeb reorganization was attacked by various independent groups. The bondholders' defense committee opposing the plan repeatedly asked Judge Wilkerson to conduct an open, public hearing on the Kuhn, Loeb plan. Judge Wilkerson repeatedly refused to do so until the bankers were ready to have such hearing, in December, 1926. The ground for rejecting the request of the independents was that the plan could not properly be brought before the court until after the property had been sold to the bankers' representatives at the end of 1926.

However, In October, 1926, the bankers' attorney, Mr. Cravath, wrote to the receivers' attorney, Mr. Shaw, considerable data about the Kuhn, Loeb reorganization plan, defending it against attacks and showing how wonderful a plan it was. Cravath asked Shaw to bring those facts to Judge Wilkerson's attention. Shaw wired the next day he had attended to the matter. Evidence shows that those facts were not brought out at any public hearings at that time. Obviously, the bankers had pleaded their case in private and secretly, before Judge Wilkerson. Despite the fact the judge was willing to do so in October, 1925, for over 13 months he refused to let opponents of the plan argue the matter before him, even in public.

In addition, letter after letter from Shaw to Cravath and other members of his law firm state in effect that Shaw

stood ready at all times to carry out the wishes of the bankers and their lawyers in the receivership. Letters also show that the bankers attorneys fully availed themselves of this secret pipeline to the receivership estate and to Judge Wilkerson.

The record before the Senate sub-committee also shows that independent committes who applied to Wilkerson for permission to intervene as parties in the receivership proceedings were turned down by him. All application by independents for intervention were opposed by Guaranty Trust Company, of New York, as trustee under the principal bond mortgage. Guaranty Trust Company has selected as its Chicago lawyer, after conference with the bankers' attorneys, a Mr. Tenney, who was a former law associate of Judge Wilkerson. Guaranty Trust Company claimed that as trustee under the bond issue, it had the sole right to speak for all the bondholders in the court proceedings, and that no bondholders had a right to intervene to speak for themselves. The independent committee said the Guaranty Trust's conduct in the receivership on a number of concrete issues played into the hands of the bankers and their reorganization plan, and hurt the position of the bankers' opponents.

Guaranty Trust Company countered this argument by saying that it was impartial and neutral and was not taking sides on the reorganization plan. During the entire period that Guaranty Trust was so arguing, it was acting as depository for bonds under the bankers' plan, and received for this service from the bankers approximately $139,000. Guaranty Trust Company also had secretly made a deal with Kuhn, Loeb so as to get, through the patronage power that Kuhn, Loeb had, one of the new trusteeships to be created under the Kuhn, Loeb reorganization plan. This gave Guaranty a fee of $60,000, as soon as the Kuhn, Loeb plan was put through. In addition, Guaranty got a fee from Judge Wilkerson of $125,000, as trustee under the old mortgage. All told, Guaranty got fees of a third of a million dollars. Guaranty's lawyers in New York (Davis, Polk, Wardwell, Gardiner & Reed) got $250,000, and their Chicago attorney (Mr. Tenney) got $75,000.

At the conclusion of the hearings, December eighth, Senator Truman suggested this was a matter for consideration by the House Judiciary Committee, for impeachment proceedings.

In 1926 the Interstate Commerce Commission conducted an investigation of the St. Paul Receivership. The one man who knew the facts in the period from the Sunday conference at the office of the banker's lawyers to the time of the actual formal appointment of receivers was Ralph Shaw. He was going to be put on the witness stand in the Interstate Commerce Commission hearings. He was then attorney for the receivers. He wrote to the banker's lawyers to ask them how he should testify. They told him not to volunteer any information, what facts should be soft-pedaled, what testimony he should guard himself against giving.

When the St. Paul went into bankruptcy in 1935, its management opposed the effort of Congress to make mandatory the appointing of trustees of a bankrupt road and to eliminate the previous provision of Section 77 of the Bankruptcy Act leaving this within the discretion of the Court. The Court (Judge Wilkerson) had already exercised discretion under the existing law by letting the old management control the property while it was in bankruptcy. In August, 1935, Congress passed the amendment and it became necessary for Judge Wilkerson to appoint trustees. He appointed Henry A. Scandrett, president of the road, as one of the trustees.

Before the appointment went through, the Independent Bondholders asked for the production of Scandrett's files showing all correspondence bearing on his selection as president in 1928. The Independent Bondholders claimed that he was too closely affiliated with the bankers and was chosen by them. Scandrett said under oath that he had no files and no correspondence leading up to his selection as president. The banker's attorney, who was in Court and acting as attorney for the St. Paul, told the Court that Scandrett had been selected as president on the recommendation of Mark Potter, one of the men who acted as receiver in 1925-1928. In fact, however, the attorneys for the bankers had been very active in getting Scandrett selected as president in 1927 and 1928 and Scandrett had in his files over thirty letters and telegrams between himself and the bankers or their lawyers on the subject. Not only were the Court and the Commission misled on this point, but the Senate Interstate Commerce Committee was similarly misinformed by Scandrett for eight months after the Committee first sought to get his file on the subject. Scandrett was made and still is one of the trustees in bankruptcy of the road.

The memorandum, of which a copy is hereto attached, has been submitted by me to Hon. Hatton W. Sumners, chairman of the Judiciary Committee of the House of Representatives. The memorandum contains a summary of evidence in the record of the hearings of the Wheeler Subcommittee of the Senate Committee on Interstate Commerce. The evidence relates to the St. Paul railroad, whose affairs were included in the subjects for investigation and hearing by the Subcommittee.

Certain documentary and other evidence relating to the receivership of the road beginning in 1925 and to its bankruptcy beginning in 1935 incidentally touched upon the conduct of Judge James H. Wilkerson.

In the unavoidable absence of Senator Wheeler, I presided at those hearings and heard the testimony. I deem it my duty to call the facts to the attention of the Government branch which has initial jurisdiction over the subject of the impropriety of the activities of any Federal judge. That branch is the House of Representatives, which in the first instance acts on such matters through its Judiciary Committee. For this reason I have submitted the memorandum to the chairman of that Committee, whose experience is wide and of long standing, and who will best be able to determine whether or not the facts call for further inquiry or action, and if so, of what nature. Such questions fall within his province, and I am of course restricting myself to the discharge of my own duty to bring before him a summary of the data elicited at the hearings at which I presided, incidentally bearing on the conduct of the Judge presiding in those proceedings.