

March 23, 1937.

Professor Felix Frankfurter
Harvard Law School
Cambridge, Massachusetts

Dear Felix:

I have read the self-serving Comments of the Guaranty Trust Company on the parts of our report relating to its activation in the Hoe and Cuba Cane reorganizations and I am not disturbed or impressed by them. I believe that a comparison of the Comments with our Report by any disinterested person substantiate that there are no material factual errors in the latter. We did not expect Guaranty Trust Company to agree with our selection of facts for emphasis or with the inferences which we drew from the facts -- and we were not disappointed.

The fact of the matter is that in both these situations Guaranty occupied just about the maximum of possible conflicting position. It was trustee for bond or debenture holders; it was bank creditor; and it participated in managerial control of the companies. Particularly remarkable in this respect were its many positions in R. Hoe & Co., Inc. In both situations it could hardly make a major move without sacrificing either the interests of its own depositors and stockholders on the one hand or of security holders of Hoe and Cuba Cane, on the other hand. We pointed this out in our Report.

We also pointed out that its lawyers in both situations, Davis, Polk, Wardwell, Gardiner & Reed, shared in many of these conflicts. Neither Guaranty Trust Company nor Davis, Polk have yet reconciled these inconsistent positions.

A number of eminently qualified and disinterested persons have complimented us upon the tone and quality of the Trustee Report. At this time, after consideration of the exceptions which been taken to the Report by persons criticized therein, I am still confident that it was fair and sound. But it would be idle to attempt to persuade Guaranty Trust Company and Davis, Polk that my opinion in this respect is well-founded.

Your informant states that our report was "prepared by two professors of the Yale Law School." This is not true. The original draft was prepared by a staff of six lawyers on our payroll. It was read by the Commissioners, criticized and carefully considered by the entire Commission. Unlike some government reports, it was truly a Commission product.

Yours faithfully,

William O. Douglas
Commissioner