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INVESTIGATION OF RAILROADS,
HOLDING COMPANIES
AND AFFILIATED COMPANIES

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON INTERSTATE COMMERCE
UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 71

(74th Congress)

AUTHORIZING AN INVESTIGATION OF INTERSTATE RAIL-
ROADS AND AFFILIATES WITH RESPECT TO
FINANCING, REORGANIZATIONS,
MERGERS, AND CERTAIN
OTHER MATTERS

PART 16

DECEMBER 6, 7, 8, AND 9, 1937

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. R.

AND ITS PREDECESSOR

SECTION ONE

Printed for the use of the Committee on Interstate Commerce



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1946. Letter, dated August 7, 1927, from F. H. Wood, to Robert T. Swaine, both of counsel, to reorganization managers advocating selection of H. A. Scandrett as president of reorganized St. Paul.	6825	7036
1947. Telegram, dated August 12, 1927, from Robert T. Swaine to F. H. Wood, both of counsel to reorganization managers, advising him of favorable consideration being given by bankers to selection of H. A. Scandrett as president of reorganized St. Paul.	6825	7037
1948. Letter, dated March 2, 1925, from F. W. Charske, vice-president, Union Pacific System, to J. J. Hanauer, of Kuhn, Loeb & Co., enclosing list of securities of Chicago, Milwaukee & St. Paul Railway Co. owned by Union Pacific System companies.	6826	7037
1949. List, undated, of junior securities held by members of Protective Committee for Bondholders of Chicago, Milwaukee & St. Paul Railway Co.	6827	7038
1950. List, dated January 23, 1925, of large holdings of bonds of Chicago, Milwaukee & St. Paul Railway Co.	6829	7039

Schedule of Exhibits—Continued

Number and summary of exhibits	Introduced at page	Appears in appendix, page
1951. Letter, dated December 22, 1927, from Mark W. Potter, receiver, Chicago, Milwaukee & St. Paul Railway Co., to H. A. Scandrett, vice-president, Union Pacific Railroad Co., concerning influence of bankers on Mr. Scandrett's selection as president of reorganized St. Paul.	6830	7040
1952. Letter, dated December 22, 1927, from Mark W. Potter, receiver, Chicago, Milwaukee & St. Paul Railway Co., to J. J. Hanauer, of Kuhn, Loeb & Co., advocating selection of H. A. Scandrett as president of reorganized St. Paul.	6830	7040
1953. Letter, dated December 27, 1927, from F. H. Wood, of counsel to reorganization managers, to H. A. Scandrett, vice-president, Union Pacific Railroad Co., concerning Mr. Scandrett's selection as president of reorganized St. Paul.	6831	7042
1954. Letter, dated January 5, 1928, from H. A. Scandrett, vice-president, Union Pacific Railroad Co., to Mark W. Potter, receiver, Chicago, Milwaukee & St. Paul Railway Co., expressing appreciation for support in connection with Mr. Scandrett's selection as president of reorganized St. Paul.	6831	7042
1955. Letter, dated December 23, 1927, from J. J. Hanauer, of Kuhn, Loeb & Co., to Mark W. Potter, receiver, Chicago, Milwaukee & St. Paul Railway Co., acknowledging receipt of letters recommending H. A. Scandrett for the presidency.	6831	7043
1956. Letter, dated January 2, 1928, from H. A. Scandrett, vice-president, Union Pacific Railroad Co., to J. J. Hanauer, of Kuhn, Loeb & Co., expressing appreciation for selection as president of reorganized St. Paul.	6832	7043
1957. Letter, dated January 2, 1928, from H. A. Scandrett, vice-president, Union Pacific Railroad Co., to C. A. de Gersdorff, of counsel to reorganization managers, thanking him for support in connection with Mr. Scandrett's selection as president of the reorganized St. Paul.	6833	7043
1958. Letter, dated January 2, 1928, from H. A. Scandrett, vice-president, Union Pacific Railroad Co., to Paul D. Cravath, of counsel to reorganization managers—same subject as "Exhibit No. 1957"	6834	7044
1959. Letter, dated January 4, 1928, from H. A. Scandrett, vice-president, Union Pacific Railroad Co., to Mr. & Mrs. Fred H. Wood, c/o Cravath, Henderson & de Gersdorff—same subject as "Exhibit No. 1957"	6835	7044
1960 to 1989. Various letters and telegrams, all dated during period December 9, 1927 to January 11, 1928, bearing on selection of H. A. Scandrett to presidency of reorganized St. Paul.	6836	7053
1990 to 2003. Various letters during period from April 20, 1936 to August 19, 1936, between H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., and I. J. Canton, assistant counsel, United States Senate Committee on Interstate Commerce, relating to efforts of Committee's staff to obtain material from Mr. Scandrett's files bearing on his selection as president.		7053 to 7059
2004. Letter, dated October 4, 1929, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Pierpont V. Davis, vice-president, The National City Co.—J. J. Hanauer, of Kuhn, Loeb & Co., and Mr. Davis referred to as ex-officio members of St. Paul board of directors.	6841	7059
	6844	7000

Schedule of Exhibits—Continued

Number and summary of exhibits	Introduced at page	Appears in appendix, page
2005. Report, dated September 7, 1935, from B. J. Challand, member of staff of United States Senate Committee on Interstate Commerce, to Max Lowenthal, Chief Counsel, containing extracts from minutes of meetings of the incorporators and first board of directors of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.	6845	7060
2006. Memoranda, undated, by J. J. Hanauer, of Kuhn, Loeb & Co., and C. E. Mitchell, president, National City Bank, concerning matters to be covered by Coverdale & Colpitts report on Chicago, Milwaukee & St. Paul Railway Company.	6857	7066
2007. Excerpt from I. C. C. Docket No. 17021, testimony of W. W. Colpitts, pertaining to relation of Coverdale & Colpitts to Kuhn, Loeb and National City Co.	6858	7068
2008. Excerpt from I. C. C. Report, Docket No. 17021—finding that Coverdale & Colpitts, while ostensibly employed by Chicago, Milwaukee & St. Paul Railway Co., were actually working for the bankers.	6858	7069
2009. List, undated, indicating distribution by Kuhn, Loeb & Co. of Coverdale & Colpitts report on condition of Chicago, Milwaukee & St. Paul Railway Co.	6859	7069
2010. Telegram, dated June 13, 1925, from W. W. Colpitts, of Coverdale & Colpitts, to W. R. Freeman, indicating that Kuhn, Loeb & Co. controlled distribution of Coverdale & Colpitts report.	6860	7070
2011. Letter, dated June 23, 1925, from W. W. Colpitts, of Coverdale & Colpitts, to Howard Elliott, chairman, Northern Pacific Railway Co.—same subject as "Exhibit No. 2010"	6861	7070
2012. Letter, dated May 7, 1925, from Kuhn, Loeb & Co. to Samuel H. Fisher, director, Chicago, Milwaukee & St. Paul Railway Co., furnishing him with copy of Coverdale & Colpitts report.	6861	7070
2013. Letter, undated, from Samuel H. Fisher, director, Chicago, Milwaukee & St. Paul Railway Co., to Kuhn, Loeb & Co., acknowledging receipt of Coverdale & Colpitts report (Exhibit No. 2012).	6861	7070
2014. Letter, dated April 22, 1925, from E. C. Jameson, chairman, Bondholders Defense Committee, to H. E. Byram, receiver, requesting copy of Coverdale & Colpitts report.	6861	7071
2015. Telegram, dated April 30, 1925, from E. C. Jameson, chairman, Bondholders Defense Committee, to H. E. Byram, receiver, again requesting copy of the Coverdale & Colpitts report.	6861	7071
2016. Telegram, dated May 1, 1925, from H. E. Byram, receiver, to E. C. Jameson, chairman, Bondholders Defense Committee, acknowledging receipt of "Exhibits Nos. 2014 and 2015"	6862	7071
2017. Letter, dated May 1, 1925, from H. E. Byram, receiver, to E. C. Jameson, chairman, Bondholders Defense Committee, suggests communicating with F. H. Ecker for copy of Coverdale & Colpitts report.	6862	7071
2018. Telegram, dated May 5, 1925, from E. C. Jameson, chairman, Bondholders Defense Committee, to H. E. Byram, receiver, concerning failure to obtain copy of Coverdale & Colpitts report from F. H. Ecker.	6862	7072
2019. Telegram, dated May 6, 1925, from H. E. Byram, receiver, to J. J. Hanauer, of Kuhn, Loeb & Co., requesting instructions with reference to E. C. Jameson's demand for copy of Coverdale & Colpitts report.	6862	7072

Schedule of Exhibits—Continued

Number and summary of exhibits	Introduced at page	Appears in appendix, page
2020. Telegram, dated May 7, 1925, from J. J. Hanauer, of Kuhn, Loeb & Co., to H. E. Byram, receiver, leaving matter of supplying E. C. Jameson with Coverdale & Colpitts report in hands of F. H. Ecker, chairman, bondholders protective committee.	6862	7072
2021. Letter, dated May 8, 1925, from E. C. Jameson, chairman, Bondholders Defense Committee, to H. E. Byram, receiver, advising of receipt of copy of Coverdale & Colpitts report.	6863	7072
2022. Letter, dated May 15, 1925, from H. E. Byram, receiver, to E. C. Jameson, chairman, Bondholders Defense Committee—same subject as "Exhibit No. 2021".	6863	7073
2023. Letter, dated February 6, 1925, from a vice-president of the New York Trust Co., to Samuel H. Fisher, director, Chicago, Milwaukee & St. Paul Railway Co., recommending plan for averting receivership—suggests that examination by Coverdale & Colpitts for bankers be discontinued.	6864	7073
2024. Memorandum, dated June 9, 1925, from Harold Stanley, vice-president, Guaranty Co., to M. P. Callaway, vice-president, Guaranty Trust Co., relating to negotiations with J. J. Hanauer, of Kuhn, Loeb & Co., for a new mortgage trusteeship of the reorganized St. Paul—Guaranty to have second choice after National City Bank.	6878	7075
2025. Memorandum, dated July 24, 1925, from C. H. Platner, corporate trust officer, Guaranty Trust Co., to M. P. Callaway, vice-president, appraising relative desirability of new mortgage trusteeships of reorganized St. Paul.	6881	7076
2026. Memorandum, dated June 18, 1926, from M. P. Callaway, vice-president, Guaranty Trust Co., to H. Stanley, vice-president, appraising relative desirability of new mortgage trusteeships in view of modifications of November 19, 1925 to bankers' reorganization plan.	6882	7077
2027. Memorandum, dated June 25, 1926, from H. Stanley, vice-president, Guaranty Trust Co., to M. P. Callaway, vice-president,—same subject as "Exhibit No. 2026".	6882	7077
2028. Excerpt from memorandum, dated January 5, 1927, by M. P. Callaway, vice-president, Guaranty Trust Co., to the effect that J. J. Hanauer, of Kuhn, Loeb & Co., had agreed to Guaranty's choice of trusteeships of the reorganized Chicago, Milwaukee & St. Paul Railway Co.	6883	7077
2029. Letter, dated January 13, 1928, from J. J. Hanauer, of Kuhn, Loeb & Co., to F. H. Ecker, former chairman, bondholders protective committee, explaining inability to award a trusteeship of the reorganized Chicago, Milwaukee & St. Paul Railway Co. to Bankers Trust Co.	6883	7078
2030. Letter, dated January 11, 1928, from F. N. B. Close, vice-president, Bankers Trust Co., to F. H. Ecker, former chairman, bondholders protective committee, requesting trusteeship for Bankers Trust Co. of the reorganized Chicago, Milwaukee & St. Paul Railway Co. (see Exhibit No. 2029).	6885	7078
2031. Letter, dated January 12, 1928, from F. H. Ecker, former chairman, bondholders protective committee, to J. J. Hanauer, of Kuhn, Loeb & Co.—same subject as "Exhibit No. 2030".	6885	7079
2032. Letter, dated January 12, 1928, from F. H. Ecker, former chairman, bondholders protective committee, to F. N. B. Close, vice-president, Bankers Trust Co.—same subject as "Exhibit No. 2030".	6885	7079

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Number and summary of exhibits	Introduced at page	Appears in appendix, page
2033. Letter, dated January 14, 1928, from F. H. Ecker, former chairman, bondholders protective committee, to F. N. B. Close, vice-president, Bankers Trust Co.—same subject as "Exhibit No. 2029".	6885	7079
2034. Letter, dated January 17, 1928, from F. N. B. Close, vice-president, Bankers Trust Co., to F. H. Ecker, former chairman, bondholders protective committee, requesting that Bankers Trust Co. be appointed a depository of the reorganized St. Paul.	6885	7080
2035. Excerpts from statements submitted by Guaranty Trust Co. and M. P. Callaway, as trustees, and their attorneys, to federal courts in opposition to petition of Bondholders Defense Committee for permission to intervene in receivership proceedings.	6901	7080
2036. Letter, dated November 10, 1925, from Ralph M. Shaw, of counsel to receivers, to Robert T. Swaine, of counsel to reorganization managers, suggesting resignation of Guaranty Trust Co. as depository under bankers' plan in order to more effectively block intervention by independent bondholders.	6901	7081
2037. Letter, dated November 11, 1925, from Robert T. Swaine, of counsel to reorganization managers, to Ralph M. Shaw, of counsel to receivers, refuting suggestion contained in "Exhibit No. 2036".	6903	7082
2038. Excerpts from various documents relating to time when Kuhn, Loeb-National City plan for reorganization of Chicago, Milwaukee & St. Paul Railway Co. was before the court for consideration.	6909	7082
2039. Telegram, dated November 28, 1927, from Ralph M. Shaw, of counsel to receivers, to Robert T. Swaine, of counsel to reorganization managers, extending congratulations on court success in opposing the Jameson Committee's petition for intervention.	6916	7083
2040. Letter, dated November 29, 1927, from Robert T. Swaine, of counsel to reorganization managers, to Ralph M. Shaw, of counsel to receivers, thanking him for his cooperation in court litigation and attributing the victory over the Jameson Committee to "team play" (see Exhibit No. 2039).	6916	7083
2041. Statements to federal courts and Interstate Commerce Commission by E. S. S. Sunderland or his firm, Davis Polk Wardwell Gardiner & Reed, attorneys for Guaranty Trust Co. and M. P. Callaway, trustees, relating to position of trustees with respect to Kuhn, Loeb-National City reorganization plan.	6919	7083
2042. Excerpts from various documents relating to petition of Guaranty Trust Co. and M. P. Callaway, trustees, to U. S. District Court for order fixing date of sale of Chicago, Milwaukee & St. Paul Railway property—collaboration with counsel for reorganization managers indicated.	6923	7084
2043. Résumé, principally from diary slips of Crayth, de Gersdorff, Swaine & Wood, showing collaboration with E. S. S. Sunderland, of Davis, Polk, Wardwell, Gardiner & Reed, in preparing affidavit on upset price for the Chicago, Milwaukee & St. Paul Railway Co.	6924	7085

Schedule of Exhibits—Continued

Number and summary of exhibits	Introduced at page	Appears in appendix, page
2044. Statement prepared and submitted by Robert T. Swaine, of Cravath, de Gersdorff, Swaine & Wood, indicating by years, revenues, expenses, income available for interest on funded debt, and fixed interest on funded debt of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. and its predecessor, Chicago, Milwaukee & St. Paul Railway Co., from June 30, 1910 through 1937 (November and December, 1937 estimated).....	6930	7086
2257. Statement prepared and submitted by Robert T. Swaine, of Cravath, de Gersdorff, Swaine & Wood, revising "Exhibit No. 2044" on basis of adjusted depreciation charges.....	6939	7088
2045. Graph prepared and submitted by Robert T. Swaine of Cravath, de Gersdorff, Swaine & Wood—same subject as "Exhibit No. 2044".....	6939	Facing 7090
2046. Telegram, dated November 3, 1925, from W. W. Colpitts, of Coverdale & Colpitts, to W. H. Coverdale, expressing belief that modifications proposed in compromise with Roosevelt Committee would weaken Kuhn, Loeb-National City reorganization plan.....	6941	7090
2047. Memorandum, dated November 4, 1925, from F. W. Burpee, of Coverdale & Colpitts, to W. W. Colpitts, relating to Kuhn, Loeb's knowledge of weakness in capital structure set up by bankers' plan as modified by compromise with Roosevelt Committee.....	6942	7090
2048. Excerpt from letter, dated December 17, 1925, from W. W. K. Sparrow, vice-president, Chicago, Milwaukee & St. Paul Railway Co., to J. J. Hanauer, of Kuhn, Loeb & Co., relating to weakening of bankers' reorganization plan by modifications resulting from compromise with Roosevelt Committee.....	6944	7093
2049. Letter, dated December 15, 1930, from Mark W. Potter, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to H. A. Scandrett, president, concerning necessity for effecting operating economies through cooperation and coordination.....	6949	7093
2050. Letter, dated May 25, 1931, from Mark W. Potter, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to H. A. Scandrett president—same subject as "Exhibit No. 2049".....	6949	7096
2051. Letter, dated January 12, 1931, from Mark W. Potter, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Pierpont V. Davis, vice-president, National City Co.—same subject as "Exhibit No. 2049".....	6950	7098
2052. Letter, dated May 18, 1932, from Mark W. Potter, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to his fellow directors—suggests possible liability of St. Paul management for negligence in failing to effect necessary operating economies through cooperation and coordination.....	6952	7101
2053. Letter, dated June 1, 1932 from Mark W. Potter, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Robert T. Swaine, director, accusing H. A. Scandrett, president, of having "wasted the biggest and best opportunity that ever came to the railroad" in failing to effect economies through cooperation and coordination.....	6954	7104

Schedule of Exhibits—Continued

Number and summary of exhibits	Introduced at page	Appears in appendix, page
2054. Letter, dated June 2, 1932, from Robert T. Swaine, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to H. A. Scandrett, president, expressing concern over damaging record being made by Mark W. Potter on the management's failure to effect economies through cooperation and coordination and suggesting a conference to discuss the matter.....	6956	7106
2055. Letter, dated June 14, 1932, from Robert T. Swaine, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Mark W. Potter, director, agreeing to desirability of effecting economies through cooperation and coordination, but defending the management's efforts with respect thereto.....	6957	7106
2056. Letter, dated June 14, 1932, from Robert T. Swaine, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to F. H. Ecker, director, expressing concern over damaging record being built up by Mark W. Potter, and suggesting that Mr. Ecker take steps to "get him on the track".....	6958	7107
2057. Memorandum, dated June 8, 1932, from W. W. K. Sparrow, vice-president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to the board of directors, defending the St. Paul management against the charges contained in "Exhibit No. 2052".....	6959	7107
2058. Letter, dated June 29, 1932, from F. H. Ecker, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Robert T. Swaine, director, concerning Mr. Ecker's success in effecting a cessation of Mark W. Potter's damaging letters on cooperation and coordination.....	6959	7112
2059. Letter, dated April 12, 1933, from D. C. Swalland, of counsel to board directors, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to W. W. K. Sparrow, vice-president concerning restrictive provisions in railroad mortgages militating against cooperative and coordinative efforts between carriers.....	6964	7113
2060. Extracts from correspondence from December 23, 1927, through December 29, 1927, between D. C. Swalland, of counsel to board of directors, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., and W. W. K. Sparrow, vice-president, indicating responsibility of J. J. Hanauer, of Kuhn, Loeb & Co. for restrictive provisions in St. Paul mortgages militating against cooperative and coordinative efforts.....	6965	7114
2061. Various letters to or from directors of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. bearing on efforts of St. Paul management to effect operating economies through cooperation and coordination.....	6974	7115 to 7138
2084. Letter, dated January 3, 1930, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to W. W. Colpitts, director, enclosing check in payment for services of Coverdale & Colpitts in connection with power contracts.....	6975	7140
2085. Letter, dated January 3, 1930, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to W. W. Colpitts, director, suggesting that Coverdale & Colpitts' bill for services in connection with power contracts was excessive.....	6976	7140

Schedule of Exhibits—Continued

Number and summary of exhibits	Intra-duced at page	Appears in ap-pendix, page
2086 Various letters and memoranda during period from July to 19, 1924 to October 10, 1934 relating to use of private cars of Chicago, Milwaukee & St. Paul Railway Co. and Chicago, Milwaukee, St. Paul & Pacific Railroad Co., by directors and officers of the companies, and others.....	6980	7141 to 7147
2106. Letter, dated June 28, 1933, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Jesse H. Jones, chairman, Reconstruction Finance Corporation, relating to salary reductions as a condition to obtaining reduced interest rates on R. F. C. loans.....	6981	7148
2107. Letter, dated July 1, 1933, from Robert T. Swaine, director, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to H. A. Scandrett, president, relating to salary reductions for Messrs. R. T. Swaine, F. H. Wood and D. C. Swatland, counsel to board of directors, in connection with interest rate reduction on R. F. C. loans.....	6981	7148
2108. Letter, dated August 28, 1933, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Jesse H. Jones, chairman, Reconstruction Finance Corporation—same subject as "Exhibit No. 2107".....	6982	7149
2109. Letter, dated August 28, 1933, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Robert T. Swaine, director—same subject as "Exhibit No. 2107".....	6983	7149
2110. Letter, dated January 9, 1928, from J. J. Hanauer, of Kuhn, Loeb & Co., to W. W. K. Sparrow, vice-president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., concerning efforts of bankers to influence distribution of the railroad's banking business.....	6983	7150
2111. Letter, dated January 24, 1928, from Mortimer L. Schiff, of Kuhn, Loeb & Co., to H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., concerning efforts of bankers to influence distribution of the railroad's advertising business.....	6983	7150
2112. Letter, dated March 5, 1928, from Mortimer L. Schiff, of Kuhn, Loeb & Co., to H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., concerning efforts of bankers to influence distribution of the railroad's car purchasing business.....	6984	7150
2113. Letter, dated March 8, 1928, from H. A. Scandrett, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., to Mortimer L. Schiff, of Kuhn, Loeb & Co.—same subject as "Exhibit No. 2112".....	6984	7151
2114 Various letters and memoranda during period from November 6, 1925 to December 8, 1927, relating to use of private cars by receivers of Chicago, Milwaukee & St. Paul Railway Co., and others.....	6985 to 6999	7151 to 7162
2147 Various letters, telegrams, and memoranda during period from July 9, 1928 to October 19, 1931, relating to use of private cars by directors of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.....	6999 to 7002	7162 to 7167

INVESTIGATION OF RAILROADS, HOLDING COMPANIES AND AFFILIATED COMPANIES

MONDAY, DECEMBER 6, 1937

UNITED STATES SENATE,
SUBCOMMITTEE OF COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to adjournment on Thursday, November 18, 1937, in room 412, Senate Office Building, Senator Harry S. Truman presiding.

Present: Senators Truman and Shipstead.

Present also: Max Lowenthal, counsel to the committee; Telford Taylor and George Rosier, assistant counsel to the committee.

Senator TRUMAN (presiding). The subcommittee will come to order. Mr. Hanauer, will you please come forward, hold up your right hand, and be sworn:

Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by this committee, so help you God?

Mr. HANAUER. I do.

Senator TRUMAN. Just take a seat there opposite the committee reporter.

TESTIMONY OF JEROME J. HANAUER, FORMERLY A PARTNER OF KUHN, LOEB & CO., 52 WILLIAM STREET, NEW YORK CITY; TESTIMONY OF MARK W. POTTER, FORMER RECEIVER OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.; TESTIMONY OF BENJAMIN J. BUTTENWIESER, MEMBER OF KUHN, LOEB & CO., INVESTMENT BANKERS, NEW YORK CITY; AND STATEMENT OF ROBERT T. SWAINE, OF CRAVATH, DE GERSDORFF, SWAINE & WOOD, ATTORNEYS AT LAW, NEW YORK CITY—
Resumed

Senator TRUMAN. Mr. Hanauer, will you give your full name and connection for the benefit of the record?

Mr. HANAUER. My name is Jerome J. Hanauer, retired, address 52 William Street, New York City.

Senator TRUMAN. You may proceed, Mr. Taylor.

Mr. TAYLOR. Mr. Hanauer, were you, for a number of years, associated with an investment banking house?

Mr. HANAUER. Yes; I was.

Mr. TAYLOR. What was that house?

Mr. HANAUER. Kuhn, Loeb & Co.

Mr. TAYLOR. When did you retire from Kuhn, Loeb & Co.?

Mr. HANAUER. At the end of 1932.

Mr. TAYLOR. Have you been engaged in any business since then?

Mr. HANAUER. No.

Mr. TAYLOR. Since your retirement from Kuhn, Loeb & Co. have you at any time had any capital in Kuhn, Loeb & Co.?

Mr. HANAUER. No.

Mr. TAYLOR. Are you related in any way to any of the present partners of Kuhn, Loeb & Co.?

Mr. HANAUER. My son-in-law is a partner.

Mr. TAYLOR. Who is that?

Mr. HANAUER. Mr. Lewis Strauss.

Mr. TAYLOR. Since 1932, when I believe you said you retired from Kuhn, Loeb & Co., have you had indirectly by way of loan or otherwise, any capital in Kuhn, Loeb & Co.?

Mr. HANAUER. No.

Mr. TAYLOR. While you were active in the firm of Kuhn, Loeb & Co. can you tell us some of the companies, if any, of which you were a director? If I might refresh your recollection—

Mr. HANAUER (interposing). Yes; I think I can tell you about that. As a matter of fact, they are about the same now. There were as to railroads, the Yazoo & Mississippi Valley Railroad Co., which is a subsidiary of the Illinois Central; the Hudson & Manhattan Railroad Co., the National Railways of Mexico. As to other corporations, Westinghouse Electric & Manufacturing Co., Mid-Continent Petroleum Corporation, and some subsidiaries of some of these, that are unimportant.

Mr. TAYLOR. Since your retirement from Kuhn, Loeb & Co. have you resigned from any of these directorships?

Mr. HANAUER. No. As a matter of fact, I have added one or two.

Mr. TAYLOR. Which were those?

Mr. HANAUER. The Illinois Central Railroad Co.

Mr. TAYLOR. Prior to your retirement from Kuhn, Loeb & Co. you were a director of a subsidiary of the Illinois Central Railroad Co., and since then you have become a director of the Illinois Central itself, is that it?

Mr. HANAUER. Yes.

Mr. TAYLOR. Mr. Chairman, may I offer for the record a list compiled from Poor's Register of Directors, of Mr. Hanauer's directorships from 1933 to date?

Mr. HANAUER. Might I have the privilege of looking at that paper, Mr. Chairman?

Senator TRUMAN. Yes.

Mr. TAYLOR. Here is that list. If there are any errors in the list as taken from Poor's Register of Directors, will you please inform us?

Mr. HANAUER. All right.

(The paper referred to was marked "Exhibit No. 1887" and is included in the appendix on p. 7003.)

Mr. TAYLOR. I see you are looking over the list. Would you mind correcting it later? We will be glad to leave that copy with you.

Mr. HANAUER. As a matter of fact I think I have finished it now. It is entirely correct, excepting as to the American Sealcoke Corporation; I think in the summer of 1937 I resigned, and from the Sealed Containers Corporation I think in 1936; and the Westinghouse

Acceptance Corporation does not exist any more. But that is not important.

Mr. TAYLOR. All right. Mr. Hanauer, while you were with Kuhn, Loeb & Co. that firm acted as reorganization managers of the St. Paul Railroad Co., did it not?

Mr. HANAUER. Yes; as one of the reorganization managers.

Mr. TAYLOR. What was the other?

Mr. HANAUER. The National City Co.

Mr. TAYLOR. Did you say the National City Co.?

Mr. HANAUER. Yes, sir.

Mr. TAYLOR. That is an affiliate of the National City Bank of New York, is it not?

Mr. HANAUER. It was.

Mr. TAYLOR. At that time it was the securities affiliate of the National City Bank of New York, was it not?

Mr. HANAUER. Yes.

SELECTION OF RECEIVERS IN 1925-1928 ST. PAUL RECEIVERSHIP—
EXTENT OF BANKER INFLUENCE THEREON

Mr. TAYLOR. The reorganization of the St. Paul Railroad, prior to the present one I mean, took place under what was known as an equity receivership, is that correct?

Mr. HANAUER. I understand that is so, but that is a legal expression.

Mr. TAYLOR. How about that, Mr. Swaine?

Mr. SWAINE. That is correct.

Mr. TAYLOR. That is, it was prior to the statutory proceeding under section 77?

Mr. SWAINE. It commenced in March of 1925 and ended in 1928.

Mr. TAYLOR. Do you recall the specific date of March 18, 1925?

Mr. SWAINE. I do not remember the exact date.

Mr. TAYLOR. When a railroad goes into receivership, I mean under the old equity procedure, how does the court arrange to operate it? What does it do? What mechanics are set up in order to operate the railroad?

Mr. HANAUER. It appointed receivers.

Mr. TAYLOR. How many receivers were appointed in the case of the St. Paul Railroad?

Mr. HANAUER. Three.

Mr. TAYLOR. Who were those three receivers?

Mr. HANAUER. Mr. Byram, who had been the president of the railroad, Mr. Brundage, of Illinois, and Mr. Mark W. Potter.

Mr. TAYLOR. Who was Mr. Brundage?

Mr. HANAUER. Mr. Brundage, I understand—well, I had never known him up until some time afterward, was a former attorney general of the State of Illinois, and was the appointment by Judge Wilkerson of a man whom he personally knew and had confidence in, whom he wanted to represent him more or less.

Mr. TAYLOR. You do not mean by that expression that Judge Wilkerson did not have confidence in the other two receivers, do you?

Mr. HANAUER. Not at all.

Mr. TAYLOR. Who was Mr. Mark W. Potter?

Mr. HANAUER. He had been an Interstate Commerce Commissioner up to a short time before that.

Mr. TAYLOR. Mr. Hanauer, in connection with many important questions of policy that may arise as to operating a railroad when it is in receivership, do the receivers decide those questions on their own judgment and initiative or do they seek the direction of the court?

Mr. HANAUER. That is really a question I could not answer.

Mr. TAYLOR. Could Mr. Swaine answer that question?

Mr. SWAINE. I do not think there is any universal rule about that. I think if the matter is one of major importance they are very apt to consult the court. Other than that I think they generally decide it.

Mr. TAYLOR. Frequently the court does give orders directing the receivers to take action; does it not?

Mr. SWAINE. Yes; but there is no universal rule.

Mr. TAYLOR. Mr. Hanauer, could you describe for us what you conceive to be the relation between receivers and the court? Are they in the nature of the personal representatives of the judge, or what is the status of receivers?

Mr. HANAUER. No; I am of opinion they are the representatives of the court itself and not of the judge. They are a body of men who are to see that the property in receivership is properly operated, not necessarily by them but through their agents; that it is properly maintained, and they in every way represent the court in the matter as differentiated from representing the security holders.

Mr. TAYLOR. In the case of the St. Paul Railroad, one of the receivers himself was in charge of the operation of the railroad prior to the receivership; was he not?

Mr. HANAUER. Yes.

Mr. TAYLOR. Did he continue to do that after the receivership? I mean Mr. Byram.

Mr. HANAUER. Yes.

Mr. TAYLOR. Prior to the receivership do you recall whether you had any information as to who would probably be appointed receivers of the company?

Mr. HANAUER. Well, of course I had no knowledge of Mr. Brundage. I knew that as a matter of custom, or frequently at least, the judge of the court will appoint someone, that I would say, he would consider more or less his personal representative, a man he has such personal knowledge of that he more or less considers him a man who would keep him to a certain extent posted. As I said before, I never knew Mr. Brundage before that time. And it has become more or less universal, so as to have continuity of management, that the operating head of the railroad company should be one of the receivers. And there are not always three receivers. It very often happens that there are two, or even one. I cannot remember exactly what happened. You must recall that this was 11 years ago. But my recollection is that it was discussed, as is usual, because the judge always asks for recommendations. He does not have to accept the recommendation made, but the judge almost universally asks for them. Mr. Potter's name was suggested on the theory that here was a man who had had nothing to do with the St. Paul Railroad, who had represented the public more or less as an Interstate Commerce Commissioner, and who had resigned from that body, and if he would take the position it would be a very popular appointment. There had been much discussion in the press before that time that possibly the Interstate Commerce Commission itself might come in and have

more or less to do with the matter of receivers. Of course, that was important and that brought to mind the suggestion that here was a man who had just resigned from the Commission, who was highly thought of, honored, and respected all over the country, and maybe he would take the position.

Mr. TAYLOR. In order to assist you in refreshing your recollection, since, as you have mentioned, it is a long time ago, do you recall whether you testified before the Interstate Commerce Commission about 1926 that in view of the more or less practice of appointing the previous president of a railroad, you did definitely anticipate that Mr. Byram would be appointed one of the receivers of the St. Paul Railroad?

Mr. HANAUER. That agrees with what I say now. And may I say at this moment, inasmuch as you have brought up the question, in order to save a lot of time and perhaps some of the Government's money, I testified not only before the Interstate Commerce Commission but at length before the Interstate Commerce Committee of the Senate at a time when Senator Watson was chairman, in 1925, and at a time when Senator Wheeler was a member of the committee, and I would be very well satisfied to have all my testimony at the hearing before the committee, which I understand is the same as this present committee, that is, as to the facts of the case, put right into this hearing, and then let you start fresh from that point.

Mr. TAYLOR. Mr. Chairman, I hope it will not be necessary to go into the details as to a number of those matters as to which Mr. Hanauer previously testified. I just want to ask enough questions to give the record some continuity, so it will be understood. I shall try to confine my questions as far as possible to documents other than those that have been put into the record of this committee previously.

Senator TRUMAN. And before the Commission.

Mr. TAYLOR. Yes; either before this committee or before the Interstate Commerce Commission. Mr. Hanauer, you also testified that prior to the time when the St. Paul Railroad went into receivership you had conferred with Mr. Potter and asked him whether, if his name were suggested to the court, he would be willing to act as a receiver; is that correct?

Mr. HANAUER. That is correct.

Mr. TAYLOR. That was approximately, if I may state my own recollection of the record, about 2 weeks before the receivership. I believe you mentioned a date of March 3.

Mr. HANAUER. I will take your figure. I have no recollection of the date.

Mr. TAYLOR. Mr. Potter told you at that time he would welcome the opportunity to serve as a receiver of the St. Paul Railroad; did he not?

Mr. HANAUER. I do not know just what language he used, but the fact was that he said he would be willing to do the work if the judge appointed him.

Mr. TAYLOR. Did you take any steps to see that Mr. Potter's name was suggested to the court?

Mr. HANAUER. I did nothing further than tell of this conversation, and of my belief that Mr. Potter would make a very good and a very acceptable receiver to those who would appear before the judge.

Senator TRUMAN. Mr. Hanauer, will you please speak a little louder. It is a little hard for the gentlemen across the table to hear you.

Mr. HANAUER. I am sorry, Mr. Chairman.

Mr. TAYLOR. Mr. Swaine, in your recollection of the circumstances about this time, I mean when the St. Paul Railroad went into receivership, do you recall that your firm knew—well, I won't say knew, but your firm anticipated it was highly probable Mr. Byram and Mr. Potter would be appointed receivers of the St. Paul when it subsequently went into receivership?

Mr. SWAINE. I wouldn't put it quite that way. We knew it was the custom to appoint the chief executive officer and, therefore, we probably did know or think that Mr. Byram would be appointed. We knew that Mr. Potter's name would be suggested because we were one of the conduits through which the suggestion was made.

Mr. TAYLOR. Can you tell us how Mr. Potter's name came to be suggested to the court?

Mr. SWAINE. My recollection is that Mr. Hanauer talked to me, and I talked to Mr. Ralph Shaw, and Mr. Ralph Shaw made the suggestion.

Mr. TAYLOR. Mr. Chairman, I offer for the record a memorandum from the files of the Treasury Department, signed by Eliot Wadsworth, Assistant Secretary of the Treasury, addressed "For the files," from which I should like to read briefly.

Senator TRUMAN. The memorandum will be received in evidence. (The memorandum referred to was marked "Exhibit No. 1888" and is included in the appendix on p. 7003.)

Mr. TAYLOR. The memorandum is dated March 16, 1925, and do you accept my recollection, Mr. Swaine, subject to correction, that it was 2 days before the St. Paul Railroad went into receivership?

Mr. SWAINE. All right.

Mr. TAYLOR. The memorandum reads in part as follows, although I am offering the entire memorandum in evidence [reading from "Exhibit No. 1888"]:

On Saturday, March 14, 1925, I had a conference with Mr. Carl de Gersdorff—

That is one of your partners, Mr. Swaine?

Mr. SWAINE. Yes.

Mr. TAYLOR. Was he an acquaintance of Mr. Wadsworth, to your knowledge?

Mr. SWAINE. Yes.

Mr. TAYLOR. I continue reading:

I had a conference with Mr. Carl de Gersdorff of the firm of Cravath, Henderson & de Gersdorff—

That was the predecessor of your present firm?

Mr. SWAINE. Right.

Mr. TAYLOR. I continue reading:

relative to the situation of the Chicago, Milwaukee & St. Paul Railroad. Mr. de Gersdorff's firm represents Kuhn, Loeb & Company. Mr. Guy Cary, of the firm of Shearman & Sterling, represent the National City Bank. Apparently these two lawyers are taking an active part in considering all problems relating to the Milwaukee road.

Mr. de Gersdorff presented certain financial data in accordance with the request in my letter of March 10, 1925, which is attached hereto.

At that point, Mr. Swaine, might I ask you whether you recall that the St. Paul Railroad owed the Government considerable sums of money?

Mr. SWAINE. Yes.

Mr. TAYLOR. And I believe that letter refers to the amount and the nature of that obligation the St. Paul Railroad owed to the Government. I continue [reading from "Exhibit No. 1888"]:

Mr. de Gersdorff stated that the possibility of a voluntary reorganization along the lines suggested by Mr. Mitchell—

That is presumably Mr. Charles E. Mitchell of the National City Co.; is it not, Mr. Swaine?

Mr. SWAINE. I assume so.

Mr. TAYLOR. I continue reading from the memorandum:

In his talk with Secretary Mellon seemed out of the question because of the great variety of creditors.

Then skipping to the third paragraph:

I had asked Mr. de Gersdorff in the morning on the telephone who were to be the receivers. He stated that Mr. Byram would be one of the receivers and that they had given careful consideration to the appointment of a second receiver. They determined that there should be a second receiver and practically made up their minds that Mr. Mark Potter, who had just resigned from the Interstate Commerce Commission, would be an appropriate appointment. Mr. Potter is a lawyer but very well known in railroad circles. Mr. de Gersdorff asked if the Treasury would approve of this appointment. I agreed to speak to Secretary Mellon about it Monday morning and have done so just before writing this memorandum, and Mr. Mellon has no objections to offer.

Were you familiar, Mr. Swaine, with this conversation between Mr. de Gersdorff and Mr. Wadsworth?

Mr. SWAINE. I have no recollection now whether I was or not. I probably was.

Mr. HANAUER. I was familiar with the fact that this gentleman went down there, because it was discussed, and we felt that in view of the large amount of money that was due the Government, we should tell them what the situation was.

Mr. TAYLOR. Well, Mr. Swaine, would you say it was apparent from this memorandum that your firm, through Mr. de Gersdorff, was clearing with the Treasury Department the suggestion, which either had been or was to be made by Mr. Shaw to Judge Wilkerson, that Mr. Potter be appointed a receiver?

Mr. SWAINE. For the reasons suggested by Mr. Hanauer; yes. Just as it was clear to other large security holders. It was a suggestion. Mr. Wadsworth's statement in there that it was a determination of course is erroneous, if it means that it was determined that they were to be the receivers. What he meant was, that they were to be suggested to the judge of the court.

ACTIVITIES OF ST. PAUL RECEIVERS IN AID OF BANKERS' REORGANIZATION PLAN

Senator TRUMAN. Is Mr. Potter present?

Mr. POTTER. I am Mr. Potter, Mr. Chairman.

Senator TRUMAN. Have you been sworn?

Mr. POTTER. I have not.

Senator TRUMAN. Please hold up your right hand and be sworn.

Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by this committee? So help you God.

Mr. POTTER. I do.

Senator TRUMAN. Take the chair next to Mr. Swaine, in order to make it easier for the committee reporter to hear you when you testify.

Mr. POTTER. Thank you.

Mr. TAYLOR. Mr. Potter, it has already been brought out that you served as one of the receivers of the St. Paul Railroad; I mean in the old reorganization proceedings.

Mr. POTTER. Yes.

Mr. TAYLOR. I have asked Mr. Hanauer and Mr. Swaine, briefly, about the relations between a receiver and the judge who appoints him, or the court as Mr. Hanauer says, and I wonder if you could state briefly what you conceive to be the appropriate and proper relation between a judge and the receiver whom he appoints for a railroad.

Mr. POTTER. I do not care to say what I conceive to be the proper attitude of the judge who appoints a receiver.

Mr. TAYLOR. It is possible you have misunderstood my question. I do not mean the attitude of the judge but the relation between the judge and a receiver.

Mr. POTTER. I do not conceive it is proper for me to say what the relations between a receiver and a judge should be. I think that is for the judge to say rather than for me.

Senator TRUMAN. Just what is your opinion about that relationship, as to what it should be?

Mr. POTTER. I do not care to try to be an expert on the ethics of that question, Senator.

Senator TRUMAN. Well, I just wanted to get your answer.

Mr. TAYLOR. Mr. Potter, you are a lawyer?

Mr. POTTER. I am; yes.

Senator TRUMAN. We would like very much to have your opinion on that question.

Mr. POTTER. I do not think I want to express it.

Senator TRUMAN. I think, probably, you have misunderstood the question propounded to you. State it again, Mr. Taylor.

Mr. TAYLOR. The question is not directed to any specific circumstances or events. I merely want to obtain from you a statement of your opinion about the obligations if, any, of a receiver to the court that appoints him, and that relationship.

Mr. POTTER. I do not care to appear here as an expert on the question of ethics, personal or otherwise. I am here to give you information about what I did and what I said. But as to anything that involves what my relations to the judge should be, I shall decline to express an opinion. That might better be stated by the judge.

Mr. TAYLOR. Those and other questions I had in mind asking you are intended to be asked in the abstract and not as referring particularly to your appointment or your relations to the judge who appointed you. I am anxious to ascertain what in general you conceive to be the proper relationship.

Mr. POTTER. I prefer not to give testimony in the abstract, or anything outside of my relations with the Milwaukee Railroad.

Mr. TAYLOR. Will you be willing to answer this question: Is it true that in the case of a receivership in equity the judge is continually

called upon to decide points that may arise among different classes of security holders?

Mr. POTTER. Well, I do not think there is any rule in that regard. Ordinarily such questions do not arise during a receivership, which is to conserve the property pending a reorganization. I suppose in actual practice one security holder and another would go to see a judge and say something to him about various things. It is common for many people to run to judges, to complain of receivers, and about various things. But I do not know of any general rule on the subject.

Mr. TAYLOR. Apart from what happens during the time a railroad is in process of reorganization, the judge approves the final reorganization, is that not true, or confirms it?

Mr. POTTER. Well, there again, you get into a good deal of a legal question, and I am not much of a lawyer. Not necessarily would a judge have to approve a reorganization.

Mr. TAYLOR. Well, in the case of the St. Paul Railroad the court did confirm the final reorganization, pursuant to which the properties were purchased.

Mr. POTTER. Yes.

Mr. TAYLOR. That plan, and the provisions of that plan, raised very definite and specific questions as to what interest in the property the old creditors of the railroad should get?

Mr. POTTER. The plan speaks for itself and I would not want to state what it provided for.

Mr. TAYLOR. Mr. Potter, would this be a fair statement of one other thing which happens during a railroad receivership: It is sometimes the case that the railroad property may have causes of action against its former officers and directors, and it is a part of the function of the court, and of the receivers, to advise him on that, to determine whether such action should or should not be brought?

Mr. POTTER. A part of the function of a receiver is to bring such matters to the attention of the judge, is that your idea, or is that what you have in mind?

Mr. TAYLOR. Yes.

Mr. POTTER. I would say decidedly that if a receiver felt there was an asset of the corporation, consisting of a claim against anyone, it would be the receiver's duty to bring that to the attention of the court, with a view to realizing on that asset.

Mr. TAYLOR. Well, now, in order that the receiver may perform that function adequately it is highly desirable that the receiver be impartial as between the old management of the railroad and the parties against whom these actions might lie; in other words, his function is quasi-judicial, is it not?

Mr. POTTER. I do not know that I would say that. I am inclined to think the balance would be in favor of the duty to decide in favor of the property as against every person in issue. He might go too far if he tried to set himself up as a judge. I think if he thought there was a reasonable chance to establish an asset he should try to establish it.

Mr. TAYLOR. But he ought to assume a judge's impartial attitude toward all parties involved in the case?

Mr. POTTER. Of course.

Mr. TAYLOR. Mr. Hanauer, in the case of the St. Paul Railroad, there was more than one plan of reorganization proposed for the railroad, was there not?

Mr. HANAUER. Do you mean publicly proposed?

Mr. TAYLOR. Yes. I do not mean submitted to the court but publicly proposed.

Mr. HANAUER. Publicly proposed by means of being offered to the security holders?

Mr. TAYLOR. Yes.

Mr. HANAUER. Yes.

Mr. TAYLOR. One plan was proposed by yourself and the National City Co.?

Mr. HANAUER. Yes.

Mr. TAYLOR. Another plan was by what was called the Roosevelt and Iselin groups, a second plan?

Mr. HANAUER. Yes.

Mr. TAYLOR. And another plan by a group represented by Mr. Jameson?

Mr. HANAUER. That was much later.

Mr. TAYLOR. Mr. Jameson was an executive officer of a fire insurance company, was he not? Do you recall that?

Mr. HANAUER. Yes.

Mr. TAYLOR. Of the Globe & Rutgers Fire Insurance Co.

Mr. HANAUER. Yes. May I say right there, in order to keep the record straight, that the first plan proposed was the so-called Kuhn, Loeb & Co.-National City Co. plan, and the Roosevelt plan was some time later than that, and much later was the Jameson suggestion.

Mr. TAYLOR. Mr. Hanauer, would you care to express an opinion on the question of whether receivers in equity proceedings should publicly express approval or disapproval of reorganization plans prior to their confirmation by the court; I mean after they have been only publicly proposed and are not before the court, should receivers, at that time, express opinions on whether the plan is a fair one or is not a fair one?

Mr. HANAUER. Well, that is a question it is very difficult to have an opinion about. I should say that a man who is a receiver but who had been for many years with a property, connected with it for a long time and acquainted with all its problems, not just since its receivership, could well express an opinion, perhaps with more justice than those who had only been there a short time, during the period of receivership.

Mr. TAYLOR. May I ask you this question: Wouldn't such a person be much more likely to have had business dealings and be acquainted with the parties proposing such a plan, than a receiver who had only recently come into the property? You mentioned a receiver who had been with the property for some time.

Mr. HANAUER. That might be. You mean a man who was appointed receiver who had been there for some time, might be much closer to and know about people who had done business with the company, much longer than another man? That might or might not be the case.

Mr. TAYLOR. Well, let us take the case of Mr. Byram, who was acquainted with and had dealt with your firm prior to his becoming a receiver of the St. Paul Railroad.

Mr. HANAUER. Mr. Byram was acquainted with us only because of his being the president of the company. I do not believe that Mr. Byram had what you would call a close connection with anybody

connected with the firm. I might add that that developed since. At that time Mr. Byram was mostly in Chicago, and for many years their financial transactions were taken care of by a financial vice president. Mr. Byram did not have very much to do with it until the trouble came, and then of course—

Mr. TAYLOR (interposing). But he had dealt in a business way with your firm?

Mr. HANAUER. The company had.

Mr. TAYLOR. But as the president of the company, he had represented it in business dealings with your house?

Mr. HANAUER. I do not recollect that he really did before that time. I think that was done mostly by others. Not that that would make any difference. I am not trying to create the impression that it would make a bit of difference, but am trying to give you the facts. Business friendships are one thing, and I haven't found one case yet of a man of established reputation, representing a body of bondholders or stockholders, because he had known anybody for a long time, letting it make any difference. I have oftentimes seen very intimate friends on opposite sides of the fence.

Mr. TAYLOR. In this connection might I read from your testimony before the Interstate Commerce Commission 10 or so years ago? You were asked the question:

The receivers of an insolvent property do not reorganize the property?

And you answered:

I don't see how they could. The receivers are the court themselves. The court must be free to listen to all plans and all objections to plans and not be in the position of trying to put through a special plan themselves. They could not enter into differences of opinions between various classes of security holders, in my opinion.

Now, at the time that your house and the National City Co. put out your plan there were rather violent differences of opinion among security holders as to whether that plan should be approved, were there not?

Mr. HANAUER. Might I just say that I could not state the case better today than I did then. I agree with every word I testified at that time. Those differences of opinion which developed, of course came afterward, not before at all.

Mr. TAYLOR. Differences of opinion with the Roosevelt committee and Mr. Iselin?

Mr. HANAUER. Might I state this right there, that all differences of opinion that arose at that time were a criticism of our plan as being too conservative, that we were trying to make this thing too safe. The whole difference between us and the Roosevelt committee was that we were not willing to make the fixed charges high enough.

Mr. TAYLOR. Whatever the precise nature may have been of those differences of opinion, I mean between the Roosevelt group and yourselves, they did not agree or feel that the plan you proposed should be approved, isn't that a fact?

Mr. HANAUER. No; for the reasons I have stated.

Mr. TAYLOR. To refer back to the question I asked previously, in such a situation if a receiver of a property expresses his approval of a plan which is in dispute, isn't that likely to be of great assistance to the parties who are proposing the particular plan, and be a corresponding obstacle to the parties who are trying to oppose that plan?

Mr. HANAUER. The paragraph that you read was whether or not receivers could get up a plan and reorganize a property themselves. There was nothing in that with reference to expressing an opinion upon a plan that was already promulgated; and as I said a little while ago, I am not sure that it is not quite proper for a receiver who has been connected with a company as president previously, and has known the situation for a long time, that he was not entirely within his province, and even perhaps his duty, to give his best opinion to the security holders.

Mr. TAYLOR. Do you limit that opinion to receivers who had been with the property for some time?

Mr. HANAUER. I would limit that to receivers who were thoroughly familiar with the history and the past career of the company. It is a question of ethics after all, as to which different people may have different opinions.

Mr. TAYLOR. I do not want to elaborate this point too much but let me read again:

The court must be free to listen to all plans and all objections to plans and not be in the position of trying to put through a special plan themselves. They could not enter into differences of opinions between various classes of security holders, in my opinion.

Isn't that testimony fairly intended to mean that a receiver should not express an opinion in accord with one group and opposed to another group? Isn't that entering into those differences of opinion, I mean if he does that?

Mr. HANAUER. You will have to take a specific case to see exactly what a man said. If a man said, "I have read this plan, and I think it would be a good thing for the company and for the security holders," that does not shut him out from an approval of another plan which may be just as good. No receiver could say, "This is the only group," but if a receiver says, "Under this plan this company can live and be prosperous, and I think it would be a good thing," that is all right. Next week he can say, "As to this plan, the company can also live." But receivers should not say, "This is the only plan, and I am against any other plan."

Mr. SWAINE. Of course, you have in mind that Congress has answered the question the other way in section 77. It is proper that a trustee may provide a plan. And you also have in mind that under legislation now before Congress, the Chandler bill, it is proposed that it should be the duty of a trustee, and his sole duty, to get up the plan.

Mr. TAYLOR. Mr. Chairman, I offer for the record copy of a telegram from the files of Kuhn, Loeb & Co., from Mr. Hanauer to Mr. Byram, dated June 2, 1925, which I read [reading from "Exhibit No. 1889"]:

Plan has been approved by all committees and will be announced tomorrow. Am sending you copies.

Senator TRUMAN. The telegram will be received in evidence.

(The telegram referred to was marked "Exhibit No. 1889" and is included in the appendix on p. 7004.)

Mr. TAYLOR. I also offer a confirmatory letter forwarded on the same date.

Senator TRUMAN. It will be received in evidence.

(The letter referred to was marked "Exhibit No. 1890" and is included in the appendix on p. 7004.)

Mr. TAYLOR. If you want to look at those you may do so.

Mr. HANAUER. No; I remember that. These were to a man who was entitled to the information.

Mr. TAYLOR. Mr. Chairman, I offer for the record copy of a telegram from Mr. Byram to Kuhn, Loeb & Co., dated June 3, 1925 [reading from "Exhibit No. 1891"]:

Congratulations. Plan is first class and will place St. Paul's financial position in front rank among western railroads, and believe it will be acceptable to security holders. Expect to be in New York tomorrow.

Senator TRUMAN. The telegram will be received in evidence.

(The telegram referred to was marked "Exhibit No. 1891" and is included in the appendix on p. 7005.)

Mr. HANAUER. May I put on the record the fact that that is a private telegram? I do not know whether there was any publicity about it or not.

Mr. TAYLOR. I was about to ask you about that.

Mr. Chairman, I offer for the record an excerpt from an article appearing in the Wall Street Journal, of date June 5, 1925, commenting on the proposed reorganization plan for the St. Paul Railroad [reading from "Exhibit No. 1892"]:

Commenting on the proposed reorganization plan for the C. M. & St. P., H. E. Byram, receiver of the system, said that he considered it a very good plan. If it is approved it will place the St. Paul in the front rank of roads from the standpoint of capital structure. Mr. Byram added the committee has worked out a plan as equitable as possible for all concerned.

Senator TRUMAN. The extract will be received in evidence.

(The extract referred to was marked "Exhibit No. 1892" and is included in the appendix on p. 7005.)

Mr. TAYLOR. Mr. Potter, did you express any opinion as to the merits of the plan of reorganization proposed by Kuhn, Loeb & Co. and the National City Co. in the matter of that St. Paul receivership, or I mean did you express any such opinion?

Mr. POTTER. I did express an opinion to someone at one time, about that time, regarding one of the plans. I do not remember whether it was one of the preliminary or one of the final plans.

Mr. TAYLOR. Mr. Chairman, I offer for the record an extract from the New York Herald-Tribune under date of June 18, 1925, from which I would like to read a part, although I am offering the whole [reading from "Exhibit No. 1893"]:

Mark W. Potter, former Interstate Commerce Commissioner and now one of the receivers for the C. M. & St. P., concurs wholeheartedly in the opinion of President H. E. Byram, also a receiver, that the bankers' plan for the reorganization of the property is an excellent one and that it should be executed without unnecessary delay.

"My experience was somewhat unusual," said Mr. Potter yesterday when asked for his views of the present controversy over the reorganization plan. "Before this proposal was put forward I was of the belief that it might be well to mark time for a while in this affair. I leaned, in other words, toward the opinion of some of those who are now opposing the reorganization. Since I have seen and studied the plan, however, I have been completely won over. The bankers' proposals will stand scrutiny, it seems to me, from any angle."

Do you recall making that statement, Mr. Potter?

Mr. POTTER. I do. I do not recall the exact language, but I have no doubt that is exactly as I said it.

Mr. HANAUER. Might it be put on the record that all these comments applied to the first plan, before it was modified, in order to satisfy the objecting minority?

Senator TRUMAN. The New York Herald-Tribune article will be received for the record.

(The article referred to was marked "Exhibit No. 1893" and is included in the appendix on p. 7005.)

Mr. TAYLOR. Might I inquire, Mr. Hanauer, whether these comments that have just been inserted in the record were made before or after or about the time that the bondholders' committee, of which you were a member, asked for deposits of securities?

Mr. HANAUER. Well, the record would show. If you have the record, I will be glad to testify to it.

Mr. TAYLOR. I believe that is the case.

Mr. HANAUER. It would be the natural thing.

Mr. TAYLOR. I did not hear your answer.

Mr. HANAUER. It would be the natural thing that the moment a plan was announced to start out getting securities deposited.

Mr. TAYLOR. Wouldn't an announcement by two or three receivers be of assistance to you in getting deposits pursuant to the plan proposed?

Mr. HANAUER. Well, I do not want to be immodest about it, but I think the names on the committee, I mean the names of the reorganization managers at that time, would have brought deposits in.

Mr. TAYLOR. Do you recall whether you did not get a substantial amount of additional deposits after you had modified the plan in accordance with objections raised by the Roosevelt committee?

Mr. HANAUER. That was an entirely different matter; that came much later.

Mr. TAYLOR. I am aware that it came later, but why do you say it is a different matter?

Mr. HANAUER. As to the Roosevelt committee, the bonds that were deposited after the modification, that had nothing to do with any statement any of these receivers might or might not have made.

Mr. TAYLOR. Do you recall that associated with the Roosevelt group there were a number of New England banks that had not deposited securities under your plan?

Mr. HANAUER. Yes.

Mr. TAYLOR. Isn't it true that subsequent to those announcements a number of banks did deposit with your committee?

Mr. HANAUER. Subsequent to what announcements?

Mr. TAYLOR. The announcements made by Mr. Byram and Mr. Potter.

Mr. HANAUER. Oh, not at all. It was much later.

Senator TRUMAN. For the purpose of clarifying our record will you identify the Mr. Roosevelt to whom you refer as the Roosevelt committee?

Mr. HANAUER. I think it might be well. It was the firm of Roosevelt & Son. You can supply the names.

Mr. TAYLOR. His name was George Emlen Roosevelt, was it not?

Mr. HANAUER. He was one of the partners. If you would like, because it seems to be your desire to go into differences of opinion between the reorganization managers and the Massachusetts savings banks, and the Roosevelt committee, leading up to the modification of the plan, I will be very glad to go into that.

Mr. TAYLOR. I think we would prefer to go into that later.

Mr. HANAUER. As you prefer.

Mr. TAYLOR. Mr. Chairman, I should like to offer for the record one more extract from the Wall Street Journal, under date of June 19, 1925, that has reference to Mr. Potter's statements.

Senator TRUMAN. It will be received in evidence.

(The extract referred to was marked "Exhibit No. 1894" and is included in the appendix on p. 7006.)

Mr. TAYLOR. I read:

Considerable buying which took place in the St. Paul issues was based on the statement of Mark W. Potter, former Interstate Commerce Commissioner and now a receiver for the road. Mr. Potter concurs in the opinion of Receiver H. E. Byram that the reorganization plan is excellent and should be executed without unnecessary delay.

Mr. Potter, would you be willing to answer this question: Would you feel that the statement that the plan proposed by Kuhn, Loeb & Co., National City Co. "is excellent and should be executed without unnecessary delay", would be of pronounced assistance to the proponents of this plan in the way of encouraging security holders to deposit their securities pursuant to that plan?

Mr. POTTER. No; I would not say it would be of pronounced assistance. I do not believe it would be of any substantial assistance. Perhaps there were some few friends of mine who might be interested in my statement. Frankly, I did not attach very great importance to that statement. I recall that the plan was submitted to me, and I was asked what I thought of it. I felt at that time that Mr. Hanauer had two thoughts in mind: One was a desire to be courteous to me, as he always was; and the other was a desire to give me an opportunity in the public interest and in the interest of security holders to point out anything about the plan that I thought was unjust. It never occurred to me that he was trying to get my support for the plan, and I know that he was not; I certainly do know that. I thought the plan was an excellent one—I speak now of the original plan—and I was quite willing to express that opinion. Perhaps I ought not to have expressed it. I did not stop to indulge in finesse or delicacy of thought. That was my opinion, and my expression of it at least exhibited a degree of courage, which I do not deplore. Of course, I had no right to speak for the court. Perhaps I should have been timid enough to phone to the judge to see if he wanted me to do that. But I do not do things that way. I struck out and said what I thought. If that is a mistake, I am sorry for it, but I do not think it was a very substantial mistake.

Mr. LOWENTHAL. Do you think that if a receiver in equity should follow the plan of phoning to the judge to ask him whether he would prefer that the receiver should not come out publicly in support of a plan before its merits and demerits had been made in court, that such action on the part of the receiver would be timid?

Mr. POTTER. Well, I know this, that if it had occurred to me I ought not to say anything without speaking to the court, I would have immediately concluded there was no occasion for me to say anything in any event. If I had thought it through to that end, I would have sat still and said nothing. But there was no thinking about it; it was just one of those outbursts, and perhaps it was the wrong thing to do.

Mr. TAYLOR. Mr. Potter, you have already said that you were certain Mr. Hanauer did not ask you to approve the plan. Do you recall whether Mr. Hanauer suggested that you make any statement about the plan?

Mr. POTTER. I do not think he did.

Mr. TAYLOR. Did you discuss that matter with him at all?

Mr. POTTER. I am not sure at this time whether I did or not. I just do not remember that. Well, I know that I did not.

Mr. TAYLOR. Mr. Chairman, I should like to offer for the record an excerpt from testimony taken before the Interstate Commerce Commission in 1926, being an examination of Mr. Mortimer N. Buckner, by Mr. Walter Fisher, then special counsel to the Commission. First, Mr. Hanauer, can you tell us who Mr. Buckner was at that time?

Mr. HANAUER. Mr. Buckner had been a director of the St. Paul Railroad. He was an official of the New York Trust Co. I think I would like to describe him in this particular situation as being more or less the representative of the security-holding interests of the Harkness family.

Mr. TAYLOR. Mr. Buckner was the chairman of the preferred stockholders' committee, was he not?

Mr. HANAUER. Yes, sir.

Mr. TAYLOR. Mr. Chairman, this extract reads, in part, as follows [reading from "Exhibit No. 1895"]:

Q. Are you prepared to say, Mr. Buckner, whether it is feasible for receivers to organize—to reorganize a property such as the St. Paul under the circumstances that existed?

And then this is the answer made by Mr. Buckner:

I don't see why. It is not difficult, if you got a plan that appeals to the security holders. I do not see why a receiver could not put it through just as well as any other group of men.

And then the next question:

Q. Just as well as Kuhn, Loeb & Company and the National City Company?

And this is the answer by Mr. Buckner:

Surely. Of course the receivers may have to be in a position to underwrite some of the securities, and in that event they would have to have banking affiliations or banking backing in some way. Of course that is a detail that could be arranged.

Senator TRUMAN. The excerpt will be received in evidence.

(The excerpt referred to was marked "Exhibit No. 1895" and is included in the appendix on p. 7006.)

Mr. TAYLOR. Mr. Chairman, I should like also——

Mr. HANAUER (interposing). Might I comment on that?

Mr. TAYLOR. Yes, certainly.

Mr. HANAUER. Mr. Buckner, as further testimony in that same proceeding will show, had no recollection of having made the statement in that form, and said of course if he did say that, that was not what he meant. And in addition to that Mr. Buckner had never had any particular experience in the matter of reorganizations.

Senator TRUMAN. He has had a great deal of experience since then in reorganizations, has he not?

Mr. HANAUER. I cannot answer that question.

Senator TRUMAN. I think you will find him on most of the reorganization committees now existing.

Mr. HANAUER. Well, being on a reorganization committee and actually reorganizing properties are two different things. One is trying to do the best you can for a particular security; the other is negotiation in the matter of trying to bring all different kinds of security holders together, each one believing he is entitled to much more than you offer him, and are trying to compromise. I mean trying to compromise the differences, and to do exact justice, even if you can, to each one, which is quite a different thing from representing one particular kind of security.

Mr. TAYLOR. You have mentioned the function of trying to represent a particular security and getting as much for it as he can——

Mr. HANAUER (interposing). Or securities.

Mr. TAYLOR. Do you recall whether the Harkness family, or interests which you mentioned were represented by Mr. Buckner, also had a considerable amount of bonds and preferred stock?

Mr. HANAUER. I think they had some bonds. It may have been testified to in a previous proceeding.

Mr. TAYLOR. Didn't they have a representative on the bondholders' committee, and that was Mr. Fisher?

Mr. HANAUER. Mr. Fisher, yes.

Mr. TAYLOR. So that to that extent the preferred stockholders and the bondholders' committee interlocked and did not represent groups who were trying to get the most they could for only one security. In other words, the Harkness family were on both sides?

Mr. HANAUER. I would not say that that is correct. My recollection, and I want to repeat that that was 11 years ago, is that the bonds were held by certain trusts and the stock was held by Mr. Harkness, and that Mr. Fisher was one of the trustees of those trusts. But if anybody wants to question the probity of Mr. Harkness, then we might as well all say that we will throw up our hands as to anybody in the United States.

Mr. TAYLOR. Mr. Chairman, I offer for the record an extract from what I believe, Mr. Swaine, are called diary or service slips, which your firm keeps. Is that the correct way to describe them?

Mr. SWAINE. Diary slips.

Mr. TAYLOR. Well, diary slips. These particular slips being dated April 25, 26, and 28, 1926—which was just 2 days after the testimony of Mr. Buckner, I believe. The entry of April 26 reads [reading from "Exhibit No. 1896"]:

Lawyer, Swatland. Description of service: Conferences with Mr. de Gersdorff, Mr. Hanauer, and Mr. Murray regarding I. C. C. hearings, in particular Mr. Buckner's faux pas.

And another extract, the previous day:

Lawyer, Swatland. Description of service: Telephone call from Mr. Hanauer re Mr. Buckner's faux pas—getting copy of Mr. Buckner's testimony—

Mr. Swaine, to paraphrase the late W. S. Gilbert, that word "faux pas" is French, is it not?

Mr. SWAINE. I take it that it is.

Mr. TAYLOR. And I assume you are enough of a linguist to give us a translation.

Mr. SWAINE. Well, I think that was a very clear slip on Mr. Buckner's part, and he recognized it as soon as he stopped to think about it.

Mr. HANAUER. That is what "faux pas" means.

Mr. TAYLOR. It means a false step, does it not?

Mr. HANAUER. That is a literal translation; or I do not say "slip" but—

Senator TRUMAN (interposing). In other words, a tactical error.

Mr. HANAUER. No; it does not mean a tactical error at all.

Senator TRUMAN. It could mean that?

Mr. HANAUER. I think not.

Mr. SWAINE. Did you ask why it was?

Mr. TAYLOR. I was going to ask you this question: Unless it was a tactical error—

Mr. SWAINE (interposing). I did not say it was a tactical error.

Mr. TAYLOR. I say, unless it was a tactical error, why was it necessary to have a conference with the lawyers and Mr. Murray in regard to this testimony?

Mr. SWAINE. I think it created an entirely false impression as to the necessary mechanics of reorganization, and was an expression that Mr. Buckner did not intend to use, or an impression that Mr. Buckner himself did not want to give. As soon as he thought about it he recognized that as well as anyone else.

Mr. HANAUER. Is there something in your statement about any part of the testimony?

Mr. TAYLOR. Not in my statement. That is an extract from the Cravath diary.

Mr. HANAUER. About getting a copy of Buckner's testimony?

Mr. TAYLOR. Yes.

Mr. HANAUER. That is all in my testimony. When I called up Mr. Buckner on the telephone he denied saying any such thing. So I got in touch with Cravath's office and got it, and then I said: "According to the way they have your testimony you seem to have said that." That is how it came up. There is certainly no great secret about it.

Mr. TAYLOR. Mr. Potter, after you and Mr. Byram had made statements approving the plan proposed by Kuhn, Loeb & Co.-National City Co., did Mr. Brundage make any similar statement?

Mr. POTTER. No.

Mr. TAYLOR. Do you recall whether you requested Mr. Buckner to make a similar statement?

Mr. POTTER. Asked Mr. Buckner?

Mr. TAYLOR. No; Mr. Brundage, I meant.

Mr. POTTER. I did not. At least I do not recall it, and I cannot conceive of my having done it.

Senator TRUMAN. The excerpts from the diary slips will be received in evidence.

(The excerpts referred to were marked "Exhibit No. 1896" and are included in the appendix on p. 7006.)

Mr. TAYLOR. Mr. Chairman, I offer for the record a copy of a carbon copy of a telegram procured from the files of Mr. Mark W. Potter. It is dated June 19, 1925, which is the day following Mr. Potter's statement as reported in the Herald-Tribune.

Senator TRUMAN. It may be received.

(Copy of telegram referred to was marked "Exhibit No. 1897" and is included in the appendix on p. 7007.)

Mr. TAYLOR. This telegram reads as follows:

Mention has been made of the fact that while Byram and I expressed approval of the reorganization plan, you have not expressed your view. They seem to feel that a statement of your view to the Associated Press would be helpful.

Do you recall that telegram, Mr. Potter?

Mr. POTTER. I do not; and I think it is a rather dirty piece of work, though, that you did not call my attention to it before asking me the question.

Mr. TAYLOR. Mr. Potter, this was from your files, I believe.

Mr. POTTER. Yes.

Mr. TAYLOR. Were you not supplied with a copy of each document taken by the committee from your files?

Mr. POTTER. I was not. What do you mean "supplied"? I had them in my files. I gave you carte blanche to go in and examine the files. You went in and examined them. I do not know what you took or what you saw.

Mr. TAYLOR. I believe, Mr. Chairman, that in all cases where the committee examiners have made copies, they have supplied one set of copies indicating what they took to the parties from whose files the documents came.

Mr. POTTER. That may be so. I do not recall. I never saw it and never examined it. If it came there, it may be in my office. I never had any objection—

Senator TRUMAN. It is not the committee's fault that you are not informed on the subject. I do not like your remark.

Mr. POTTER. I think he ought not to have asked me about something—

Senator TRUMAN. He has a perfect right to ask any questions he wants to ask, so long as I am in charge of this committee.

Mr. POTTER. All right. I will take care of myself as I go along.

Senator TRUMAN. Go ahead and do it.

Mr. TAYLOR. Mr. Potter, do you recall who had made mention of the fact that Mr. Brundage had not expressed approval of the plan?

Mr. POTTER. I do not.

Mr. TAYLOR. Do you recall who it was who seemed to feel that [reading from "Exhibit No. 1897"]:

a statement of your view to the Associated Press would be helpful?

Mr. POTTER. I do not.

Mr. TAYLOR. It says "they seem to feel—"

Senator SHIPSTEAD. I would like to ask a question. I came in late. So far as the plan of reorganization is concerned, had that been submitted to the court for approval or disapproval before all these transactions and communications took place?

Senator TRUMAN. Can you answer that question, Mr. Potter?

Mr. SWAINE. No; it had not. Under the legal machinery which was in vogue at that time, the plan was not submitted to the court until it had been submitted to all the security holders and the attitude of the security holders developed.

Senator SHIPSTEAD. I should like to ask Mr. Potter a question.

Senator TRUMAN. Proceed, Senator.

Senator SHIPSTEAD. I should like to ask Mr. Potter if he thinks it would be proper for a court having charge of the property in the hands of a receiver to express any opinion upon any plan that had not been presented to the court. Do you think it would be proper for the court to express an opinion?

Mr. POTTER. I certainly should not express an opinion if I were the court. I cannot conceive of the court doing it, but, again, I do not want to say what a court should or should not do, Senator.

Senator SHIPSTEAD. Do you think it is proper for the receiver, who is an agent of the court, to express an opinion?

Mr. POTTER. I won't answer that as a general question. The opinion I expressed at that time may have been hasty; it may have been unwise; it may have been unsound. It struck me at the time as a perfectly proper thing to do, and I think it was a proper thing to do, and did no harm. It certainly did not control the court, or anyone else. If anyone feels that I ought not to have done it, I am prepared to recognize that he may be right in the opinion that I ought not to have done it, but I did it. I do not think it did anybody any harm, and that is all there is to it. We all make mistakes.

Senator SHIPSTEAD. I realize that. I just asked for your opinion as to the proper relation of a receiver, an agent of the court, to the court, and if you think that an agent of the court can do things that would not be proper for the court to do.

Mr. POTTER. Generally, of course, a receiver ought not to do that. A receiver ought not to do anything that would by any possibility draw reflections on the court or embarrass the court, and receivers ought to be very careful in expressing their opinions—perhaps more careful than I was. I do not think that was a matter of any consequence to speak of. It did not occur to me so at the time.

Mr. SWAINE. Senator, I think you might have in mind, as the background of that question, that the controversy was whether the fixed charges should be the amount proposed by this plan or an amount something more than \$2,000,000 larger. That was one of the principal points of controversy. The opposition wanted a larger fixed charge. Secondly, the question had to do with the payment off of the Government debt. The Kuhn, Loeb plan provided for the payment off of the \$55,000,000 of Government debt. The opposition did not want that paid off. They wanted it funded into a long-term obligation. It was upon those two principal questions in controversy that these receivers said that this was a sound plan; and while I can see that the question is debatable, cannot something be said for the proposition that the receivers could properly state that it was a sound thing to pay the Government debt off, and, secondly, to have the reduced amount of fixed charges? As I say, I can see that it is debatable, but the question ought to be in the light of that background.

Senator SHIPSTEAD. Do you not think it would have been proper for the receiver to have advised the court if the court had asked, instead of taking sides in a controversy? It seems to me the receiver went outside of the duties and responsibilities of an agent of the court.

Mr. SWAINE. There are two schools of thought on that, and Congress has taken just the opposite attitude in its present reorganization machinery.

Mr. LOWENTHAL. Congress has not—

Mr. SWAINE. Under section 77, the trustee may propose a plan.

Mr. LOWENTHAL. We will come to that question. Congress has not said that it is proper for a receiver, where there are two contesting sides and each has plans, or one side is opposing the plan of the bankers—Congress has not said that it is proper for a receiver in such a case, before the matter has come up for court decision, to go out and help the bankers. Congress has in no way said that.

Mr. SWAINE. Congress has said nothing at all about whether it is a banker's plan or anybody else's plan, but Congress has said that

the trustee may adopt a plan, and if there are two plans publicly announced the trustee, under section 77, may adopt one of those plans. It may be the banker's plan or somebody else's plan.

Senator SHIPSTEAD. Is it not a fact that a court trustee's duties, responsibilities, and liberties may be entirely different under a law or an act of Congress than as the agent of a court of equity?

Mr. SWAINE. They are the officers of the court under the act of Congress. The question is as to the philosophy of it, that is all.

Senator TRUMAN. Proceed.

Senator SHIPSTEAD. Is it not also a question of ethics?

Mr. SWAINE. It may be.

Senator SHIPSTEAD. In one case you have a question of law, and in another you have a question of conscience.

Mr. SWAINE. My point is that if Congress has assumed that it should be done one way, certainly it could not have been very unethical to have done it the way Congress later enacted into law.

Mr. LOWENTHAL. That is not correct.

Mr. SWAINE. You and I disagree about that.

Mr. LOWENTHAL. Congress has under no circumstances, in any law, said that it is proper for a court trustee or receiver, before a plan has been heard before the court, where that plan is gotten out by one side, and there is another side contesting it, to rush out within a few days after the plan has been made public by the one side, and say that it is a good plan.

Mr. SWAINE. Under section 77 the trustee may do exactly that thing, because the trustee may propose a plan.

Mr. LOWENTHAL. It is one thing for a trustee to propose a plan, and it is another thing for a trustee to say "I am for the plan of this one side."

Mr. SWAINE. Let us project ourselves back to 1925. Suppose that section 77 had been in effect at that time. The trustees of this property, instead of merely going out in a formal statement and saying they thought it was sound, could have adopted it as their plan, and proposed it as their plan under section 77.

Mr. LOWENTHAL. Within a few days after the bankers make it public, the receivers have read it, and they know there is another group opposing it, and the receivers go out and say that they approve the reorganization plan put out by Kuhn, Loeb & Co.

Mr. SWAINE. They could adopt it.

Mr. LOWENTHAL. No such action has been taken by any trustee in bankruptcy in any railroad case since section 77 has been adopted, or could be taken. He would be removed.

Mr. HANAUER. May I straighten out one matter here on this question of time? My recollection—and I am trying to have it looked up now—is that the Roosevelt opposition did not appear until some little time after that and at the time these statements were made by Mr. Byram and Mr. Potter there was absolutely nothing known, so far as I know, about the opposition of the Roosevelts. The Roosevelts waited until we had put out the plan.

Mr. LOWENTHAL. You knew, Mr. Hanauer, that Mr. Jameson did not like your plan.

Mr. HANAUER. I am not speaking of Mr. Jameson. Mr. Jameson did not put out a plan.

Mr. LOWENTHAL. He was opposing it. He did not like your plan.

Mr. HANAUER. He was not opposing it until a long time afterward. He came in as an individual.

Mr. LOWENTHAL. You tried to get Mr. Jameson to come on your committee.

Mr. HANAUER. We invited him.

Mr. LOWENTHAL. And he refused.

Mr. HANAUER. Yes.

Mr. LOWENTHAL. He told you that he was against your plan.

Mr. HANAUER. No.

Mr. LOWENTHAL. He did not tell you that?

Mr. HANAUER. There was no plan at the time he was invited.

Mr. LOWENTHAL. He did not tell you he was against your plan when he saw your plan?

Mr. HANAUER. After we issued the plan, yes; but certainly not before that.

Mr. LOWENTHAL. You did not know, at the time the suggestion was made to Mr. Potter that he try to get his coreceiver, Mr. Brundage, to tell the Associated Press that he, Mr. Brundage, was in favor of the Kuhn, Loeb plan—you did not know at that time that Mr. Jameson was opposed to it, and that there was a large, important bondholding interest opposed to your plan?

Mr. HANAUER. Decidedly not.

Mr. LOWENTHAL. You did not know that?

Mr. HANAUER. Decidedly not.

Mr. LOWENTHAL. We will show that, Mr. Hanauer.

Mr. HANAUER. But all the opposition was because we were too conservative. That I think you will admit.

Mr. LOWENTHAL. We will show that Kuhn, Loeb knew, at the time efforts were made to get receivers to come out in favor of the Kuhn, Loeb plan, that there were important bondholding interests opposed that plan.

Mr. HANAUER. Mr. Potter has testified that he was not asked to make this statement, and I am perfectly willing to swear today that we never asked either of the receivers to make that statement.

Mr. LOWENTHAL. Who are the "they" referred to, then?

Mr. HANAUER. I do not know who the "they" are, in a newspaper statement.

Mr. LOWENTHAL. This is a telegram. This is a telegram from Mr. Potter to Mr. Brundage. You have a copy before you. "They seem to feel that a statement of your view to the Associated Press would be helpful."

Mr. HANAUER. I do not know. It may have been some newspaper comment. Frankly, Mr. Brundage was never a railroad man, and his opinion would have had absolutely no influence. It never would have occurred to me to want Mr. Brundage to say anything.

Mr. LOWENTHAL. Who are the "they"?

Mr. HANAUER. You will have to ask Mr. Potter. I do not know. It probably was some newspaper comment.

Mr. LOWENTHAL. Some newspaperman thinks a statement by Mr. Brundage to the Associated Press would be helpful to whom?

Mr. HANAUER. Someone else may have said it to Mr. Potter, but I am sure I did not.

Mr. LOWENTHAL. "Would be helpful" to whom?

Mr. HANAUER. It never would have occurred to me that Mr. Brundage, who was attorney general—of course, this was 11 years ago, but I am confident I never suggested that.

Mr. LOWENTHAL. I think we will show in a moment that the bankers and their representatives were very active in getting help.

Mr. HANAUER. I beg your pardon?

Mr. LOWENTHAL. We will show how the bankers and their representatives were very active in getting help.

Mr. HANAUER. Of course we were anxious to get help.

Mr. LOWENTHAL. From the receivership estate.

Mr. HANAUER. Because we believed in this plan, and the results have shown that that was the best plan. I am sorry it was ever modified.

Mr. TAYLOR. You have already testified, Mr. Potter, that Mr. Brundage did not make a statement approving the plan, have you not?

Mr. POTTER. That is my recollection.

Mr. TAYLOR. I offer for the record, Mr. Chairman, a copy of an original letter from Mr. Potter's file, from Mr. Brundage, in reply to the telegram which has been introduced. This letter is dated June 22, 1925, from Mr. Brundage to Mr. Potter. I should like to offer the whole letter, and read one paragraph.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1898" and is included in the appendix on p. 7007.)

Mr. TAYLOR. Mr. Brundage writes:

I talked with Judge Wilkerson this morning, and he felt as I did—in other words, that I ought not at this time to express any opinion concerning the reorganization plans. My duty as the officer of the court was to assist in administering the property while in the court's possession; beyond that I ought not to express myself.

I also offer for the record Mr. Potter's reply to Mr. Brundage, dated June 23, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1899" and is included in the appendix on p. 7007.)

Mr. TAYLOR. Mr. Hanauer—

Mr. POTTER. May I look at that?

Mr. TAYLOR. Yes [handing paper to Mr. Potter.]

Mr. Hanauer, following Mr. Potter's statement approving the plan, did you make use of that statement in any way in assisting your plan to find support—I beg your pardon—your plan and the National City Bank's plan, to find support among the security holders?

Mr. HANAUER. If you have anything on that subject, I will be glad to see it, but I have absolutely no recollection of such a thing.

Mr. TAYLOR. Mr. Chairman, I offer for the record a copy of a carbon copy of a telegram from the files of Cravath, de Gorsdorff, Swaine & Wood, dated June 18, 1925, that being the same day as Mr. Potter's statement. This telegram is addressed to Mr. Robert T. Swaine, care of Milton Harrison, Poland Springs House, Poland Springs, Maine.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 1900" and is included in the appendix on p. 7008.)

Mr. TAYLOR. Who is Mr. Milton Harrison, Mr. Swaine?

Mr. SWAINE. Mr. Harrison was an officer of an association of bondholders that were meeting in Poland Springs, Maine, in order to discuss the St. Paul plan.

Mr. TAYLOR. May I read the telegram, Mr. Chairman?

Senator TRUMAN. Yes.

Mr. TAYLOR (reading from "Exhibit No. 1900"):

Hanauer suggests as further ammunition if necessary interview this morning's Tribune by Potter endorsing Plan stop Interview states Potter inclined first to favor delay but study of Plan has won him completely over quote The Bankers proposals will stand scrutiny it seems to me from any angle.

The balance being the statement of Mr. Potter as reported in the paper. Mr. Swaine, do you recall whether you made any use of that telegram after you received it?

Mr. SWAINE. I have no recollection. It was a meeting of savings banks, and I remember that we discussed the St. Paul plan in all its details for at least 2 hours. I have no recollection of this episode at all.

Mr. TAYLOR. Mr. Chairman—

Mr. LOWENTHAL. May I interrupt? Mr. Hanauer, I call your attention to the fact that this telegram from Mr. Swaine's partner to Mr. Swaine, in connection with Mr. Swaine's effort to persuade the savings banks, and referring to Mr. Potter's support of the bankers' plan, preceded by 1 day Mr. Potter's telegram to Mr. Brundage saying [reading from "Exhibit No. 1897"]:

they seem to feel—

Somebody or other seems to feel—

that a statement of your view to the Associated Press would be helpful.

Mr. HANAUER. To Mr. Brundage?

Mr. LOWENTHAL. Yes, sir; the day before.

Mr. HANAUER. Maybe there is a wrong date on one of those things.

Mr. LOWENTHAL. Do you mean to say there is a wrong date?

Mr. HANAUER. I do not know. I cannot remember, 11 years ago whether—

Mr. LOWENTHAL. Are you questioning the accuracy of these exhibits?

Mr. HANAUER. No; I am not questioning it. I am just pointing out possibilities. Originals very often have wrong dates on. I am not questioning anything, except I do not see what difference it would make.

Mr. TAYLOR. I offer for the record, Mr. Chairman, an extract from the Savings Bank Journal, which quotes the proceedings at Poland Springs, Maine, which Mr. Swaine was attending, June 18, 1925.

Senator TRUMAN. It may be received.

(The document referred to was marked "Exhibit No. 1901" and is included in the appendix on p. 7008.)

Mr. TAYLOR. Chairman HARRISON asked "Are the present receivers in favor of the plan?"

Mr. Swaine replied:

I just received a telegram of interest in that connection. Mr. Mark W. Potter, one of the receivers, who, as you probably know, was an Interstate Commerce Commissioner until within the last year, this morning gave out in New York an interview from which I want to quote.

Then, Mr. Swaine, you quoted the telegram which has just gone into the record.

Mr. HANAUER. May I say, as to that, that the expression there "who, as you know, was an Interstate Commerce Commissioner" shows exactly why we valued Mr. Potter's opinion. Generally speaking, the opinion of a receiver who had no previous connection with railroading would not be of much value, but here was Mr. Byram, with long experience with the company, and Mr. Potter, who knew a great deal about railroads from his experience with the Interstate Commerce Commission.

Mr. TAYLOR. You state that made you value his opinion. You mean his opinion of the plan.

Mr. HANAUER. His opinion of the plan, being one on which the property could safely be operated.

Mr. TAYLOR. Is it not clear from these telegrams that Mr. Potter's statement was of assistance to you, and was used by Mr. Swaine in persuading the security holders, who were some of the savings bank executives—

Mr. SWAINE. It was used, but it is a nonsequitur that it was of assistance. That group of savings banks did not go along. They were the nucleus of the Roosevelt group. Their objection was that we cut their fixed charges too much.

Mr. TAYLOR. You used it with an eye—

Mr. SWAINE. It may be; but it was a nonsequitur. It did not assist, at least from a practical standpoint.

Mr. TAYLOR. You endeavored to use it to assist yourselves.

Mr. SWAINE. Apparently, from that record. I do not question that record at all.

Mr. TAYLOR. Mr. Potter, do you recall whether, in addition to your public pronouncement on the St. Paul plan, you conferred with and endeavored to persuade individual persons to favor the plan proposed by Kuhn, Loeb and the National City Co.?

Mr. POTTER. I do not recall that I did. I do not believe I did. I would be surprised to learn that I did. I confess that the whole picture is a bit hazy—these various letters, and so forth.

Mr. TAYLOR. Mr. Chairman, I offer a copy of original letter from the files of Kuhn, Loeb & Co., from Mr. Mark Potter to Mr. Jerome J. Hanauer, dated June 5, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1902" and is included in the appendix on p. 7008.)

Mr. TAYLOR. That, I believe, is approximately 2 days after your plan had been made public, Mr. Hanauer. [Reading:]

I think it worth while to send a copy of the proposed reorganization plan to Ray W. Clarke, who has written me the enclosed letter. Clarke was in the Commission for some time, participating in the handling of finance applications. He is an able fellow, who is thought well of everywhere, and it will do no harm to have him equipped so as to defend the plan in conversation, etc.

Mr. Hanauer, I should like to ask, on the basis of this letter, whether you recall whether or not you had conversation with Mr. Potter shortly after you promulgated the plan, with reference to his assisting in persuading people to favor the plan.

Mr. HANAUER. At that time I used to see Mr. Potter occasionally when he was in New York. I have no present recollection of asking

him to appeal to individuals, because, with the distribution of these securities among thousands and thousands of people, I would say that could not be of much assistance. I have no recollection of it at all. Here is a man whom I do not know, who came to Mr. Potter and, as I understand it, all that Mr. Potter suggested was that a copy of the plan be sent to him. Anybody could ask for a copy of the plan.

Mr. TAYLOR. The letter indicates why he thought it would be a good idea to send him a copy of the plan.

Mr. HANAUER. That is Mr. Potter's opinion. He is here. I do not know anything about it.

Mr. TAYLOR. Mr. Potter, why was it of interest to you to have Mr. Clarke equipped so as to defend the plan in conversation?

Mr. POTTER. Mr. Clarke, as I recall, was on the staff of the Interstate Commerce Commission. I think he was in the Bureau of Finance. I do not recall the letter, but he evidently wrote me. He was an intelligent fellow. I thought the plan was an excellent plan. I thought it was desirable to have just as many people know about it and its merits, as were interested. I did not know how it might come up. I thought it was a good thing to have him posted on it. That is the best analysis I can give of it now.

Mr. TAYLOR. Mr. Chairman, I also offer for the record a letter from Mr. Clarke to Mr. Potter, referred to in the letter which has just gone into the record. This letter is without date.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1903" and is included in the appendix on p. 7009.)

Mr. TAYLOR. Mr. Potter, in the light of this letter dated June 5, 1925, do you think it was, as you described it before, an outburst of enthusiasm that made you come out in favor of the plan? Does it not appear that approximately 2 weeks before you had already thought well of the plan? Does it not appear, from—

Mr. POTTER. Does it not appear from what?

Mr. TAYLOR. From the letter dated June 5, 1925, which has just been put in the record, which I believe you have in your hand.

Mr. POTTER. It appears from the letter of June 5 that I knew of the plan, yes.

Mr. TAYLOR. And already favored it.

Mr. POTTER. Yes.

Mr. TAYLOR. Mr. Chairman, I also offer for the record a letter dated November 13, 1926, from Mr. Potter to Mr. Brundage, and a letter dated November 12, from Mr. Brundage to Mr. Potter, and a letter dated November 15, 1926, from Mr. Brundage to Mr. Potter.

Senator TRUMAN. They may be received.

(The documents referred to were marked "Exhibits Nos. 1904 to 1906" and are included in the appendix on pp. 7009 and 7010.)

Mr. TAYLOR. Mr. Hanauer, do you recall whether Mr. Byram assisted you in any way directly in getting individuals to deposit securities with your committee?

Mr. HANAUER. I would make the same answer. It was 11 years ago, and I have not any recollection. I should doubt that that kind of thing would be very effective. If he went out and did it, I have no recollection. If you have anything there, I would be glad to see it.

Mr. TAYLOR. I offer for the record, Mr. Chairman, a letter dated July 29, 1926, from Mr. Byram to Mr. Hanauer.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1907" and is included in the appendix on p. 7010.)

Mr. TAYLOR. I would like to read from this letter briefly, as follows:

On the train this morning the gentleman whose card is enclosed called upon me to ask about the reorganization and other matters in connection with the property.

He stated he was the owner of \$150,000.00, par value, of the Junior Bonds which he has not as yet deposited and stated he had been besieged by different groups many times during the past year or so to secure his deposit, but he had so far declined to do so, acting on advice of the Phenix Bank. I was unable to make out whether this was the Chatham & Phenix or some other Phenix bank. He said his brokers were Gardiner & Company. He seemed to think there was some advantage to him in not depositing his bonds because of a difference of a point or so in the market quotation for the bonds as compared with the certificates of deposit.

I gave him all the information I could in regard to the situation and he seemed gratified.

Perhaps the Reorganization Managers might want to take some steps to persuade him to deposit his bonds.

This for your information.

Also, Mr. Chairman, I offer the acknowledgment letter from Mr. Hanauer to Mr. Byram, dated August 3, 1926.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1908" and is included in the appendix on p. 7011.)

Mr. HANAUER. Would you read it, please?

Mr. TAYLOR. Yes, Mr. Hanauer. [Reading from "Exhibit No. 1908":]

I beg to acknowledge receipt of your letter of July 29th with reference to your conversation with Mr. Eibschutz, President of the Night and Day Press, for which I thank you.

On the first letter, Mr. Hanauer, there is a note at the foot [reading from "Exhibit No. 1907"]:

NOTE.—The following pencilled notation appears in this letter with line directed to word "card": "See Nathan Eibschutz, 1095-9A."

Mr. HANAUER. That is just a cross reference in the filing department.

Mr. TAYLOR. Mr. Hanauer, it does appear from that that Mr. Byram brought to your attention parties who had not as yet deposited their securities, so that you might contact them and persuade them to deposit with your committee, does it not?

Mr. HANAUER. Yes. In this particular case—and I imagine that was always the case with people who came to him to inquire—might I at this point say that it is natural that a man who is operating a railroad is very anxious to keep fixed charges down. Why shouldn't he be, if he wants to have a conservative organization? If the earnings are there the security holders would get them, whether it is a fixed-charge bond or an income bond, but here was an opposition. I testified in 1925 at length, and I do not want to go into it again, as to the speculative character of the opposition, but they were trying to increase the fixed charges by a very large amount, in order to get a higher price for the bonds, to sell out.

Mr. TAYLOR. Mr. Hanauer, after all—

Mr. HANAUER. An operating man does not want to see anything like that happen.

Mr. TAYLOR. Mr. Hanauer, the question of which plan was preferable would be, after all, for the court, would it not?

Mr. HANAUER. No; not at all—in the first instance, the security holders. It is trying to get the security holders to come in and agree. Then the court will pass upon it, and he will hear all the various representatives of the security holders.

Mr. TAYLOR. So that in the last analysis the court is called upon to pass upon the plan.

Mr. HANAUER. Based upon what he hears from the various classes of security holders.

Mr. TAYLOR. Mr. Hanauer, I know you cannot answer this question of your own knowledge, but from your knowledge of the circumstances, would you think it likely that Mr. Byram would have given such information to Mr. Jameson, or to the Roosevelt group?

Mr. HANAUER. What?

Mr. TAYLOR. Information similar to what he gave you about Mr. Eibschutz. Would he have been likely to write a similar letter in regard to security holders to the other committees, so that they might also know that Mr. Eibschutz had not yet deposited with any committee?

Mr. HANAUER. I cannot answer that question. As a matter of fact—I am not sure that the date has been put into the record. There was a lot of newspaper talk, but the Roosevelt plan was dated when? Let us see whether it was before or after the date? It was October 14, 1925. There was no other plan out until October.

Mr. TAYLOR. There was opposition to your plan prior to that, was there not?

Mr. HANAUER. Yes, sir; but I am trying to find the date when there was any public advertisement in connection with that opposition.

Mr. TAYLOR. Mr. Swaine, at this very meeting in Poland Springs on the 19th, Mr. Roosevelt was there presenting a very different point of view of the plan to the one you presented, was he not?

Mr. SWAINE. That confirms the recollection I had a little while ago, that there was not any Roosevelt plan. If the date is October 14, my recollection is that the Roosevelts and the other reorganization managers agreed upon a modified reorganization plan on November 19. My meeting at Poland Springs was in June, was it not?

Mr. TAYLOR. June 19.

Mr. SWAINE. There was no Roosevelt plan at that time. As I say, the Roosevelts and the Savings Bank people wanted just two modifications of our plan. They wanted us to increase the fixed charges, and they did not want us to raise the money to pay off the Government. They wanted us to get legislation, and there was legislation introduced in Congress, sponsored very largely by the Roosevelt interests, providing for the funding of the Government debt into a long-term obligation.

Mr. TAYLOR. But it is correct to say, is it not, Mr. Swaine, that at the time of the conference at Poland Springs the Roosevelt group were opposed to your plan in its then form?

Mr. SWAINE. Yes; but with direct reference to your question, I confess I see no reason why the receivers should not favor a reorganization on the basis of a reduced fixed charge, and on the basis of getting rid of the Government debt. Those were the two issues, and sole issues at that time. It seems to me that those were issues

on which it was entirely ethical for the receivers to express views, and entirely ethical for them to assist in getting a reorganization through on that basis.

Mr. LOWENTHAL. Mr. Brundage did not agree with you, did he?

Mr. SWAINE. No; he did not; and you do not either. I know that.

Mr. LOWENTHAL. Did the Judge agree with you?

Mr. SWAINE. I do not think the Judge ever criticized—I do not know, but I doubt whether the Judge ever criticized either Mr. Potter or Mr. Byram.

Mr. TAYLOR. I believe the letter from Mr. Brundage showed that the Judge advised Mr. Brundage not to pronounce an opinion.

Mr. SWAINE. I think there was a little different situation.

Mr. LOWENTHAL. The Judge did not agree with you, did he, Mr. Swaine?

Mr. SWAINE. I have no recollection that the Judge ever passed an opinion on the propriety of Mr. Byram's and Mr. Potter's action. As I say, I think Mr. Brundage's action was an entirely different question than that of either Mr. Byram or Mr. Potter.

Mr. LOWENTHAL. He was a receiver.

Mr. SWAINE. Who?

Mr. LOWENTHAL. Mr. Brundage.

Mr. SWAINE. Yes; but he was not an expert in railroad matters.

Mr. TAYLOR. Was Mr. Byram an expert on railroad finance, and the terms of the plan?

Mr. SWAINE. He had been connected with railroads for a long while, and knew a great deal about railroads, and he knew a great deal about this railroad.

Mr. LOWENTHAL. Did Mr. Brundage say in his letter, Mr. Swaine—

Mr. SWAINE. I do not remember, Mr. Lowenthal, what he said. The letter has been introduced in evidence.

Mr. LOWENTHAL. Do you find in it, Mr. Swaine, any indication that the Judge made a distinction between one type of receiver and another, and did he say it was all right for one receiver to speak, but not for another?

Mr. SWAINE. I will let the letter speak for itself.

Mr. TAYLOR. Mr. Chairman, I should like to ask Mr. Hanauer, first, whether he recalls whether Mr. Byram gave him advance information of the probable formation of other committees than the committee on which he was engaged with Mr. Ecker. Do you recall whether Mr. Byram advised you in advance?

Mr. HANAUER. I do not recall, but he may have told me of conversations with various people. I would like to point out that Mr. Byram, as well as having been receiver, was president of the company. The directors, under Mr. Byram's presidency, had asked us to go into this thing and try to form committees, and it might be natural, from that standpoint, that he did speak to us, but I have no definite recollection.

Mr. TAYLOR. Mr. Chairman, I offer for the record two telegrams from Mr. Byram to Mr. Marony.

Senator TRUMAN. They may be received.

(The two telegrams were marked collectively "Exhibit No. 1909" and are included in the appendix on p. 7011.)

Mr. TAYLOR. Mr. Marony was the financial representative of the St. Paul in New York?

Mr. HANAUER. He was the head of the New York office. I do not remember at this time what was his official position.

Mr. TAYLOR. The telegram is addressed to him as financial representative. That is the only reason I used that term. The telegrams are dated March 31, 1925, and April 1, 1925, and are in code. They read, decoded, as follows:

The first telegram reads [reading from "Exhibit No. 1909"]:

Please advise Hanauer large holders Terre Haute bonds identified with First National Bank interests here are planning form friendly protective committee. Have suggested they confer with Hanauer before doing so.

The second telegram reads:

Income Bonds. Parties proposing organize committee are large holders and would be entirely friendly.

Mr. Hanauer, what is a friendly holder of a bond—a Terre Haute bond or an income bond?

Mr. HANAUER. I do not know what Mr. Byram had in mind, but I can see what he had in mind in sending that telegram, because, as an operating man, he had stated his opinion as to the value of the Terre Haute to the entire property, and he had reason to believe—that was before the plan was developed, was it?

Mr. TAYLOR. Yes.

Mr. HANAUER. He had reason to believe that the Terre Haute bonds would not be disturbed, and that it would be a waste of effort and a waste of money for anybody to form a committee before finding out whether they were going to be hurt.

Mr. TAYLOR. You have no opinion as to what Mr. Byram meant by friendly holders?

Mr. HANAUER. I think you can define that as well as I can, Mr. Taylor. I should say a friendly holder was one who had no particularly selfish interest to serve. He would want to see something done that was fair.

Senator SHIPSTEAD. He had no fear?

Mr. HANAUER. No; I did not say "fear."

Senator SHIPSTEAD. Would it be proper to say that he was friendly because he felt he would not be hurt, that he was in a secure position?

Mr. HANAUER. In this particular case he was friendly to our group. I do not see that the question of fear has anything to do with the question of a friendly holder. A friendly holder is not looking for trouble. He is not a striker. He really wants to get the information.

Mr. LOWENTHAL. Mr. Hanauer, in this code is your name "abstruse?"

Mr. HANAUER. I have not the slightest idea what that code is. I never saw it. Probably it would be a very appropriate code word.

Mr. LOWENTHAL. "Episcopal" seems to be—

Mr. HANAUER. I never saw the code.

Mr. LOWENTHAL. "Episcopal" seems to be one of the words designating the First National Bank of New York.

Senator SHIPSTEAD. Are they Episcopalians? [Laughter.]

Mr. LOWENTHAL. They are a leading institution in New York, are they not?

Mr. HANAUER. The First National Bank?

Mr. LOWENTHAL. Yes.

Mr. HANAUER. Rather.

Senator TRUMAN. Proceed.

Mr. Shaw, you have been sworn already, have you not?

Mr. SHAW. I do not think so.

Senator TRUMAN. You were before this committee once before, I think, and have already been sworn, have you not?

Mr. SHAW. Not in connection with this matter. I have never been sworn before the committee.

Senator TRUMAN. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth touching the matters under investigation by the committee?

Mr. SHAW. I do.

Senator TRUMAN. Just have a seat, Mr. Shaw.

TESTIMONY OF RALPH M. SHAW, A PARTNER IN THE LAW FIRM OF WINSTON, STRAWN & SHAW, CHICAGO, ILL.

SELECTION OF RECEIVERS AND COUNSEL FOR RECEIVERS—EXTENT OF BANKER INFLUENCE THEREON

Mr. TAYLOR. Mr. Shaw, you have appeared of record here before, but you have not appeared as a witness; is that correct?

Mr. SHAW. I appeared of record before the committee.

Mr. TAYLOR. For the Great Western?

Mr. SHAW. But not in connection with the St. Paul.

Mr. TAYLOR. Do you want to state briefly for the record your business affiliations?

Mr. SHAW. My name is Ralph M. Shaw, a partner in the firm of Winston, Strawn & Shaw, in Chicago. We practice law.

Mr. TAYLOR. Mr. Shaw, you were active in connection with the inception of the St. Paul receivership, were you not?

Mr. SHAW. I was interested in it; yes.

Mr. TAYLOR. Could you tell us by whom, and in what manner, an equity receivership of a railroad is instituted? How does it come about? How does it first get into court?

Mr. SHAW. An equity receivership is instituted by the filing of a bill of complaint by a complainant that fits into the practice and procedure of the court in which the bill of complaint is filed, asking for the appointment of a receiver by the court. That is followed by the appointment of a receiver by the court, if the court does appoint one. Generally in railroad receiverships, though not always, it is with the consent of the defendant. Occasionally it is *in invitum*.

Mr. TAYLOR. Where it is with the consent of the debtor—

Mr. SHAW. I beg your pardon?

Mr. TAYLOR. Where the bill is filed with the consent of the debtor, the creditor is often referred to as a friendly creditor, is he not?

Mr. SHAW. I do not know what he is often referred to as.

Mr. TAYLOR. Have you heard the term "friendly receivership" or the term "friendly creditor"?

Mr. SHAW. I have heard the terms "conservation receivership" and—yes, I have heard of the term.

Mr. TAYLOR. The general theory of the bill that a creditor files is to conserve and marshal the assets for the benefit of creditors.

Mr. SHAW. I would rather talk about this particular bill, if you please. I am not appearing here as an expert on friendly bills.

Mr. TAYLOR. In the terms of this particular bill, Mr. Shaw, its purpose was to conserve the assets of the St. Paul for the benefit of the various classes of creditors.

Senator TRUMAN. May I make a statement for the benefit of those learned counsel around this table? The idea and purpose of this committee is to get information, and if you gentlemen, who have had more experience with receiverships than any other people in the United States, cannot give us that information, how are we going to get it?

Mr. SHAW. I shall be glad to give you all the information I have.

Senator TRUMAN. Section 77 is up for amendment in this Congress. We are trying to find out what is the best way to meet this railroad situation, with 75,000 miles in receivership. We want to get it out, if it can be gotten out. We have you gentlemen here for the purpose of giving us information, and if you cannot give it, where are we going to get it?

Mr. SHAW. With that elucidation of your purpose, I shall be glad to help you all I can.

Senator TRUMAN. That is the only purpose of this committee. It does not exist for any other reason. We are not prosecuting anybody or persecuting anybody. We are trying to get facts. Proceed.

Mr. TAYLOR. Mr. Shaw, I recognize that these events took place some time ago, and I will ask you to use your best recollection. Where you cannot recall, I will refresh your recollection to the extent possible.

Do you recall how you came to be involved in the St. Paul receivership?

Mr. SHAW. In a very general way I do. Of course, it has been 12 years ago, and I think a great many of the details of what took place have passed out of my mind. The receivership has been lifted since 1928. I have testified twice in connection with this matter, once in the hearing before the Interstate Commerce Commission, and once before a congressional committee which visited Chicago. My recollection is now a little hazy and indistinct, but subject to the privilege of correcting such mistakes as I may make, if my evidence at present should be in conflict with what I testified to at those two hearings, I shall be glad to tell you what I know, and what part I took in the proceedings.

Mr. TAYLOR. As a first bite, Mr. Shaw, will you tell us how you came to be a party to the proceedings at all?

Mr. SHAW. I was invited by one of the partners in the firm of Cravath, Henderson & de Gersdorff to come to New York, and did go to New York, on the Sunday preceding the application for the receivers.

Mr. TAYLOR. Had your firm had any prior connection, in a business way, with Mr. Swaine's firm?

Mr. SHAW. Our firms have been friendly, and our predecessors have been friendly, ever since 1892 or 1893, when I was employed as a junior law clerk in the firm in which I am now a partner.

Mr. TAYLOR. Would it be accurate to describe your relation to Mr. Swaine's firm as their western representatives?

Mr. SHAW. I would not think that it would. They send us business when they have business in the West, but I would not say we were the

exclusive representatives of that firm. In fact, I do not know anything about that.

Mr. TAYLOR. Before the Interstate Commerce Commission, Mr. Shaw, you were asked whether you had ever heard of Cravath, Henderson & de Gersdorff taking any representation that was opposed to Kuhn, Loeb & Co. You replied, "I do not know anything about their business, except what they send out to us to take care of as their western representatives."

Mr. SHAW. Western representatives in particular matters.

Mr. TAYLOR. In a number of particular matters, I assume.

Mr. SHAW. In any one or more, if there are more than one.

Mr. TAYLOR. I offer for the record an extract from the hearings of the Interstate Commerce Commission in the investigation of the Chicago, Milwaukee & St. Paul, Docket No. 17021 (p. 2665), containing the excerpt from the testimony that has just been referred to.

Senator TRUMAN. It may be received.

(The extract referred to was marked "Exhibit No. 1910" and is included in the appendix on p. 7011.)

Mr. TAYLOR. Mr. Chairman, I offer for the record a copy of a letter from Mr. de Gersdorff to Mr. Shaw, dated March 10, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 1911" and is included in the appendix on p. 7011.)

Mr. TAYLOR. I should like to read briefly from this letter [reading from "Exhibit No. 1911"]:

When Strawn was in New York just before leaving for South America—

Mr. Strawn is one of your partners, is he?

Mr. SHAW. Yes.

Mr. TAYLOR (reading further):

I had a talk with him about Chicago, Milwaukee & St. Paul matters. He may have repeated to you my conversation. When he left I thought that it would not be necessary to discuss the matter again until his return, but there have been some recent developments which make it very desirable that we should talk with you promptly. Could you make it convenient to be here in New York to attend a conference either Monday or Tuesday of next week? Please wire me on receipt of this letter. Will you please treat this letter as quite confidential.

I also offer Mr. Shaw's reply, Mr. Chairman, by wire, dated March 12, 1925, to Mr. de Gersdorff.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 1912" and is included in the appendix on p. 7012.)

Mr. TAYLOR. I should like to read this [reading from "Exhibit No. 1912"]:

Came home very unexpectedly last night. Find your letter tenth. Will be glad to be in New York either Monday or Tuesday. Prefer Tuesday but will come either day you designate please answer.

Mr. TAYLOR. I take it, Mr. Shaw, that while your recollection may not serve, the letters adequately indicate that these letters were the genesis of your connection with the St. Paul affair.

Mr. SHAW. Yes, sir; substantially so.

Mr. TAYLOR. Mr. Shaw, you have described the mechanics, briefly, by which a railroad enters an equity receivership. Is it correct that when you came to New York over that week and prior to the institution of the proceedings you were requested to take such

proceedings as were necessary in Chicago to have the St. Paul put into equity receivership?

Mr. SHAW. That would be a fairly accurate statement.

Mr. TAYLOR. In order to do that you consulted with the company's representatives and found what we have heard referred to as a friendly creditor to institute the proceedings, and acted as his counsel in bringing those proceedings against the St. Paul—that being the Binkley Coal Co.

Mr. SHAW. That is substantially correct.

Mr. TAYLOR. Did a representative of Mr. Swaine's firm go out with you to Chicago after the conference?

Mr. SHAW. No, he did not.

Mr. TAYLOR. Did not Mr. Swatland accompany you to Chicago on that trip?

Mr. SHAW. My recollection is no. If I am mistaken about that, if you have any written memorandum which indicates that I went west—

Mr. SWAINE. I will state the fact. Mr. Swatland was there, whether he accompanied Mr. Shaw or not. That is immaterial.

Mr. SHAW. I do not recall that Mr. Swatland was on the same train. He may have been, but I do not recall.

Mr. TAYLOR. Mr. Shaw, when you were in New York that week and before the receivership, I believe you testified that you attended a conference at Mr. Swaine's office that Sunday.

Mr. SHAW. Yes, I did.

Mr. TAYLOR. At that conference did you hear mention made of the individuals whom it was hoped or anticipated—

Mr. SHAW. Will you please say that again?

Mr. TAYLOR. At this conference at Mr. Swaine's office that Sunday did you hear mention made of the persons whom it was hoped would be appointed receivers of the St. Paul property?

Mr. SHAW. Certainly, I did.

Mr. TAYLOR. Were those individuals Mr. Byram and Mr. Potter?

Mr. SHAW. Those two were suggested as being the individuals whom the gentlemen interested in having this conservation receivership would like to have appointed, with the court's acquiescence.

Mr. TAYLOR. Mr. Shaw, did you yourself suggest at that conference that Mr. Brundage might be an appropriate receiver of the property?

Mr. SHAW. I think I did.

Mr. TAYLOR. Mr. Shaw, did you interview or confer with Judge Wilkerson prior to March 18, when the receivership took place, with reference to the appointment of these three gentlemen as receivers?

Mr. SHAW. Certainly.

Mr. TAYLOR. Was that before or after you came to New York?

Mr. SHAW. After I went to New York.

Mr. TAYLOR. Could you tell us briefly in what way and when you conveyed that information to the judge?

Mr. SHAW. As I recall it, that application was made on the 18th day of March. I think I had my interview with the court on the day before.

Mr. TAYLOR. Did you mention to the judge, Mr. Brundage, or did the Court already have him in mind?

Mr. SHAW. I suggested Mr. Brundage.

Mr. TAYLOR. Just what did the court indicate to you, Mr. Shaw?

Mr. SHAW. He did not indicate anything. He said he would take the matter under advisement. I told him of the trip I had made to New York, and the group of gentlemen whom I had met there; that I had been informed at that conference in New York that there were present in the room representatives of each class of security holders, the holders of each class of securities which the St. Paul had outstanding, together with representatives of the company; that I had been told that the only salvation for St. Paul was through a conservation receivership, and accordingly I was going to file a bill, and that the gentlemen who were interested in preserving the property by a conservation receivership would ask to have the Hon. Mark Potter and the president of the company appointed. I told him that I thought there ought to be a third man, because in a large receivership of that character I thought there ought to be someone who was not connected with the property or with the gentlemen applying for it, and I suggested to him Mr. Brundage. He said he would be in court at 10 o'clock the following morning and take the matter under advisement.

Mr. TAYLOR. According to your recollection, he gave no indication as to whether he agreed with these recommendations?

Mr. SHAW. None whatsoever.

Mr. TAYLOR. Mr. Chairman, I offer for the record an excerpt from the testimony before the Interstate Commerce Commission by Mr. W. W. Miller on May 8, 1926.

Senator TRUMAN. It may be received.

(The excerpt referred to was marked "Exhibit No. 1913" and is included in the appendix on p. 7012.)

Mr. TAYLOR. Who was Mr. W. W. Miller, Mr. Swaine?

Mr. SWAINE. Counsel for the company.

Mr. TAYLOR. In New York?

Mr. SWAINE. Yes.

Mr. LOWENTHAL. Do you remember with what firm he was connected, Mr. Swaine, at that time?

Mr. SWAINE. At that time the name of the firm was Hornblower, Miller, & Garrison.

Mr. TAYLOR. Mr. Chairman, I should like to read briefly from this excerpt. [Reading from "Exhibit No. 1913"]:

The subject of Chicago counsel to represent a plaintiff to commence the proceedings was discussed with counsel for the bankers, and it was agreed that Winston, Strawn & Shaw, by reason of their experience in such matters, would be suitable counsel for such purpose. Mr. Shaw of said firm was, therefore, communicated with by telephone by Mr. de Gersdorff and Mr. Swaine, of Cravath, Henderson & de Gersdorff, and advised of the situation, and requested to ascertain whether Judge Wilkerson would be available on Wednesday, March 18th, to receive and act upon a petition for a receivership should one be presented. Mr. Shaw was also requested to advise Judge Wilkerson as to the wishes of the company and the bankers as to the personnel of the receivers. Mr. Shaw reported that Judge Wilkerson would be available to act and that his disposition was to appoint Mr. Byram and Mr. Potter as receivers, as desired by the company and the bankers, with a third receiver selected personally by the Court, and who would probably be E. J. Brundage, a former Attorney General of Illinois.

Mr. Shaw, is your recollection in conflict with the testimony of Mr. Miller?

Mr. SHAW. I do not know where he got that. I did not write the letter.

Mr. TAYLOR. It is not a letter. It is an extract from his testimony.

Mr. SHAW. I do not know anything about it.

Mr. TAYLOR. Your recollection is in conflict with that?

Mr. SHAW. My recollection is just what I testified. It is always possible to express a hope, however, even in the event of adverse litigation.

Mr. LOWENTHAL. Mr. Shaw, do you recall whether you communicated to the court the names of any of the gentlemen present at that Sunday conference in Mr. Swaine's office?

Mr. SHAW. I would not want to say that I did. I told him about my visit in New York. I do not know into what detail I went. I may have or may not. What difference does it make?

Mr. LOWENTHAL. Did you know the names of the gentlemen who were in that room—all of them?

Mr. SHAW. No; I know some of them when I arrived. I was presented to a number of gentlemen whom I had never met before. The conversation was in the presence of all of them. I would not undertake to say about that.

Mr. LOWENTHAL. Were you informed as to which class of securities the various gentlemen present represented?

Mr. SHAW. No. If so, I do not recall it. I only know that I was told—and no one in the room dissented—that there were present in some capacity representatives of groups of all the securities of the St. Paul Railroad Co. which had been issued and were outstanding.

Mr. LOWENTHAL. Do you know who told you that, Mr. Shaw?

Mr. SHAW. No.

Mr. LOWENTHAL. Do you remember whether you communicated to Judge Wilkerson, in this conference prior to the receivership, as fully as possible all the facts that you had as to what had gone on?

Mr. SHAW. I do not remember anything about it—just exactly that particular conversation. In all human probability I did, but I do not remember the conversation.

Mr. LOWENTHAL. Was it a rather long conference with Judge Wilkerson?

Mr. SHAW. I do not recall.

Senator TRUMAN. The committee will take a recess until 1:30.

(Whereupon, at 12 noon, a recess was taken until 1:30 p. m.)

AFTERNOON SESSION

The subcommittee resumed at 1:30 p. m. on the expiration of the recess.

Senator TRUMAN (presiding). We will resume. Mr. Shaw, will you please take a seat up here, so I may ask you some questions and hear you better?

Mr. SHAW. Certainly.

TESTIMONY OF JEROME J. HANAUER, FORMERLY A PARTNER OF KUHN, LOEB & CO., 52 WILLIAM STREET, NEW YORK CITY; TESTIMONY OF MARK W. POTTER, FORMER RECEIVER OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.; TESTIMONY OF BENJAMIN J. BUTTENWIESER, MEMBER OF KUHN, LOEB & CO., INVESTMENT BANKERS, NEW YORK CITY; STATEMENT OF ROBERT T. SWAINE, OF CRAVATH, DE GERSDORFF, SWAINE & WOOD, ATTORNEYS AT LAW, NEW YORK CITY; AND TESTIMONY OF RALPH M. SHAW, PARTNER IN THE LAW FIRM OF WINSTON, STRAWN & SHAW, CHICAGO, ILL.—Resumed

THE BANKERS AND THEIR COUNSEL PREPARE FOR THE 1925 RECEIVERSHIP

Mr. TAYLOR. Mr. Hanauer, about the time the St. Paul Railroad went into receivership there was a committee formed to represent the preferred stockholders, was there not?

Mr. HANAUER. Yes.

Mr. TAYLOR. And Mr. Mortimer N. Buckner was the chairman of the committee?

Mr. HANAUER. Yes.

Mr. TAYLOR. And he was then chairman of the board of the New York Trust Co.?

Mr. HANAUER. That is my recollection.

Mr. TAYLOR. And a director of the St. Paul Railroad?

Mr. HANAUER. Yes.

Mr. TAYLOR. Do you recall whether he had been on a subcommittee of St. Paul directors just prior to the receivership, that was formed to consider how the maturity in 1925 might be dealt with?

Mr. HANAUER. My recollection is that he was not.

Mr. TAYLOR. Do you recall conferring with him prior to the receivership about how to meet that June maturity?

Mr. HANAUER. No; I do not.

Mr. TAYLOR. Do you recall who the counsel to the committee were?

Mr. HANAUER. Counsel to which committee?

Mr. TAYLOR. The preferred stockholders' committee. Mr. Swaine, it was Murray, Aldrich & Roberts was it not?

Mr. SWAINE. I think that was the name of the firm.

Mr. HANAUER. I had nothing to do with that.

Mr. TAYLOR. Mr. Chairman, I offer for the record the minutes of the first meeting of preferred stockholders' committee of the Chicago, Milwaukee & St. Paul Railway Co., from which it would appear it was held the 17th of March 1925.

Senator TRUMAN. The minutes will be received in evidence.

(The minutes referred to were marked "Exhibit No. 1914" and are included in the appendix on p. 7012.)

Mr. TAYLOR. Mr. Swaine, that was the day before the company went into receivership, was it not?

Mr. SWAINE. That is what you said this morning.

Mr. TAYLOR. These minutes show as present: Mr. Mortimer N. Buckner, Mr. Arthur W. Loasby—Mr. Hanauer, was the latter connected with the Equitable Trust Co.?

Mr. HANAUER. I think so.

Mr. TAYLOR. And Mr. Oliver C. Fuller, by M. N. Buckner, proxy, and Mr. Harold I. Pratt, by M. N. Buckner, proxy. And there were also present, Mr. George Welwood Murray and Mr. Boyd C. Curtis. Mr. Hanauer, I want to call attention that on the second page of these minutes it appears that Mr. Murray presented to the meeting a form of deposit agreement for the preferred stockholders' committee, dated March 18, 1925. In other words, that was done at this very first meeting, so there was a deposit agreement already drafted.

Mr. HANAUER. This is the first I have heard of that. We felt it would be a useless expense to immediately ask for deposit of securities because people would not deposit without there being a plan.

Mr. TAYLOR. Well, this committee, apparently, followed a slightly different procedure.

Mr. HANAUER. No. I would say that counsel for this committee, probably believing that it would be done, prepared this. But as to that I do not know. I have really no knowledge at all, no first-hand knowledge, of the action of the preferred stockholders' committee.

Mr. TAYLOR. Mr. Swaine, have you ever heard of the Pittsburgh Navigation Co.?

Mr. SWAINE. Yes.

Mr. TAYLOR. What ports does it operate between?

Mr. SWAINE. It operates between, or rather is another name for a transportation company that operated between Chicago and Seattle.

Mr. TAYLOR. Mr. Chairman, I offer for the record diary slips or service charge memoranda in the files of Cravath, de Gersdorff, Swaine & Wood, in connection with that matter.

Senator TRUMAN. The record will be received in evidence.

(The memoranda referred to were marked "Exhibits Nos. 1915 to 1918" and are included in the appendix on pp. 7015-7021.)

Mr. SWAINE. I can tell you quite simply what the answer to that is: I did not know whether it was with Mr. Hanauer's knowledge or not, but I prepared drafts of deposit agreements for all classes of securities that might be involved, in order to have them ready for action if action were required to be taken quickly. And I prepared them for the Pittsburgh Navigation Co., or with the Pittsburgh Navigation Co.'s name in the heading. And my recollection is that the name of that company had exactly the same number of letters in it as the Chicago, Milwaukee & St. Paul, and all that might be needed was to change from Pittsburgh to Chicago. It was as a matter of protection, to have the papers ready for quick action if quick action was necessary.

Mr. TAYLOR. Do you know whether the deposit agreement was the one you had drafted previously?

Mr. SWAINE. I do not know whether it was the same one. But I know it undoubtedly started from it.

Mr. TAYLOR. It was based upon yours?

Mr. SWAINE. It was a draft I gave to each counsel, and which each counsel changed to suit his own peculiar idiosyncracies.

Mr. TAYLOR. Have you a copy of that, Mr. Swaine?

Mr. SWAINE. A copy of what?

Mr. TAYLOR. A copy of these diary entries.

Mr. SWAINE. I think a paper was handed over here.

Mr. HANAUER. Have you any record put in as to when any of these deposit agreements were first used?

Mr. SWAINE. As a matter of fact, I do not think deposits were called for then.

Mr. TAYLOR. By the preferred stockholders' committee?

Mr. SWAINE. I do not think they were. I think that while they had these deposit agreements, and had them ready for use, as Mr. Hanauer said, it was decided no deposits would be actually asked for until they could be asked for on the basis of a specific proposal. My recollection is that while they might have formally adopted them, they did not actually ask for deposits until the plan was promulgated, in June.

Mr. TAYLOR. I find on page 2, February 4, 1925, McCloy started working on preferred stockholders' agreements.

Mr. SWAINE. It would be one of the first things I would do when called in.

Mr. TAYLOR. Apparently the work in your office started January 18, 1925, which is about 2 months before the receivership. Mr. Swatland started working on it at that time. Mr. Swaine, can you tell from a cursory examination of this whether your firm had not been actually at work on this prior to March 18, 1925, when the company went into receivership?

Mr. SWAINE. Of course we had.

Mr. TAYLOR. And had done a great many hours' work?

Mr. SWAINE. Yes.

Mr. TAYLOR. Did you do that on your own initiative or at the request of clients?

Mr. SWAINE. I think on the request of Kuhn, Loeb & Co., who were in conference with officers of the company, on the company's then financial problems.

Mr. HANAUER. You do not mean on specific things?

Mr. SWAINE. No. I was called in by Kuhn, Loeb & Co. on things they were acting on; and as far as specific details were concerned I doubt if anybody in Kuhn, Loeb & Co. knew I was doing it. I was doing it on my own, according to my recollection.

Mr. TAYLOR. Can you tell from recollection that your work covered quite a broad field in connection with the receivership; not confined to any particular legal documents but to a number of phases likely to be involved in the proceeding later?

Mr. SWAINE. I was trying to keep myself informed, and to be prepared, with papers that I thought might be needed on any turn in the situation.

Mr. LOWENTHAL. Mr. Hanauer, I am very much interested in these minutes of the first meeting of the preferred-stock holders' committee. I note that the members of the proposed committee who were present, were two in number, Mr. Buckner and Mr. Loasby. Do you know who Mr. Loasby was?

Mr. HANAUER. I stated before this that he was either the president or the vice president of the Equitable Trust Co.

Mr. LOWENTHAL. And Mr. Buckner was the head of the New York Trust Co.?

Mr. HANAUER. Yes.

Mr. LOWENTHAL. Now, with these two members present there were also present Mr. George Welwood Murray—do you remember the law firm of which he was the head, whether they were the attorneys for the Equitable Trust Co.?

Mr. HANAUER. I do not remember, but it is quite possible.

Mr. SWAINE. He was.

Mr. LOWENTHAL. And Mr. Boyd C. Curts was present, and he was made secretary of the committee. Do you know what institution or firm Mr. Curts was connected with?

Mr. HANAUER. As a matter of fact this is the first time I have heard of the minutes or of that meeting. I had nothing to do with the preferred-stock holders' committee at all.

Mr. LOWENTHAL. We will come to that later. I notice that in the printed plan put out by your firm, Mr. Hanauer, for the reorganization of the St. Paul Railway Co., the secretary of the preferred-stock holders' committee, Mr. Curts, was given as having his address at No. 100 Broadway. Would that at all refresh your recollection that he was connected with the New York Trust Co.?

Mr. HANAUER. It would not. But we could easily find out who he was and put it on the record, if you would like. You must remember that it was 11 years ago, and I do not believe I met Mr. Curts, not as far as I can remember.

Mr. LOWENTHAL. I wonder if you would look at this paper, Mr. Swaine. Was Mr. Curts, at the time of the formation of the first preferred-stock holders' committee, connected with the New York Trust Co.?

Mr. SWAINE. I have no definite recollection, but I think it might be assumed for your purposes that he was.

Mr. LOWENTHAL. 100 Broadway was the address of the New York Trust Co., was it not?

Mr. SWAINE. I assume he was there.

Mr. LOWENTHAL. I want to call attention to these very interesting facts about the organization of the first preferred stockholders' committee as I gather from these minutes. Two men were present as members of the committee, each the head of a New York bank. Two appointments were made, one of a lawyer and one of secretary, the lawyer being the attorney for one of the banks, and the secretary being connected with the other bank; and that each of those banks was then appointed to positions connected with this committee; the New York Trust Co. was appointed depository for the committee, and the Equitable Trust Co. of New York was appointed as registrar of the certificates of deposit to be issued by the depository, namely, the New York Trust Co. I am referring to these things, Mr. Hanauer, because the distribution of business to these banks seems to immediately flow from the creation of the committee, and that the four jobs that were created by the committee were distributed, two of them going to the two banks whose representatives were the only members present, and the other two jobs went to people connected with those two banks.

Mr. HANAUER. Let me again repeat, that it is something I knew nothing about, and that I had nothing to do with, the appointment of these people. I did not know of this particular meeting at which only two persons are supposed to have been present, or of the appointment of counsel; or that they selected their own banks as depositaries. However, they were very good companies, I will say.

Mr. TAYLOR. I wish to refer to one or two other things on these service slips [referring to "Exhibit No. 1915"]. On page 4, under date of February 24, 1925, it appears that Mr. McCloy, of your firm,

Mr. Swaine, was working on various plans and agreements of reorganization; and following that there appear to be other entries in connection with work on plans of reorganization. Do you recall whether the plan of reorganization that Mr. McCloy and the other gentleman were working on, was a plan prepared initially in your office, or was it work on legal matters connected with plans prepared elsewhere?

Mr. SWAINE. I do not remember.

Mr. TAYLOR. Mr. Chairman, I offer for the record a copy of a memorandum from the files of Kuhn, Loeb & Co., dated January 20, 1925, entitled "Plan," which appears to be a memorandum as a basis for a plan of reorganization of the St. Paul Railroad.

Senator TRUMAN. It will be received in evidence.

(The plan referred to was marked "Exhibit No. 1919" and is included in the appendix on p. 7025.)

Mr. TAYLOR. Mr. Swaine, I call to your attention that on page 2 of this plan it is provided that the new common stock should be of no par value if permitted by law; and it appears from the diary slips that on February 28, 1925, Mr. McCloy was looking up the law regarding no-par-value stock. And again on March 1 there was further examination of law in regard to no par value stock. Do you think it probable, Mr. Swaine, that it was happen-chance that Mr. McCloy was investigating these questions, or isn't it presumable he was looking up these questions as a result of the plan prepared in January for Kuhn, Loeb & Co. which provided for no-par-value stock if legal?

Mr. SWAINE. Well, I cannot speculate on that. All that I can say is that that is a question we would look up in connection with the reorganization of any railroad at that time.

Mr. TAYLOR. It does appear that that question was actually before Kuhn, Loeb & Co. in working on this plan.

Mr. SWAINE. You say it does or does not?

Mr. TAYLOR. It says, "The common stock shall be of no par value, if permitted by law." I assume they referred that question to you, to find out whether it could be done.

Mr. SWAINE. Whether they referred it to us or not we would have looked it up.

Mr. LOWENTHAL. Do you know of any other large railroads that have no-par-value stock?

Mr. SWAINE. Yes.

Mr. LOWENTHAL. Will you give us for the record any that you can remember?

Mr. SWAINE. I think the Katy has no-par-value stock.

Mr. LOWENTHAL. The usual rule is, is it not—

Mr. SWAINE (interposing). If you are interested you will find in a brief filed in the Western Pacific reorganization, within the last 2 months, a complete collection of all the no-par issues which the Interstate Commerce Commission has permitted. My recollection is that it is over a page long.

Mr. LOWENTHAL. Would you say that the usual practice is to have par-value or no-par-value stock?

Mr. SWAINE. Usually it is to have a par value, because most of the railroads were organized before no-par stock came into being. They are not all \$100 par, however; some of them have nominal par, at smaller amounts, and sell at larger amounts than the par value.

Conversely, some have \$100 par, and sell below the par value—good proof that there should be no par.

Mr. TAYLOR. A copy of that plan is now before Mr. Hanauer. Look at it briefly and see if a number of the provisions are not similar to the provisions finally drafted. For instance, the stock was of no par value, as stated in this memorandum.

Mr. SWAINE. The purport of your question is, whether substantive questions on which we were working were questions which appeared in this, and actually they were. All substantive problems were of course decided by the bankers and not the lawyers. When we had a substantive problem it was up to us to determine the legal questions that those substantive problems raised.

Mr. TAYLOR. I notice that during the first 5 years the stock would be placed in a voting trust. And the stock was so placed for 5 years.

Mr. SWAINE. Yes.

Mr. TAYLOR. It provided for an assessment of \$24 on the preferred and the common stock. That is not exactly but approximately the assessment that was made?

Mr. SWAINE. No; it was \$28 and \$32 as I remember it.

Mr. TAYLOR. The stockholders received fixed interest bonds for their assessment as indicated in this memorandum?

Mr. SWAINE. Yes; for a part of their assessment.

Mr. TAYLOR. And junior bondholders received income bonds for a large part of their old holdings?

Mr. SWAINE. Yes; that is right. Under the original plan they were to have received income bonds for all of their holdings.

Mr. TAYLOR. Mr. Swaine, would it be a fair statement that prior to the receivership your work on the matter had advanced far enough so that you were prepared to be the moving spirit in a number of directions in connection with the receivership? You had a plan, the bill of complaint, the deposit agreements, and were very well prepared when the thing came to pass.

Mr. SWAINE. We were not prepared to be the moving spirit, but we were prepared to see that the spirits that did move, moved in order.

Mr. TAYLOR. And in accordance with the work you had previously done?

Mr. SWAINE. We had studied the problem so that the direction could be enlightened and not unenlightened, if that is your argument.

Mr. LOWENTHAL. Do you know how much the New York Trust Co. got as depositary of the first preferred stockholders' committee? Do you remember that?

Mr. SWAINE. No.

Mr. LOWENTHAL. You do not know how much the Equitable Trust Co. got?

Mr. SWAINE. No.

Mr. LOWENTHAL. Nor what counsel for that committee got?

Mr. SWAINE. No.

Mr. LOWENTHAL. Nor what the secretary got?

Mr. SWAINE. No. But that is all a matter of record with the Interstate Commerce Commission, of course.

Mr. LOWENTHAL. Do you mean in the way of estimating it, or the actual figures?

Mr. SWAINE. I think the actual figures are there, but I do not know. I can find it for you if you want to know.

Mr. LOWENTHAL. You are referring to the testimony introduced in the course of the proceedings on the application for the issuance of reorganization securities. Don't bother about it right now.

Mr. SWAINE. Well, my recollection is not clear on all of the details, but I can give you the exact amounts.

Mr. LOWENTHAL. We will come back to it later.¹

Mr. SWAINE. All right.

RELATION BETWEEN COUNSEL FOR RECEIVERS AND COUNSEL FOR BANKERS

Mr. TAYLOR. Mr. Shaw, at the very outset of the receivership your firm were counsel to the plaintiff?

Mr. SHAW. Yes, sir.

Mr. TAYLOR. And shortly thereafter your firm were appointed counsel to the receivers?

Mr. SHAW. We resigned as counsel for the plaintiff and were appointed special counsel to the receivers.

Mr. TAYLOR. When did you first learn that your firm was to be appointed counsel for the receivers?

Mr. SHAW. I do not know the exact date, but very shortly after the bill had been filed and receivers had been appointed.

Mr. TAYLOR. Do you recall whether you knew prior to the institution of the proceedings before the judge that you were likely to be appointed counsel for the receivers?

Mr. SHAW. No; I did not know that. I did not know in fact that it was going to happen.

Mr. TAYLOR. Do you know whether anybody had suggested your firm for the appointment as counsel to the receivers, I mean prior to the appointment?

Mr. SHAW. No. I had no knowledge on the subject whatever.

Mr. TAYLOR. Mr. Potter, when did you first learn that your counsel, in the St. Paul receivership, were to be Winston, Strawn & Shaw?

Mr. POTTER. I do not remember. Promptly after the appointment, I take it.

Mr. TAYLOR. When you conferred with Mr. Hanauer prior to the receivership was there a discussion as to who counsel would be?

Mr. POTTER. None whatever.

Mr. TAYLOR. Did you have any prior acquaintance with Mr. Shaw or his firm?

Mr. POTTER. No.

Mr. TAYLOR. Or was it a new relationship?

Mr. POTTER. I do not think I had ever met Mr. Shaw or any member of his firm before that time. I am not certain about that, however. No, I am wrong about that; I think I met Mr. Strawn sometime before that when I was on the Interstate Commerce Commission and he was before the Commission on some matter.

Mr. TAYLOR. Did the judge confer or consult with you as to your preference in the matter of counsel at all?

Mr. POTTER. I do not recall any conference upon that subject.

Mr. TAYLOR. Mr. Potter, the position of counsel to receivers is a very important position in the conduct of a receivership, is it not?

Mr. POTTER. Yes.

¹ See "Exhibits Nos. 2258-A to 2258-H", inclusive, Hearings, Part XVII, pp. 7476-7480.

Mr. TAYLOR. To refer back to the discussion of this morning: Wouldn't you say that it is just as necessary that counsel of receivers should be impartial and not more closely affiliated with one group of security holders than others?

Mr. POTTER. Yes.

Mr. TAYLOR. As in the case of the receivers themselves?

Mr. POTTER. Yes.

Mr. TAYLOR. Mr. Chairman, I offer for the record four letters passing between Mr. Swaine and Mr. Shaw, dated, respectively, December 7 and 10, 1925, and January 25 and 27, 1926.

Senator TRUMAN. They will be received in evidence.

(The letters referred to were marked "Exhibits Nos. 1920 to 1923" and are included in the appendix on pp. 7026-7027.)

Mr. TAYLOR. I will ask you, Mr. Shaw, if you did not testify before the Interstate Commerce Commission in connection with the inception of the receivership and the circumstances surrounding it?

Mr. SHAW. I think I was interrogated on that subject.

Mr. TAYLOR. Mr. Chairman, I read from the first letter as follows [reading from "Exhibit No. 1920"]:

Mr. Towner has just returned from Washington.

Who is Mr. Towner?

Mr. SHAW. One of my partners.

Mr. TAYLOR. I continue reading from the letter:

He tells me that you were present at the hearing before the Commission on the two days when Hickey and Eastman interrogated Byram touching the steps which were taken after the decision of the board that the property could not be saved from receivership and the actual appointment of the receivers, and that nothing further developed along that line after you left.

Mr. Towner tells me that he thinks when the hearing is resumed next week, at some time or other during its progress it will be necessary for me to take the stand. As you know, I can bridge the gap so far as it is proper to do so between the meeting at your office on the Sunday morning prior to the application of the receivers and the actual appointment thereof, and will be delighted to do so.

Mr. Shaw, I would like to inquire if you can tell us what is the significance of the phrase "so far as it is proper to do so"?

Is there any extent to which it was improper to bridge the gap?

Mr. SHAW. I do not know what I had in mind when I wrote that.

Mr. TAYLOR. Going on further [continuing reading from "Exhibit No. 1920"]:

On the other hand, I do not know at this instant the answers to the following inquiries:

(1) Who actually prepared the bill; that is to say, who prepared its phraseology?

That is the bill of complaint in the receivership, is it not?

Mr. SHAW. Certainly.

Mr. TAYLOR. Reading further:

(2) How did the person who drew it happen to draw it; that is to say, who asked him to draw it?

(3) Who did pay for the printing, if in fact it has been paid?

I imagine that if I should say that I have been informed that "thus and so" took place, it would be sufficient to cover these questions.

Are you in a position to enlighten me somewhat in detail along these lines or would you prefer that I disclaim any knowledge prior to the time when I was called to New York?

Mr. Shaw, I would like to ask why it was important for you to know what Mr. Swaine preferred.

Mr. SHAW. I understood the Commission was making some inquiry about those facts, and I did not know about them. If I had been informed by someone whom I trusted, as I did Mr. Swaine, I could say that I had been informed by a responsible person knowing the facts, although I would have to disclaim knowing it. That would speak for itself.

Mr. TAYLOR. Well, I am asking you.

Mr. SHAW. Well, the letter speaks for itself.

Mr. TAYLOR. Why was it of any importance what his preference in the matter was?

Mr. SHAW. Well, if he did not want to tell me, I could testify that I did not know, you see. It seems a silly question.

Mr. LOWENTHAL. Don't you think if the Commission wanted the facts that you did not have and that Mr. Swaine had, it could call Mr. Swaine?

Mr. SHAW. It might, but things of that kind are utterly unimportant.

Mr. LOWENTHAL. Do you think it silly to inquire why you asked Mr. Swaine to ascertain his preference of what occurred before the Commission?

Mr. SHAW. Well, if he was a person who knew, I would just as soon do it his way as any other way, as long as it was the truth.

Mr. LOWENTHAL. But you think it is a silly question, do you?

Mr. SHAW. Yes.

Mr. LOWENTHAL. To ask Mr. Swaine as to how testimony could be introduced before the Commission?

Mr. SHAW. I think so.

Mr. LOWENTHAL. All right.

Mr. TAYLOR. Don't you think you were consulting Mr. Swaine on the scope of what your testimony should be?

Mr. SHAW. Oh, no; that is just foolish. It is a plain fact that someone knew it. I could say I had been told about it, or did not know. The question was, I wanted the facts, and it was not why I asked the question.

Mr. TAYLOR. Continuing to read from the letter [reading from "Exhibit No. 1920"]:

As you will have observed from Mr. Dynes' letter to you of December 5—

Mr. Dynes is counsel of the St. Paul, is he not?

Mr. SHAW. He is now general counsel. At that time he was general solicitor. That also is a matter as to which the record will speak for itself.

Mr. TAYLOR. I continue reading:

He now thinks that the curiosity about the actual machinery of the appointment of the receivers has abated so far as Commissioners Eastman and Hickey are concerned, but that it will be pressed by the Attorney General of Wisconsin. Of course, if it is not pressed, the witness certainly will not volunteer.

The witness is yourself, is he not?

Mr. SHAW. That would be the inference from the letter.

Mr. TAYLOR. Do you think that shows the Commission is being cooperated with in obtaining the facts?

Mr. SHAW. I have made it a rule never to answer questions I am not asked.

Mr. LOWENTHAL. Mr. Shaw, might I interrupt to ask this question: Do you have anything to do with the present receivership or bankruptcy or reorganization of any railroads?

Mr. SHAW. Yes.

Mr. LOWENTHAL. You had with the Chicago Great Western?¹

Mr. SHAW. Yes.

Mr. LOWENTHAL. Any others than that?

Mr. SHAW. I personally have not.

Mr. LOWENTHAL. Does your firm?

Mr. SHAW. I think my firm is interested in one way or another in several bankruptcy proceedings in which railroads are interested.

Mr. LOWENTHAL. Could you mention them?

Mr. SHAW. I would rather not because I do not recall. If it is of any interest to you, I will get it.

Mr. LOWENTHAL. Do you have the members of your firm serve as directors of railroads from time to time?

Mr. SHAW. I think I was elected as a director of the Great Western shortly—well, in the very recent past. I think my partner, Mr. Strawn, is now a director of the Alton Railroad.

Mr. LOWENTHAL. Your firm has from time to time for a good many years dealt with the Interstate Commerce Commission on matters affecting railroads, and particularly their finances?

Mr. SHAW. Well, we have dealt with them in matters representing railroads. I wouldn't say we have particularly represented them in the matter of finances, except in matters in which we have been connected.

Mr. LOWENTHAL. Including railroad finances?

Mr. SHAW. Including anything that came up, but not particularly railroad finances.

Mr. TAYLOR. The balance of the letter reads as follows [continuing reading from "Exhibit No. 1920"]:

In this connection, at this date I am expecting to leave Chicago for Washington on Sunday, the 13th, on business which will probably keep me there several days, so that my absence in Washington may be taken advantage of to entirely avoid the possibility of introducing such evidence unless it is pressed.

Mr. LOWENTHAL. Mr. Shaw, I do not understand this. Where were these hearings being held?

Mr. SHAW. What hearings?

Mr. LOWENTHAL. In connection with the Commission's investigation of the St. Paul receivership.

Mr. SHAW. My recollection is that up to that time—well, I don't know. Some were held in Washington and some in Chicago, and which proceeding I do not recall.

Mr. LOWENTHAL. When you were actually questioned you were questioned in hearings held in Chicago?

Mr. SHAW. I do not know. I would rather look up the dates before I commit myself. That would be the inference from the letter.

Mr. LOWENTHAL. Do you think it is cooperation on the part of counsel appearing before the Commission to suggest the possibility of interposing, the delay we will say, mentioned in the last sentence of your letter of December 7, 1925?

Mr. SHAW. It is very difficult at this time to get the entire atmosphere obtaining at that time. But whatever I did I thought it was proper or I would not have done it.

¹ See Hearings, Part IX.

Senator TRUMAN. You were counsel for the receivers at that time?

Mr. SHAW. Yes; I was.

Mr. TAYLOR. The second letter is from Mr. Swaine to Mr. Shaw, dated December 10, 1925, from which I read [reading from "Exhibit No. 1921"]:

No mystery should be made of the fact that the bill for the appointment of receivers was filed at the suggestion of and in cooperation with the railway company. Indeed, I think that at the hearing in Washington both Mr. Byram and Mr. Fisher needlessly evaded questions designed to bring out that fact.

Mr. Swaine, I wondered if you could give us offhand any needful evasion. In other words, if this was a needless evasion, what is a needful evasion?

Mr. SWAINE. None occurs to me at the moment.

Mr. LOWENTHAL. Could you tell us, please, Mr. Swaine, the names of railroads in connection with the reorganization of which at the present time your firm is connected either as counsel for committees or otherwise? I think the Frisco is one.

Mr. SWAINE. Well, we are counsel for the consolidated bondholders' committee of the Frisco. We are counsel for the first-mortgage bondholders' committee of the Western Pacific. We are counsel for the first-mortgage bondholders' committee of the Spokane International. We are counsel for the first mortgage bondholders' committee of the Georgia Central. We are counsel for the bank-note holders' committee of the Chicago & North Western. We are counsel for the bondholders' committee of the N. O. T. & M., of the Missouri Pacific.

Mr. LOWENTHAL. You are not in the D. & R. G.?

Mr. SWAINE. No; I do not think so.

Mr. LOWENTHAL. You are in the St. Paul?

Mr. SWAINE. We are counsel for the debtor in the St. Paul. I don't know of any others. If you have any more—

Mr. LOWENTHAL. Well, I thought perhaps you could add them for the record. That is some seven railroads.

Are you in the Seaboard?

Mr. SWAINE. I have a very remote connection in the Seaboard.

Mr. LOWENTHAL. That is eight railroads. Would you not say that your firm is active in connection with the reorganization of more railroads than any other single law firm in the country?

Mr. SWAINE. I would not want to boast.

Mr. LOWENTHAL. Is that not your estimate?

Mr. SWAINE. No. It may well be that Davis, Polk, Wardwell, Gardner & Reed have more, because they represent the Morgans and the Guaranty Trust Co.; and through their representation of the Guaranty Trust Co., as trustee, they were in more railroad situations than we.

Mr. LOWENTHAL. Do you think of any other firm that has more railroads than Davis, Polk?

Mr. SWAINE. No; I do not.

Mr. LOWENTHAL. From the point of view of counsel representing committees in connection with reorganizations, do you think there is any law firm which represents committees in connection with as many reorganizations of railroads as your firm does at the present time?

Mr. SWAINE. Well, I do not know.

Mr. LOWENTHAL. Would you not estimate that you are about at the top?

Mr. SWAINE. Are you speaking qualitatively or quantitatively?

Mr. LOWENTHAL. I should prefer, at the moment, to follow the line of questions already put to you, which were quantitatively.

Mr. SWAINE. I do not know; I have not checked all committees. Cadwalader, Wickersham & Taft, Colonel Anderson, of Richmond, represent a number. Mr. Burgess, from here, represents a number.

Mr. TAYLOR. The Mr. Fisher referred to is a director of the St. Paul?

Mr. SWAINE. Yes; I think you are quite right.

Mr. TAYLOR (reading from "Exhibit No. 1921"):

In the end Commissioner Woodlock asked Mr. Fisher how long he had been interested in railroad financing and on Mr. Fisher's replying "about ten years", asked whether he had ever heard of a railroad receivership which was not, in effect, a voluntary assignment for the benefit of creditors. Mr. Fisher replied that he had not. This seemed to prick the bubble of mystery and no more was said on this subject.

On the other hand, it does not seem to me either necessary or advisable to volunteer information on this question if it is not raised, or if it is raised, to go unduly into detail.

May I ask why it was not necessary for Mr. Shaw to go into detail?

Mr. SWAINE. Well, I thought then, as now, there was too frequently a spirit of emphasizing unimportant things in connection with these problems and having the publicity of matters that had no real importance, getting the minds of the investors off of the real issue.

Senator TRUMAN. Did you not think that the Commission ought to have had all the facts?

Mr. SWAINE. There is no reason why they should not have had them, Senator, but that does not mean that there should have been a going into needless detail or that it should have been needlessly accentuated.

Mr. LOWENTHAL. Who was to decide that, Mr. Swaine? You, the Commission, or Mr. Shaw?

Mr. SWAINE. You will hunt through that letter in vain to find any suggestion that that question should not be answered. On the contrary, I said that I thought the witnesses at the time made a mystery of it by not making the answer. The fact is, I do not know of any railroad reorganization in the last several decades that was not initiated in exactly the same way as this one that is operating the St. Paul receivership, which, you know much better than I, Mr. Lowenthal, was a device which Congress finally recognized in the passage of section 77B.

Under the old equity procedure, in the Wabash receivership in the late eighties or the early nineties, the Wabash had tried to file the bill itself, and there had been grave doubt as to the validity of that kind of receivership. So, the consent receivership was devised, and I think it has always been silly to try to clothe it in any mystery or to recognize it as anything but what it was.

Mr. LOWENTHAL. As I read the first sentence of this second paragraph, it tends toward the imposition of censorship on what the investigating body will learn, that censorship to be determined by the lawyers who are supposed to be giving all the facts to the Commission.

Mr. SWAINE. Not at all.

Mr. LOWENTHAL. That is the result of it.

Mr. SWAINE. No; it is not, at all.

Mr. LOWENTHAL. If you say that there is a tendency to go into unnecessary detail, that is what you decide, not what the Commission decides.

Mr. SWAINE. After the question was asked, there was no implication that he was not to answer the question.

Mr. LOWENTHAL. You know, the Commission might not know a great many of the facts unless they were volunteered by the lawyers in the case.

Mr. TAYLOR (continuing reading from "Exhibit No. 1921"):

You received, you will remember, from counsel for the railway company printed forms of papers with the name of the petitioning creditor not filled in, and you consulted officers of the railway company as to an available creditor. It seems to me you should admit, if asked, that it would have been difficult to obtain the information contained in the bill from any other source. The question how Binkley Coal Company could have known all the facts set out in the bill was asked of both Mr. Byram and Mr. Fisher by Commissioner Eastman and Mr. Hickey and was rather heartfully dodged by them.

Mr. SWAINE. The implication is that they should not have dodged that at all; they should have told it straightforwardly. I have never had anything to do with any of them in which the petitioning creditor was not supplied—that goes for industrials as well as for railroads—by the prospective defendant.

Mr. LOWENTHAL. You do not read the sentence as an emphasis on the lack of artfulness?

Mr. SWAINE. No; I do not. It was not intended to have any such implication. It should not have been dodged.

Mr. LOWENTHAL. Then, why talk about "inartfully"?

Mr. SWAINE. Because I think it was silly for them to try to dodge it. It could not have been dodged if they had wanted to.

Mr. TAYLOR (continuing reading from "Exhibit No. 1921"):

You will remember the activities of Messrs. Miller and Garrison; indeed I believe from my conversation with Mr. Miller in Washington that he was prepared to swear that he drew the bill, although my own memory is not wholly in accord.

Mr. SWAINE. Mr. Miller resented the implication that anybody else should find it necessary to prepare a legal document and hand him a draft.

Mr. LOWENTHAL. He represented the defendant?

Mr. SWAINE. He represented the defendant; that is right.

Mr. LOWENTHAL. He would not have the drawing of the bill at all?

Mr. SWAINE. In any realistic sense, he would, Mr. Lowenthal, as you know.

Mr. LOWENTHAL. The drawing was actually done by attorneys for Kuhn, Loeb?

Mr. SWAINE. The drafts of all the papers that we expected might be needed were drawn by counsel for Kuhn, Loeb and were ready for use by whatever party needed them.

Mr. TAYLOR (continuing reading from "Exhibit No. 1921"):

The cost of printing the bills and orders was paid by the Receivers.

Mr. SWAINE. That is in answer to a direct question.

Mr. TAYLOR. Referring back to your previous letter, you will see that it is in answer to one of three direct questions. Can you find in your letter any answer to the first of those three questions?

Did you tell Mr. Shaw who prepared the bill?

Mr. SWAINE. I did not in the letter.

Mr. TAYLOR. Did you tell him how the person who drew it happened to draw it?

Mr. SWAINE. I did not in the letter.

Senator TRUMAN. Mr. Swaine, was not Mr. Byram one of the receivers for the railroad at that time?

Mr. SWAINE. Yes.

Senator TRUMAN. Was not Mr. Shaw his counsel?

Mr. SWAINE. Yes.

Senator TRUMAN. Would not this imply that Mr. Shaw had not advised his client on how to testify?

Mr. SWAINE. I do not think Mr. Shaw had anything to do with Mr. Byram's testimony before the Commission. I may be wrong on that.

Mr. SHAW. You are exactly right. There was so much work that had to be done at that time that I personally knew nothing about what was going on in this hearing. My recollection is that it was taken care of by Mr. Dynes. I have no recollection of the matter at all.

Mr. SWAINE. I think Mr. Shaw was called as a witness to testify how he had been brought into the case.

Mr. TAYLOR. This is your letter, Mr. Swaine, to Mr. Shaw [reading from "Exhibit No. 1922"]:

I have your letter of the 21st instant in re the foregoing and the enclosures therein referred to—

Mr. SWAINE (interposing). That is not the letter which you read.

Mr. TAYLOR. No; but I think it is on another subject. [Continuing reading:]

So far as my going on the witness stand is concerned, I am perfectly willing to appear as a witness whenever these gentlemen demand it. Of course, I have no desire to go, but from what Dynes tells me, I am inclined to think that if it is not forgotten altogether, the gentlemen who are pressing it will probably insist upon my taking the stand, because no one can bridge the gap between the interview on Sunday in your office and the Wednesday when the receivers were appointed.

Mr. Shaw, that was the interval in which you discussed with the judge the appointment of receivers?

Mr. SHAW. It was during that interval I discussed it. I did a lot more than that during that interval. You would have to arrange—

Mr. LOWENTHAL. You were about to say something, Mr. Shaw. Would you not like to volunteer it for the record?

Mr. SHAW. In the appointment of a receiver for a great railroad system, extending as this railroad receivership did into five or six circuits, it is quite essential, in order to avoid the dismemberment of the property and the interference of what I prefer to designate as sharpshooters, that the plans be very carefully laid, so that, if possible, ancillary receivers and primary receivers may all be appointed as expeditiously as possible, and, if possible, within 1 day.

I returned to Chicago on the following Monday morning, and I had to lay my plans so that as soon as possible after the appointment of receivers in a primary jurisdiction, an ancillary receiver should be appointed at once in each of the circuits. So, there was a good deal of work to do between Monday morning and Wednesday, when the application for receivers was made. I had to prepare the bills of complaint, so that if the court in the primary jurisdiction appointed

receivers, the information could be telephoned to counsel in other places, to fill in the bill with the copies of the orders, and applications could be made for the ancillary receiverships in the various other districts. So there was a lot of work to do in those 2 days.

Mr. LOWENTHAL. Mr. Swatland was assisting you at that time?

Mr. SHAW. Mr. Swatland was in Chicago. I testified this morning that I did not know whether he was on the same train with me when I went West or not. Mr. Field, Mr. Dynes, and I were on the same train.

Mr. TAYLOR. Continuing with the letter [reading from "Exhibit No. 1922"]:

Very briefly, if I should be asked to explain that, I would testify that groups representing large amounts of all classes of security holders advised me in your office that a receivership was absolutely necessary to protect the integrity of the property as a going cohesive unit; that thereafter the case proceeded in precise accordance with the practice approved by the Supreme Court of the United States in the Metropolitan Street Railway case, which I took as a guide; that there was no question but that the plaintiff was a creditor; that I had nothing to conceal and no apologies to make.

Further, I think I should say that without losing my temper or making myself offensive, I would not tolerate any sinister or offensive suggestion on the part of the questioner, whoever he may be.

I have no patience with witnesses who in proceedings of that kind permit themselves to be placed on the defensive in lieu of placing the questioner on the defensive.

Changing the subject, I must say that I am greatly interested in and delighted with the line of procedure outlined in your letter and of course will be glad to assist in carrying it out to the utmost of my ability.

The final letter, of January 27, 1926, reads as follows, and was from Mr. Swaine [reading from "Exhibit No. 1923"]:

Your letter of January 25 has been received.

It was the attitude of our clients prior to the receivership that the determination of the questions as to whether and when the receivership was necessary was entirely for the board of directors without interference on the part of the bankers. Indeed, our clients had not expected that a receivership would occur before June 1, and the receivership occurred when it did because of the advice of the railway company's counsel and the feeling of the board that there would be justifiable criticism if it authorized payment of the April 1st interest knowing that the June 1st interest and principal could not be paid. Hence, I think your emphasis should not be on what we told you but on what Mr. W. W. Miller, the company's counsel, told you.

If you said that "groups" advised you at our office, might you not be embarrassed to name the "groups" on cross-examination?

Mr. Hanauer, a determination of that factor was very important because of the necessity for refunding that June maturity?

Mr. HANAUER. That could not be answered "yes" or "no." My previous testimony both before the Interstate Commerce Committee of the Senate and before the Interstate Commerce Commission goes into that at length, and the Coverdale and Colpitts report was that that May maturity was not the real trouble; that even if they refunded those, they could not last long, and therefore it became evident that a receivership was necessary.

The time of the receivership was forced by the opinion which Mr. Miller, the counsel for the company, gave to the directors, that it would not be proper for them to pay interest on the bonds where the coupons matured on the 1st of April, which were part of the same mortgage as the June maturities, and that of course, was a surprise to us. We were at that time waiting on the possibility of at least starting

with a voluntary plan, but that was all upset by Mr. Miller's advice to the board that they just could not go on. That precipitated the question that accounted for all the rush at that time, and the bankers had nothing to do with the date of selection. That was Mr. Miller's advice to the board of directors.

Mr. TAYLOR. Mr. Miller's advice was based upon the assumption that they would not have enough to pay the bonds by the 1st of June?

Mr. HANAUER. Yes.

Mr. LOWENTHAL. When did Mr. Miller give that advice?

Mr. HANAUER. I think it was around the beginning of March.

Mr. LOWENTHAL. When did Cravath, Henderson & de Gersdorff begin working on this receivership?

Mr. HANAUER. I don't doubt much earlier, but not on this receivership.

Mr. LOWENTHAL. I beg your pardon; on the Pittsburgh Navigation Co.?

Mr. HANAUER. No, no; do not let us joke about it; you want the facts. Senator Truman has stated he wants facts, and I am trying to give them.

In a reorganization of this sort, there has to be a receivership. I am perfectly willing to tell you now, without a reading of those letters, so far as the banking end is concerned, that Kuhn, Loeb & Co. took the responsibility. They accepted the responsibility. Nobody else took the responsibility, so we took it.

We kept counsel employed on that, and they discussed with us the details of what an efficient reorganization would do. They would have all the papers ready for any kind of contingency, and they did it very well, because unfortunately under the practices in the courts—I am talking only as a layman—you understand that the first man who runs into a court gets someone appointed as receiver. That is a matter I imagine Mr. Shaw referred to when he spoke about sharpshooters. That is the necessity for both secrecy and preparedness.

There is no denying that Kuhn, Loeb took the leadership and that their counsel, Cravath, Henderson & de Gersdorff, were posted and were prepared for every possible contingency, whether it was to be receivership or not. During that period it was known that Coverdale and Colpitts were making an investigation. Notice of that was given to the public by public statements. Everybody knew that Coverdale and Colpitts were making a public investigation to determine whether or not this company could go on. A public statement was made in the beginning, when Coverdale and Colpitts were employed.

Mr. LOWENTHAL. Do you think it is quite fair to assume that when the banks rush in to be first to get receivers, they are not sharpshooters?

Mr. SWAINE. I want to say this—

Mr. LOWENTHAL (interposing). I am asking Mr. Hanauer.

Why is it assumed that the banker is necessarily not a sharpshooter and that anybody else is?

Mr. HANAUER. Because the banker has been in touch with the board of directors. Because he has responsibility for the securities that for years he has sold.

The great trouble is, in most cases, that the bankers for the railroad companies are not in close enough touch, especially now, since the law has been made that they cannot become directors. They get all their

information second hand. If they were sitting on the board, they would get certain information and be able to stop certain things.

You hear that a railroad is going to be bought or has been bought.

Mr. LOWENTHAL. Am I correct in my assumption that the attorney for the bankers becomes a director of the road after you reorganize it?

Mr. HANAUER. The attorney—as I understand it, Mr. Swaine—

Mr. LOWENTHAL. Am I correct in that?

Mr. HANAUER. I will not answer you yes or no. Senator Truman has stated that he wants the facts.

Mr. LOWENTHAL. Either Mr. Swaine became a director—

Mr. HANAUER (interposing). He became counsel for the new company and became a director.

Mr. LOWENTHAL. Various other men were on the board who were associated with Kuhn, Loeb until you reorganized the company?

Mr. HANAUER. Not entirely. They were not only reorganization representatives but they were security holders.

Mr. LOWENTHAL. Notwithstanding that, the road again went into bankruptcy within 7 years; is that correct?

Mr. HANAUER. No; it is not correct to say with that kind of board.

Mr. LOWENTHAL. Is it not true that the road went into receivership or into bankruptcy within 7 years?

Mr. HANAUER. They went into bankruptcy. I want to answer that in full, if I may.

Senator TRUMAN. Proceed.

Mr. HANAUER. The St. Paul road went into bankruptcy in 1935, about July 1. That can be explained in two ways. I will first take up the specific reason. The specific reason was that because of the opposition of the minority security holders at the time, they forced upon the reorganization managers, representing the majority, a modification of this plan, which increased the fixed charges by \$2,300,000 a year.

That means that between 1925 and 1935, when the company went into bankruptcy—there were \$46,000,000 additional fixed-charge bonds out at 5 percent, meaning that on those extra \$46,000,000 of bonds, \$23,000,000 of interest was paid during that period. Against that, there would have been paid on the \$46,000,000 adjustments, which under the original plan would have been issued instead of those bonds, something under \$13,000,000, which would not have been paid if they had not earned it, but on the basis of what the earnings turned out to be they would have got about \$13,000,000, or something of that sort, instead of \$23,000,000 which was paid. So the company would have had about \$10,350,000 more cash, and it would not have gone into bankruptcy in 1935, and it is quite possible, studying the figures since 1935, that it would have been solvent today, weak, it is true, like many other railroads, praying for the action of the Interstate Commerce Commission in raising rates. That is the specific situation confronting the St. Paul.

As to the general thing, we all know what has happened since 1925. Starting with 1929 there was a cyclone which struck this country, and very many railroads which were in much better position than the St. Paul, even after being reorganized, have fallen by the wayside. I can read for you, if you would like to have me do so, a list of bonds with a Moody "A" rating at the time of the St. Paul reorganization

in 1925, all of which have gone down substantially as much as the St. Paul bonds. That is the general reason.

But without the general reason, the depression, or the cyclone, the tremendous reduction in the gross earnings of railroads, the fact that additional taxes were incurred, that wages were put up, that rates were reduced—in spite of that, if we had been permitted to put through our original conservative plan, the St. Paul would have been \$10,350,000 better off in cash and, in all likelihood, would today be strong and still solvent. That was the situation as to what we were trying to do with the St. Paul.

Every suggestion ever made by any of the opposition was that we were too conservative, but certainly that was no reason why it went into the hands of the courts again in 1935.

For 2 years the result showed that those high fixed charges might be justified, but from that time on there was a continual drop.

Mr. LOWENTHAL. Commissioner Eastman warned you before you put your plan through that it was not a practical one?

Mr. HANAUER. If you say so.

Mr. LOWENTHAL. Do you doubt me?

Mr. HANAUER. It depends on what he said. Commissioner Eastman, I think—I am relying on my memory of 11 years ago—objected principally to the income-bond idea. I do not remember that he ever said that the charges were too high, but at that time, of course, this agreement had been made with all of these security holders. I am talking about our original plan, of this much-talked-about—

Mr. LOWENTHAL (interposing). Whatever his advice was, it did not modify the plan at all, did not affect you?

Mr. HANAUER. I think by that time all the securities all over the world had come in, and for the next 2 years it looked as if it was all right, but my argument at the time was that if the earnings were there, they would get it on the income bonds. If they insisted on making it a fixed charge, the structure was not as strong.

Mr. SWAINE. Senator Truman, we have got a long way from the question asked about the procedure of putting the property into receivership, and Mr. Lowenthal said that if it was the bankers who did it—

Mr. LOWENTHAL (interposing). Mr. Hanauer's phrase was that anybody else would be a sharpshooter.

Mr. HANAUER. I did not say anything of the sort—that anybody else was. Mr. Shaw said that there might be sharpshooters.

Mr. LOWENTHAL. But you think a banker might not be?

Mr. HANAUER. The banker in this case was not.

Mr. SWAINE. The banker was cooperating with the debtor itself to effect an owner proceeding, just like the proceeding provided for today under "77."

In the Frisco case, it is a matter of fact that the suit for the appointment of a receiver—and you may know about it, Senator, since it was in your State—was brought in the State court. If you had a State court receivership in each of the States, the result would have been to break up that system, to break its unity into as many separate railroads as there were States. So here the property, as Mr. Shaw stated, was in five circuits. The important thing was to try to get this property under a single system in all five circuits. That is the reason

why, under the archaic system which happily has been rendered obsolete by section 77, counsel, in order to protect the unity of the venture and the entity that was there had to see that those cases were ready and that the action should be taken in the Federal courts in all the circuits at once.

I had a similar experience in connection with the Seaboard. When the Seaboard was placed in receivership, it was only by the grace of God that we beat a State-court receivership in one of the Carolinas—I have forgotten which—which would have broken up the Seaboard.

I say that it is a fortunate thing that that practice has been made obsolete, but the idea that it is something that was mysterious or something that should be dodged, artfully or inartfully, is, if you will pardon the expression, silly. Let us be realists about it. The purpose was to keep the venture as an entirety.

Senator TRUMAN. One of the things that bother me is why counsel for a receiver in this case should have to consult counsel for the bankers in this receivership as to what should be testified before the Commission. That is what is worrying me right now.

Mr. SHAW. I can answer that.

Senator TRUMAN. Please do.

Mr. SHAW. The fact is this: That if I went on the witness stand I could say, "I have been told by so-and-so that this is a fact," which would greatly expedite and shorten the matter. But if I did not know, I would have to get it from somebody else.

I should like to elaborate on this question of sharpshooters. When you go through the receivership of a great railroad property, cooperating with the corporation itself, whatever the result may be in the future, that is for the court to determine. Everybody is heard. If you get a receiver appointed in one circuit and do not get it simultaneously done in the other circuits, a lot of creditors in the various States run in and attach and make all kinds of confusion. They generally do it not because they think they would be any better off that way, but to be bought off. The bankers' plan is to go before the court, wherever it may be, and seek to preserve the corporate integrity of the operating property.

It is the fellows who try to break in, hold up, and blackmail who have to be guarded against in a receivership of this kind of property. An effort was made to do it in St. Paul. One incident was that somebody tried to slap an attachment on in Kansas, in the eighth circuit, but fortunately the receivers were in possession. They did not do it to collect the money any quicker; they did it to create trouble. They are what I call sharpshooters.

Mr. LOWENTHAL. Your explanation was that the attorneys for the receivers were writing the attorneys for the bankers to ascertain their preferences as to the testimony the attorneys were to give before the Commission?

Mr. SHAW. What difference does that make? After all, this whole receivership went before the courts. The plan was approved by the courts and approved by the Supreme Court of the United States. What is all the shouting about now? I cannot get it.

Mr. TAYLOR. Mr. Swaine, in your letter to Mr. Shaw you referred to groups representing security holders, which advised him in your office. Could you tell us in what respect you thought Mr. Shaw might be embarrassed?

Mr. SWAINE. That he might not know.

Mr. TAYLOR. Could you not have avoided that by telling him in the letter?

Mr. SWAINE. Well, I did not conceive it as my job to sit down and prepare an elaborate memorandum on all the various points. I was available to be called. The Interstate Commerce Commission knew of my participation in this matter.

Mr. LOWENTHAL. Why was it necessary for Mr. Shaw to be consulting you as to what Mr. Shaw should testify, or for you to advise him what might be embarrassing for him to testify?

Mr. SWAINE. When men who are friends discuss problems, they are usually frank with each other, even though they realize that in the future their letters may become public.

Mr. LOWENTHAL. More frank than with the Interstate Commerce Commission?

Mr. SWAINE. No; I was available to be called, and I had first-hand knowledge.

Mr. TAYLOR. Continuing with the letter [reading from "Exhibit No. 1923"]:

References to the bankers or their counsel should be minimized (and in this connection it should not be volunteered that the New York meeting was at our office), not because there is the slightest question as to the propriety of anything that was done, but because the sensation-hunters would give undue prominence to any testimony affecting them and get away from the true facts that the receivership had been determined upon independently by the company's board of directors, and when this determination had been made, counsel for the bankers cooperated with counsel for the company (because of their interest in and responsibility towards the securities) in working out the most efficient and least disturbing procedure for effecting the receivership.

Mr. SWAINE. My prophecy has been fulfilled.

Mr. TAYLOR. Would you not consider that the first sentence there is direct advice to Mr. Shaw as to how to testify in this matter, advising him to minimize reference to the bankers and not to volunteer information?

Mr. SWAINE. He was not the first witness I had talked over testimony with.

Mr. LOWENTHAL. This happened to be the attorney for the receiver appointed by the court.

Mr. TAYLOR. I offer for the record two documents, one dated March 19, 1925, and the other dated March 21, 1925, from the files of Cravath, de Gersdorff, Swaine & Wood, which I should like to read.

This is from Mr. Shaw to Mr. de Gersdorff [reading from "Exhibit No. 1924"]:

As you already know, Mr. Swatland is returning to New York on the Broadway today.

In view of the fact that I have tried through him to keep you and Mr. Swaine fully advised as to every detail which developed since I left New York on Sunday, I have not written at length and, unless you desire it, will not attempt to cover by letter the various things that were said and done by everybody in connection with the appointment of the receivers. He will undoubtedly fill in such gaps, if any, as remain after he arrives here.

However, if there is anything respecting which either you or Mr. Swaine should desire any detailed information coming from me personally, please do not hesitate to let me know. In the meantime we stand ready to carry out—so far as we can—any of your wishes in connection with the receivership.

And the reply from Mr. de Gersdorff [reading from "Exhibit No. 1925"]:

I have your letter of March 19th. I have not yet had a chance to talk with Swatland, but take this opportunity of saying that we appreciate very much your attitude in the entire matter.

Senator TRUMAN. The letters will be received.

(The letters referred to were marked "Exhibits Nos. 1924 and 1925" and are included in the appendix on p. 7028.)

Mr. TAYLOR. Would you not say, Mr. Shaw, that that letter fairly reflects that you felt that you were still acting as the representative of Cravath, de Gersdorff, Swaine & Wood?

Mr. SHAW. In the first place, that is not a proper inference. We have represented them many times and hope we will many times more; but we are not the western representatives of Cravath, de Gersdorff.

Now, what is the rest of the question?

Mr. TAYLOR. The question is, does it not reflect that you were still acting as their representative? Don't you think the language infers that?

Mr. SHAW. I will not answer that. If you would try to get a picture of the whole situation instead of trying to pick out a few little words there and putting a nasty emphasis on, which I think you are intentionally trying to do, that picture was to preserve the unity of this property while a reorganization plan could be drawn as the result of conferences with groups of security holders; and I considered myself as representing the receivers in the reorganization of this property in a way satisfactory to all of the groups. I thought Mr. Swaine was in touch with these groups, and that is the way I acted. I always acted that way, and I am not ashamed of it.

Senator TRUMAN. Did Mr. Swaine represent all of the groups?

Mr. SHAW. He was drawing a plan of reorganization in conference with all of the groups.

Mr. SWAINE. At that time, Senator, I represented the only organized groups. Opposition had not yet developed, and I do not think there was any conflict between the groups which I represented and the ultimately organized groups on the questions which were occurring at that time. Their action would have been entirely in harmony so far as the institution of the receivership was concerned. We might find later on—

Mr. LOWENTHAL (interposing). Do you think it would be a nasty inference for anyone to make, or an unfair inference for anyone to make, when you were writing, as you did, on March 19, 1925, to the bankers' counsel and saying "In the meantime we stand ready to carry out, so far as we can, any of your wishes in connection with the receivership."?

Mr. SHAW. It would be a very natural inference if anyone were trying to smirch the situation, but it would not be a natural inference for anyone who looked at what we were—

Senator TRUMAN (interposing). Nobody is trying to smirch the situation.

Mr. SHAW. Senator, there is a sneer in the attitude of the questioner, and contempt, and an atmosphere to make it appear—

Senator TRUMAN. No effort has been made to do any such thing.

Mr. SHAW. Then he might change the form of some of those questions. I will answer that question. No; I don't think so, not if anybody knew the facts.

Senator TRUMAN. We are trying to get the facts now, whoever it hurts.

Mr. SHAW. It does not hurt anybody.

Senator TRUMAN. We are going to get the facts for the benefit of the Senate.

Mr. SHAW. Here was a situation where we were trying to preserve a great property, acting in cooperation with groups who said they represented all the different security holders. After all, the whole plan had to get before the court sooner or later.

Mr. LOWENTHAL. Do you think it would be unfair to say that a receiver's attorney, who wrote as you did on March 19, 1925, was doing what a receiver's attorney ought not to do?

Mr. SHAW. I think it would be, in the light of all the circumstances, quite unfair—so unfair that I think it is unfair for you to ask the question.

Mr. LOWENTHAL. I am sorry, Mr. Shaw. I differ with you.

Mr. SHAW. Then you and I differ.

Mr. TAYLOR. I offer for the record, Mr. Chairman, copy of a letter from the file of Crayath, de Gersdorff, Swaine & Wood, from Mr. Shaw to Mr. Swaine, dated May 27, 1925.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 1926" and is included in the appendix on p. 7029.)

Mr. TAYLOR. Mr. Shaw, this was about 2 months after you became counsel for the receivers, May 27, 1925, was it not?

Mr. SHAW. I do not remember just when that was.

Mr. TAYLOR. The letter reads as follows [reading from "Exhibit No. 1926"]:

Mr. Strawn is writing you under separate cover touching his call at the Interstate Commerce Commission's office last week.

Supplementing that letter, we think that though the Receivers will undoubtedly play a minor part in the investigation by the Commission, nevertheless they will undoubtedly be there, and we think (subject, of course, to your approval) that we should represent them at that hearing and that it may be helpful if we do so.

I would like to ask Mr. Shaw again why it was relevant for you, as counsel for the receivers, to act subject to the approval of Mr. Swaine's firm in determining the part the receivers would play in the investigation.

Mr. SHAW. That has been answered two or three times. Mr. Swaine's firm was engaged in drawing a plan of reorganization, in conference with all the security holders, as we then knew them. We were trying to work out a plan and were trying to reorganize this property as the security holders would want it reorganized. I was in touch with their counsel. The receivers had been appointed at the solicitation of the company and the security holders. They were all working at that time as a cohesive unit. It was a perfectly natural thing for me to do, perfectly natural. I think it was quite proper, and I have no apologies to make for it.

Mr. LOWENTHAL. You mean that at that time, May 27, 1925, you did not know that there were some security holders who were opposed to Kuhn, Loeb & Co.?

Mr. SHAW. I do not think I knew it at that time.

Mr. LOWENTHAL. Do you think that might have made a difference?

Mr. SHAW. It would have depended upon what their objections were.

Mr. LOWENTHAL. Do you think it might have made a difference in whether you would write such a letter to Mr. Swaine?

Mr. SHAW. I am not going to indulge in what may have happened if something else had happened.

Senator TRUMAN. Mr. Potter, did you know that your attorneys were getting instructions from the attorneys for the bankers?

Mr. POTTER. No; I did not know that.

Senator TRUMAN. Would you have approved of it if you had known it?

Mr. POTTER. Well, I do not know. It seems to me, sitting here, that the whole picture perhaps is not quite grasped. Mr. Swaine's firm were counsel. Everybody looked forward to reorganization. In the meantime the court appointed receivers to protect the property. The court wanted Shaw to handle the legal matters for the receivers. Shaw had been called in at an earlier stage by the counsel for Kuhn, Loeb & Co., and they had a sort of relationship in the reorganization and perhaps to it. The whole thing was a cooperative, constructive activity in which I presume no sharp lines were drawn. Undoubtedly the receivers hoped that a constructive reorganization finally would be developed. Everybody was working on it. Undoubtedly the receivers would have liked to have their counsel cooperate and be helpful in any way they could. I think it was a general cooperative activity, in that everybody was trying to act to an ultimately desirable end.

Senator TRUMAN. It would be just as well, then, if the court had appointed Kuhn, Loeb & Co. as receivers. Proceed.

Mr. TAYLOR. I want to call attention to one matter in connection with the letter dated May 27, 1925, which has just been offered for the record. That letter reads thus [reading from "Exhibit No. 1926"]:

Supplementing that letter, we think that though the receivers will undoubtedly play a minor part in the investigation by the Commission, nevertheless they will undoubtedly be there, and we think (subject, of course, to your approval) that we should represent them at that hearing and that it may be helpful if we do so.

Have you a copy of that before you, Mr. Potter?

Mr. POTTER. I have not read it.

Mr. TAYLOR. Do you think that the activities of the bankers or their counsel, in connection with preparing a plan, had any relevance to what you or your counsel would do in connection with the Interstate Commerce Commission's investigation? Do you think there is any reason why the bankers' counsel should have been consulted on a matter of this sort?

Mr. POTTER. I do not see any. As I recall that situation, this investigation was regarding matters which took place prior to the receivership. I do not remember that the receivers were in it. I do not remember that I gave it any attention at all until I was called upon to testify as to the condition in which I found the property, and as to what I understood to be necessary for the receivership. I do not recall that we as receivers were interested in that investigation a particle.

Mr. TAYLOR. Continuing with the letter [reading further from "Exhibit No. 1926"]:

On the other hand (subject, of course, to your approval), we do not think that either the receivers or ourselves should be burdened with the responsibility of explaining the past history of the St. Paul Railroad.

Do you recall, Mr. Potter, whether Mr. Shaw consulted you on whether—

Mr. POTTER (interposing). I do not recall that he ever did; no.

Mr. TAYLOR (reading further from "Exhibit No. 1926"):

That we think should be done by Mr. Dynes. We say Mr. Dynes, because he was former general solicitor of the company and was for years in charge of its trial work. Prior thereto he was for years a well-known trial lawyer in the City of Chicago.

Skipping to the next paragraph [reading]:

With reference to the place of hearings before the Commission—If these hearings should unfortunately be pressed this summer, don't you think it would be better to have the hearings in Chicago rather than in Washington? Washington is an ungodly hot place in the summer time, as you know. If the hearings take place in New York, you are likely to be confronted with the same embarrassments that arose with respect to counsel immediately after the appointment of Receivers.

Do you recall whether Mr. Shaw consulted you as to whether you would prefer to have the hearings in Chicago or Washington?

Mr. POTTER. I do not recall that he did. I do not know of any reason why he should, because I did not feel we were interested in the hearings.

Mr. TAYLOR. Do you know of any reason why he should have consulted Mr. Swaine about that?

Mr. POTTER. No.

Mr. TAYLOR. Mr. Swaine, may I ask what he means by his reference to "embarrassments that arose with respect to counsel immediately after the appointment of receivers"?

Mr. SWAINE. I have not the slightest idea. If you have anything that will refresh my recollection, perhaps I can answer. That phrase is meaningless to me.

Mr. TAYLOR (reading further from "Exhibit No. 1926"):

With these suggestions we hold ourselves ready to acquiesce in any decision that you make in the premises and to be as helpful as we can, whatever you may decide.

Mr. Chairman, I also offer for the record a letter dated July 16, 1925, from Mr. Shaw to Mr. Swaine, reading, in part, as follows [reading from "Exhibit No. 1927"]:

Enclosed herewith I hand you an article which appeared upon the front page of the Chicago Journal of Commerce of this date.

This morning I called General Brundage over the 'phone and asked him if he had seen the article and if it were true that the receivers had employed Mr. Hughes to support the Potter plan at the rate hearing.

Senator TRUMAN. The letter will be received.

(The letter referred to was marked "Exhibit No. 1927" and is included in the appendix on p. 7029.)

Mr. TAYLOR. May I ask whether just prior to this letter you had promulgated the first draft of the Potter plan?

Mr. POTTER. What is the date of that letter?

Mr. TAYLOR. July 16, 1925.

Mr. POTTER. I have read this letter. Now, what is your question?

Mr. TAYLOR. The question was whether just prior to this letter the first draft, or whatever you might call it—not the final embodiment of it, but the initial draft—had been published?

Mr. POTTER. I prepared the memorandum which I have before me dated June 26, 1925, which explains what is now referred to as the Potter plan. That, I think, was distributed around a bit for general

consideration. There was a good deal of controversy regarding it. Later in December I prepared another plan in which I dealt exhaustively with every objection that I heard made to the Potter plan. So that consideration of the Potter plan I presume started in June 1925. Does that answer your question?

Mr. TAYLOR. Yes. Might I ask if about the same time that the Potter plan first came out there was an application by carriers for a rate increase for which Mr. Hughes was retained to represent the receivers before the Commission?

Mr. POTTER. Yes.

Mr. TAYLOR. That was Charles Evans Hughes?

Mr. POTTER. Yes.

Mr. TAYLOR. Continuing with the letter [reading from "Exhibit No. 1927"]:

He—

That means Mr. Hughes—

said that he knew nothing about his employment to support the Potter plan, but that late last evening Mr. Byram had called him (Brundage) over the telephone and that he (Mr. Byram) had said that Kuhn, Loeb & Company, Mr. Ecker, and Roosevelt and Sons had all joined in requesting the Receivers to employ Mr. Hughes to represent the Receivers in the hearing before the Commission at which the question of a general advance in rates is to be heard and determined; that upon this representation to him by Mr. Byram he (Brundage) had immediately acquiesced in the employment of Mr. Hughes.

I am sending you this information because we would like you to know the nature of the publicity given here and we would also like to know just what your attitude and the attitude of Kuhn, Loeb & Company is in the matter, to the end that we may cooperate in every way in the furtherance of your wishes.

I would like to ask you, Mr. Potter, whether Mr. Shaw consulted you on the question of the scope of the retaining of Mr. Hughes?

Mr. POTTER. No.

Mr. TAYLOR. He did not?

Mr. POTTER. No.

Mr. TAYLOR. I would like to ask Mr. Shaw why, in this case, he found it desirable to consult with the attorneys for the bankers with reference to the scope of that employment?

Mr. SHAW. The same answer stands for that as it does for any of the other questions along that line. It is the point of view. It is a picture. It was a perfectly proper thing for me to do, in my judgment. At any rate, I did it, and I would not have done it if I thought it was improper.

Mr. LOWENTHAL. Would you think it was more appropriate to consult your own clients than to consult Kuhn, Loeb & Co. or their lawyers?

Mr. SHAW. Well, I will let you make your inference as you want to about the appropriateness. After all, that has nothing to do with this issue.

Senator TRUMAN. Proceed.

Mr. TAYLOR. Mr. Potter, can you suggest any reason why Mr. Shaw should have consulted the attorneys for the bankers on the question of employing Mr. Hughes?

Mr. POTTER. No.

Mr. SHAW. As a matter of fact, I did talk to Mr. Brundage. Mr. Potter was in New York. Evidently I did talk to General Brundage.

But that would not have made any difference. I would have written the letter anyway.

Mr. SWAINE. The situation is this. The Western railroads had filed an application for a rate increase. All the factions in the St. Paul agreed that the St. Paul's interest in the situation might be different from the situation of the roads generally. You will notice that the opposition joined with the groups which Kuhn, Loeb represented in suggesting to the receivers that in this matter it was of great importance to the venture that Judge Hughes should be employed to represent the receivers. The people who were the owners of the property were suggesting to the court's custodian that they would like to have their interest protected by the man whom they regarded as retained to protect their special interest in that rate proceeding. That was why the suggestion was made. It was made to one of the receivers, namely, to Mr. Byram.

Mr. TAYLOR. Mr. Swaine, the question raised in this letter is whether Judge Hughes should be employed to support the Potter plan or employed to represent or carry on the rate increase, is it not? That is, Mr. Shaw called to your attention an inquiry in which it is stated that Mr. Hughes was going to support the Potter plan; and the question is whether that was an accurate statement or whether he was really representing—

Mr. SWAINE (interposing). I think that question was directed to us from this standpoint. One of the questions on which the interests of the St. Paul might vary from the interests of the other railroads in the same territory was this very question of the Potter plan; and as you will doubtless develop through the other correspondence which you have taken from our files, there was a good deal of difference of opinion, as to the Potter plan, and the security holders whom we were acting for, as well as the security holders in the Roosevelt group, were exceedingly anxious not to have a controversy over the Potter plan destroy the possibility of getting any rate increase at all. We were very fearful that in this controversy, which arose among railroad executives, the main objective would be lost sight of, and that is why we called Judge Hughes in as an independent person; and I have no doubt that is why Mr. Shaw asked me whether Judge Hughes was in there to represent the interests in getting a rate increase or was he in there representing a particular philosophy of rate increase that was embodied in the Potter plan.

Does that answer your question?

Mr. TAYLOR. That is just my understanding. I would like to further ask whether, on that question which you have very clearly stated, you know why Mr. Shaw should have regarded your wishes or the wishes of Kuhn, Loeb & Co. as governing on him in the matter?

Mr. SWAINE. Yes. Because it was the security holders who had initiated the retention of Judge Hughes.

Mr. TAYLOR. Who retained him?

Mr. SWAINE. The receivers.

Mr. TAYLOR. Should he not have been governed by the wishes of the receivers?

Mr. SWAINE. The receivers should be governed by the wishes of the security holders, because, after all, they were the real owners of the property. The receivers knew and the court knew that the group, for which we were speaking, represented at that time, it is my recollection,

the substantial majority of the bonds, and it seemed to me that the people who had a substantial majority of the bonds were the substantial owners of the property, and that there was no impropriety in their saying to the receivers, "We want you to take an attitude thus and so on the problem of rates, because it is going to affect our ability to own our interest."

Mr. LOWENTHAL. Let me ask Mr. Hanauer at this time, did Kuhn, Loeb & Co., as a firm, own any St. Paul Railway Co. securities, any whatsoever?

Mr. HANAUER. I testified to that before. Eleven years is a long time. We owned no St. Paul securities during the period in which this was first discussed, until after the plan was promulgated. It may be that after that, when everything was public, we may have bought some. I do not know whether we did or did not. But my testimony before the Senate committee and the Interstate Commerce Commission on the subject was correct, and you can put it into this record if you like.

Mr. TAYLOR. My previous question I want to ask in a little different way. Assuming that it was quite proper for the security holders to present to the receivers whatever their views of the scope of Judge Hughes' employment should be, is it not clear that Mr. Shaw's responsibility was to take directions from the receivers and not from you?

Mr. SWAINE. I do not think he was taking directions. I think you are reading into all these letters more than Mr. Shaw intended to state, and certainly more than I ever got out of them. All I got out of those letters was just courtesy toward the people who represented a large block of securities, and he was trying to find out what they wanted. I have done exactly the same thing when I have been in the situation that Mr. Shaw was in, representing a receiver. I have tried to find out what the principal security holders wanted. That is what I thought Mr. Shaw was doing. I still do not think that Mr. Shaw was taking directions from me. I think he was trying to find out through me what the security holders for whom I was acting wanted.

Mr. TAYLOR. It is my recollection that a number of these letters end in somewhat similar fashion. Do you think it is a fair inference from the phrasing of a number of these paragraphs that Mr. Shaw was exceedingly likely to take your views of these subjects?

Mr. SWAINE. I think it was proper, under all the circumstances, that he should, because we represented the large security holders.

Mr. TAYLOR. He did not represent the large security holders, did he?

Mr. SWAINE. He represented the receivers. But, after all, the receivers were dealing with the property interests of the large security holders and, I should think, might fairly well give some effect to their wishes, at least—not controlling effect, but some effect to what the security holders might want. And when Mr. Shaw says, "I will try to do everything in furtherance of your wishes," I always read that as subject to the qualifications that the wishes were something that were not inconsistent with any instructions he might have from the court—

Mr. LOWENTHAL (interposing). If I said to a man, "I stand ready to carry out, so far as I can, any of your wishes," that goes quite a ways, does it not?

Mr. SWAINE. "So far as I can" carries with it the implication that everything that I ask is consistent with what he thought wise at that time.

Mr. LOWENTHAL. But "subject to your approval." My! I should say that was subject to the approval of someone in position to order or to veto.

Mr. SWAINE. No; I think you are giving undue weight—

Mr. LOWENTHAL (interposing). To the English language?

Mr. SWAINE. To Mr. Shaw's disposition to be courteous.

Mr. LOWENTHAL. If there had been security holders, to Mr. Shaw's knowledge, who were opposed to Kuhn, Loeb on any of these matters, do you think it would have been appropriate for Mr. Shaw to write such letters to you?

Mr. SWAINE. Yes; if they had represented a majority of the security holders. He would not have been writing these letters to me if I had not been representing a great majority of the security holders.

Mr. LOWENTHAL. You do not think the fact that Cravath, Henderson & de Gersdorff had called Mr. Shaw into the case originally had anything to do with the matter?

Mr. SWAINE. Yes; I think it had something to do with it, of course.

Mr. TAYLOR. I offer for the record copy of an original letter from the files of Cravath, de Gersdorff, Swaine & Wood, dated July 20, 1925, from Mr. Shaw to Mr. Swaine, reading as follows [reading from "Exhibit No. 1928"]:

This morning General Brundage returned from New York.

He tells me that both Mr. Potter and Mr. Byram told him that Mr. Hughes had been employed to present solely the "Potter plan" to the Commission. As this statement was so different from the facts as I understood you to give them to me over the telephone, I thought you ought to know it.

For your personal perusal I enclose herewith copy of a letter from Mr. Potter to Mr. Hughes, which Mr. Brundage sent to me.

With regards and hoping to be back on the job in the early autumn, I am

Senator TRUMAN. The letter will be received.

(The letter referred to was marked "Exhibit No. 1928" and is included in the appendix on p. 7030.)

Mr. TAYLOR. I also offer a letter dated October 9, 1925, from Mr. Shaw to Mr. Swaine, re *Binkley Coal Company v. C. M. & St. P. Ry. Co.*

Senator TRUMAN. The letter will be received.

(The letter referred to was marked "Exhibit No. 1929" and is included in the appendix on p. 7030.)

Mr. TAYLOR. May I just ask whether, in about October, the so-called Roosevelt committee petitioned Judge Wilkerson to be allowed to intervene as parties in the action?

Mr. SWAINE. I do not remember the date.

Mr. TAYLOR. Sometime just a few months after the receivership?

Mr. SWAINE. Somewhere between March and November 19.

Mr. TAYLOR. This letter reads as follows [reading from "Exhibit No. 1929"]:

Herewith copy of the petition for leave to intervene in the foregoing case, filed this morning. As I stated to you over the phone, the matter is now set for argument before Judge Wilkerson on Monday the 19th, at 2:00 P. M. I am under personal promise to advise the petitioners some time after Tuesday of next week whether there is any intention of opposing the petition or not. As a result of our telephone conversation this morning, unless I hear from you to the contrary, I will so advise them, say, on Thursday of next week.

In the interim, I am expecting to hear from you on Monday, Tuesday, or Wednesday of next week as to what your judgment is as to the position which the Receivers should take, and I assume you will by that time have learned from the representatives of the complainants in the foreclosure suits as to what position they will take. I assume that Mr. Judson, representing the unsecured creditors, will be very glad to oppose the intervention, and that the counsel for the defendant will do the same.

Mr. Shaw, do you recall on what basis you assumed that Mr. Judson would be very glad to oppose the petition for intervention?

Mr. SHAW. I do not recall that now.

Mr. TAYLOR. How did Mr. Judson happen to be in the case, and who was he?

Mr. SHAW. He was substituted as counsel for the complainants when we retired from that position.

Mr. LOWENTHAL. As I understand it, your successor as attorney for the plaintiff you assumed would oppose the petition of the committee for intervention?

Mr. SHAW. That is what I said in that letter.

Mr. LOWENTHAL. Did you oppose the petition?

Mr. SHAW. My recollection is that the receivers did not take any position with respect to the intervention. That is my recollection, unless something appears differently in the record.

Mr. LOWENTHAL. Is that your recollection, Mr. Swaine?

Mr. SWAINE. I do not recollect whether the receivers took a position or not.

Mr. TAYLOR. I also offer, Mr. Chairman, for the record, a letter dated October 10, 1925, from Mr. Swaine to Mr. Shaw, which I will not read unless you wish me to.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 1930" and is included in the appendix on p. 7030.)

Mr. TAYLOR. I also offer a letter dated October 12, 1925, from Mr. Shaw to Mr. Swaine.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 1931" and is included in the appendix on p. 7031.)

Mr. TAYLOR. I also offer a copy of a Western Union night letter from Mr. Shaw to Mr. Swaine, dated October 29, 1925, reading as follows [reading from "Exhibit No. 1932"]:

Rosenthal finished his presentation—

He was counsel to the Roosevelt Committee?

Mr. SWAINE. That is my recollection.

Mr. TAYLOR (continuing reading):

Rosenthal finished his presentation just as court adjourned this afternoon. Opposing counsel will be heard tomorrow Friday. Nothing new developed at today's hearing except that Rosenthal used the privilege of the floor to make a violent attack upon the reorganization plan.

I offer that night letter in evidence, Mr. Chairman.

Senator TRUMAN. It will be received.

(The night letter referred to was marked "Exhibit No. 1932" and is included in the appendix on p. 7031.)

Mr. TAYLOR. Mr. Swaine, the plan referred to there is undoubtedly the plan promulgated by Kuhn, Loeb & Co. and the National City Co. Is that correct?

Mr. SWAINE. I assume so. You will note that one of the letters that you did not read said that the reason the intervention should be opposed was that the sole purpose of the intervention was to hold up the proceeding and prevent the entry of a foreclosure decree; that it was, in our judgment, not an intervention designed to move the proceeding along, but it was an intervention designed to obstruct the proceeding.

Mr. LOWENTHAL. Might it be put differently, that they might try to intervene to prevent the bankers from moving it along their way?

Mr. SWAINE. No; I do not think it would be fair to put it that way.

Mr. LOWENTHAL. You do not think so?

Mr. SWAINE. No; because the movement that we were trying to take was a movement that was in everybody's interest, to get the issues adjudicated and to be ready; and this in no way operated to keep the opposition from opposing itself to the plan itself. What we were trying to do then was to get the preliminary groundwork done for any plan, whatever plan that might be, and to get it out of the way and get foreclosure decrees entered.

Mr. LOWENTHAL. Although the opposition pointed out that the Kuhn, Loeb plan ought to be considered as to its fairness or unfairness, soundness or unsoundness, at an early stage of the receivership, and not after you had taken a number of technical stages which the opposition claimed would help Kuhn, Loeb to pull their plan through?

Mr. SWAINE. The presence of a decree would have helped Roosevelt just as much as it would anyone else. In other words, had they represented a majority of the securities, the presence of a decree would have been just as helpful to them as to us. In other words, we had to have these matters adjudicated. You had to have your foreclosure decrees before there should be any plan. Their attitude was solely one of obstruction.

Mr. LOWENTHAL. They did not agree with you on that?

Mr. SWAINE. I think they did. I think they were sufficiently realistic about this that they would have agreed that their sole purpose was to prevent the entry of a foreclosure decree.

Mr. LOWENTHAL. To help your plan go through?

Mr. SWAINE. To help any plan go through, because they wanted to obstruct.

Mr. LOWENTHAL. The Jameson committee felt the same way?

Mr. SWAINE. I think so. At that particular time I do not know whether the Jameson Committee had been organized.

Mr. LOWENTHAL. You do not remember that their briefs said the very opposite of what you are now saying?

Mr. SWAINE. I think the Jameson committee was not organized until November 5.

THE LETTER OF OCTOBER 29, 1925 FROM MR. CRAVATH TO MR. SHAW

Mr. TAYLOR. Mr. Chairman, I offer for the record carbon copy of a letter from the files of Cravath, de Gersdorff, Swaine & Wood, dated October 29, 1925, entitled "St. Paul Reorganization." The letter is initialed "P. D. C.", and there is a reply directed to Mr. Paul D. Cravath.

He is senior partner in the firm, Mr. Swaine?

Mr. SWAINE. Yes.

Senator TRUMAN. The letters will be received.

(The letters referred to were marked "Exhibits Nos. 1933 and 1934" and are included in the appendix on pp. 7032-7033.)

Mr. TAYLOR. The letter to Mr. Shaw reads in part as follows (reading from "Exhibit No. 1933"):

I read in the Times this morning the enclosed account of Mr. Rosenthal's silly attack on the Kuhn, Loeb-National City Company Plan for the reorganization of the St. Paul railroad. This attack, of course, is wholly irrelevant and I assume will be so treated by the Court. On the other hand, I am very anxious that the court should get no wrong notions of the comparative merits of our plan (which I will call for brevity the Present Plan) and the so-called Roosevelt Plan. I very much hope, therefore, that you will sometime take an opportunity of explaining the subject to the court. To that end I enclose for your information:

- (a) The pamphlet containing the announcement of the Bondholders' Committee of which George E. Roosevelt is Chairman, setting forth the terms of the Roosevelt Plan;
- (b) The circular of our Bondholders' Committee pointing out the weaknesses of this plan and the superior merits of the Present Plan;
- (c) A similar circular issued by the two Stockholders' Committees;
- (d) Some material regarding the genesis of the Roosevelt Plan and the purposes of Mr. Roosevelt and his associates, which I dictated as a guide in preparing affidavits for use when necessary in opposition to the application of the Roosevelt Stockholders' Committee to become parties to the foreclosure suit.

There follows, which I will not read unless you request—

Mr. SHAW. I think you ought to read it.

Mr. TAYLOR. Shall I read the whole letter, Mr. Chairman?

Senator TRUMAN. Go ahead and read it.

Mr. TAYLOR (continuing reading from "Exhibit No. 1933"):

As you will see by reading these papers, it is the Roosevelt Plan and not the Present Plan which crucifies the stockholders. While apparently the assessment is much larger under the Present Plan, on analysis the difference is comparatively small. The Roosevelt Plan crucifies the stockholders by creating new prior annual charges equal to about two per cent upon the common stock and also by contemplating that the Government debt shall be paid out of earnings at the rate of about \$5,000,000 a year for eleven years beginning about four years hence.

Apparently George Roosevelt has maneuvered himself into a strange position. The real interest of his firm and of his associates is in the common stock, of which according to the petition of their Stockholders' Committee, they hold about 180,000 shares, mostly common. All of their private attempts to modify the Present Plan were in the interest of the stock, but George Roosevelt's ambition prompted him to accept the chairmanship of the Bondholders' Committee, of which his associates are bondholders having no interest in the stock. He was, therefore, forced by the logic of his associations on this committee, to put out a so-called "Bondholders' Plan" which is injurious to both classes of stock and ruinous to the common stock.

Of course, the stockholders' Committee which he organized and which is made up of his friends and neighbors, could not possibly approve the Roosevelt Plan. They have therefore announced, as you will see from the enclosed advertisement, that they are committed to neither Plan, but are simply seeking to represent stockholders in the foreclosure proceedings.

It must always be borne in mind that while the Present Plan is called the Kuhn, Loeb-National City Company Plan and they are the Reorganization Managers, the Plan was the outcome of protracted negotiations by three committees representing respectively bonds, preferred and common stock. Those negotiations were conducted at arms' length, with great thoroughness and sometimes with acrimony. The result was an agreement on a Plan which is fair to all interests and which has withstood criticism and attack remarkably well.

The same cannot be said of the Roosevelt Plan. It was evolved by a Bondholders' Committee which did not negotiate with any committee representing the stock. The result is a plan which destroys the hope of the common stock without materially benefiting the bondholders from their point of view as investors. In order to reduce the apparent assessment the Roosevelt Committee asks the

¹ See "Exhibit No. 1930", appendix p. 7030.

bondholders to consent to the extension of the Government debt without adequate provision for its payment, and offers them the contingent interest, in earnings equal to three-quarters of one percent, which is so far off in the future that it does not interest sensible bondholders, who are chiefly concerned in the security of their investment and the strength of their company. To make this result possible, sacrifices are laid upon the stockholders which greatly reduce the value of the preferred stock and make the common stock almost worthless except for voting purposes. It is very doubtful if the participation of the common stock under the Roosevelt Plan could be underwritten.

It must also be borne in mind that when the Present Plan was formulated both the Preferred stock and the common stock was selling at a very much lower price level than now. The announcement of the Plan at once put up the market value of the stock, a movement which was encouraged by the heavy buying of the Roosevelt Group.

I think that these brief observations and after perusing the circulars, you will have the situation clearly in mind and will be in a position to explain it to the Court and to Receiver Brundage, which I hope you will do at an early opportunity.

And the reply, Mr. Chairman, which I have offered for the record, dated October 30, 1925, the following day, reads as follows [reading from "Exhibit No. 1934"]:

The matter mentioned in your letter of October twenty ninth has been attended to Stop Will probably be in New York Tuesday or Wednesday and drop in to see you.

I would like to ask Mr. Shaw in what manner he attended to the matter mentioned in Mr. Cravath's letter of the previous date?

Mr. SHAW. I do not recall.

Mr. TAYLOR. I would like to ask Mr. Swaine if he has any recollection of his own, or through Mr. Cravath, as to how Mr. Cravath expected these documents and the arguments in that letter would be explained to the court and to Receiver Brundage?

Mr. SWAINE. I have no recollection.

Mr. TAYLOR. Mr. Chairman, the staff of the committee has inspected the records of the argument on that petition, which I believe took place on the three days, 29th, 30th, and 31st of October, and have been unable to find any argument of Mr. Shaw prior to the 31st of October, which is the day following the telegram which states that the "matter mentioned in your letter of October 29th has been attended to."

Does that circumstance, which is subject to check by you, of course, in any way refresh your recollection as to how the matter was presented to the court?

Mr. SHAW. What circumstance?

Mr. TAYLOR. The circumstance that you do not seem to have argued before the court, in open court, until the day following that telegram.

Mr. SHAW. Not at all. My recollection is still subject to correction if there is anything of record to the contrary, that I came to the conclusion that in a dispute of that kind the receivers had no business in the matter, and it was left to the plaintiff and the defendant and such other persons as had a right to address the court. That is my recollection. If there is anything to the contrary, I hope you will call my attention to it before I close my answer.

Mr. TAYLOR. The only thing to the contrary, Mr. Shaw, is the telegram in the record saying that the matter suggested by Mr. Cravath has been attended to.

Mr. SHAW. I have no independent recollection of what took place 11 years ago. If it was attended to it was attended to. That is all I know about it.

Mr. TAYLOR. There is nothing in the record of any argument before the court on those days which we have found which discloses any statement by you to the court in open court prior to the 31st, which is the day following that telegram.

Senator TRUMAN. Gentlemen, I am not interested in criticizing individuals, but I am interested in criticizing practices which may be wrong. I have gone into this thing pretty thoroughly, and I think I know what my conclusions are, and I am going to read them to you.

In this case we find practices that are thoroughly wrong. The attorneys for the receivers are supposed to be entirely neutral and to perform their services as if they were the judge himself. They are, in fact, the agents of the court in these big receiverships. And let me say that when we had Mr. Thompson on the stand several weeks ago he was very particular to see that everything was ethically carried out in the Missouri Pacific receivership. In fact, he had one of his attorneys investigated by the Bar Association of St. Louis because he had instructed some witnesses on the opposite side of the fence to testify in a certain way before this committee.

In this case, involving a railroad with approximately 700 million dollars of assets, one of the biggest railroads in the whole country, the attorneys for the receivers wrote to the attorneys for the bankers assuring them that the attorneys for the receivers stood ready to carry out any of the wishes of the bankers' attorneys in connection with the receivership, and desired to cooperate in every way in the furtherance of the wishes of the bankers' attorneys.

To me this is a shocking disclosure.

Mr. Cravath, the bankers' attorney, wrote to Mr. Shaw, the receivers' attorney, whom Mr. Cravath had brought into this receivership case, and asked Mr. Shaw to go to the judge and criticize the reorganization plan prepared by opponents of Kuhn, Loeb & Co. Mr. Cravath really asked Mr. Shaw to get across to the judge, privately and secretly, the fact that the Kuhn, Loeb reorganization plan was a good one and the Roosevelt Committee's reorganization plan was a bad one. It is not consistent with ideas of justice and fair dealing that one side to a fight shall be allowed to plead its case privately and secretly before a judge through the medium of theoretically neutral receivers and their counsel, while the other side is absent and utterly unable to defend its interests. It is an utterly wrong practice which, if employed in receiverships in general, may well explain the dominance of New York bankers and the fact that the reorganizations they have been able to push through the Federal courts have so often been so unsound.

We find in this record a third circumstance, one relating to the Interstate Commerce Commission's investigation of the St. Paul receivership. Mr. Shaw and Mr. Swaine conduct correspondence in which Mr. Shaw is trying to find out just how far he shall go in telling the facts to the Commission. Mr. Swaine is really coaching Mr. Shaw in this correspondence, telling him not to volunteer information, telling him what shall be minimized, and so on.

These two lawyers are lawyers actively engaged in railroad reorganizations before the Interstate Commerce Commission. It is their duty to give the Commission, when it is conducting an investigation, all the facts in their possession, not to be trying to work out some program which will give it only a partial picture of the truth.

INVESTIGATION OF RAILROADS, HOLDING COMPANIES
AND AFFILIATED COMPANIES

TUESDAY, DECEMBER 7, 1937

UNITED STATES SENATE,
SUBCOMMITTEE OF COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to adjournment on yesterday, in room 412, Senate Office Building, Senator Harry S. Truman presiding.

Present: Senator Truman.

Present also: Max Lowenthal, counsel to the committee; George Rosier, Sidney J. Kaplan, and Telford Taylor, assistant counsel to the committee.

Senator TRUMAN (presiding). The subcommittee will come to order. Mr. Hanauer, will you please come forward?

TESTIMONY OF JEROME J. HANAUER, FORMERLY A PARTNER OF KUHN, LOEB & CO., NEW YORK CITY; TESTIMONY OF MARK W. POTTER, FORMER RECEIVER OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.; TESTIMONY OF BENJAMIN J. BUTTENWIESER, MEMBER OF KUHN, LOEB & CO., INVESTMENT BANKERS, NEW YORK CITY; AND STATEMENT OF ROBERT T. SWAINE, OF CRAVATH, DE GERSDORFF, SWAINE & WOOD, ATTORNEYS AT LAW, NEW YORK CITY—Resumed

CONTROL OF REORGANIZED ST. PAUL—SELECTION OF OFFICERS, DIRECTORS AND VOTING TRUSTEES—EXTENT OF BANKER PARTICIPATION THEREIN

Senator TRUMAN. You may proceed, Mr. Rosier.

Mr. ROSIER. Mr. Hanauer, your firm, Kuhn, Loeb & Co., and the National City Co. prepared the reorganization plan and agreement dated June 1, 1925, for the St. Paul Railroad, did you not?

Mr. HANAUER. Yes.

Mr. ROSIER. And the modification of the plan dated November 19, 1925?

Mr. HANAUER. Well, I was away when the modification was made, being in Europe, but that was prepared, I think I can safely testify, in cooperation with the minority, with whom the agreement had come about.

Mr. ROSIER. I believe there has already been some testimony of yours before the Interstate Commerce Commission, back in 1925 and 1926 to the effect that you were the prime mover in drawing up

There has recently come to my attention the action of the bar association in St. Louis, which has ordered inquiry into the conduct of a subordinate lawyer on the staff of the Missouri Pacific bankruptcy trustee. That inquiry was ordered by reason of the facts brought out at our committee hearings a couple of weeks ago in the Missouri Pacific bankruptcy case.¹

If those facts, important in themselves, but relatively of much less importance than the facts which have been brought out today, justified and made necessary a bar association inquiry into the conduct of the lawyer in that case, such an inquiry by bar associations in New York and Chicago into the conduct disclosed at this morning's hearings is imperative. I hope such an inquiry will be made. If our biggest lawyers can conduct themselves with regard to court and Commission proceedings as was done in this case, there is little to hope for in the form of impartial justice. It is therefore of highest importance that practices of this nature be thoroughly inquired into by the bar associations.

The subcommittee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 3:55 p. m., the subcommittee adjourned until the following day, Tuesday, December 7, 1937, at 10 a. m.).

¹ See Hearings, Part XV, pp. 6433-6446, 6454-6455.