

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON

February 17, 1937

Honorable William O. Douglas  
Securities and Exchange Commission  
Washington, D. C.

Re: Kruger & Toll

Dear Bill:

I am sorry that I missed you yesterday. As Carol told you, I was in New York, talking to some of your friends about Kruger and Toll and leaving with them tangible evidence of your esteem in the form of subpoenas. I got a great deal done and developed some rather interesting facts.

I first saw Eugene Untermeyer. He was by turns indignant and wheedling. I indicated ignorance about the hearing except that it in general concerned the contribution by the bankers and the purchase of rescission claims. He insisted that these matters were quite clear and that there was nothing which we did not know. He himself had not participated in the matter and had no documents except letters from the attorney who acted for Lee, Higginson in the matter and which formally notified him of the settlement. He said that he would show me these letters if I would not use them or let it be known in any way that he had shown them to me. I declined the offer with thanks; but he showed them to me anyway. They were, as I had supposed, purely formal letters, but they disclosed that Bechtel of Carter, Ledyard had acted for Lee, Higginson in this matter, and that he had paid \$24,000. I subsequently found in Mr. Bechtel's files a letter from Eugene Untermeyer to Joseph Proskauer concerning the settlement of these claims. I really hope that Eugene Untermeyer does not produce a carbon of this letter at the hearing. If he does not, I am going to shoot a fast one down the middle of his gizzard as an indication of the esteem in which I hold him. Not only was he stupid and secretive in his conversation with me, but he also, during the time I was there, raised hell with four law clerks and two young ladies who were his file clerks.

I ascertained to my own satisfaction from him and from other sources, as will hereinafter appear, that he really had very little to do with these matters. Samuel Untermeyer is in Palm Springs, California, and I indicated to Eugene Untermeyer and to Hartman my desire to avoid bothering Samuel Untermeyer if we could get the whole story without him. I found this approach rather effective. By using it I got Eugene Untermeyer to say that Samuel had nothing to do with the closing of the settlement; he was unwilling to admit that Hartman had closed it and tried to evade my probings along this line. Ultimately the scoundrel tried to convey the impression that John Foster Dulles had settled the rescission claims. I knew that this was a damned lie. You understand that my conversation with him was entirely amicable and that I did

not push him in any way or ask any direct questions. I merely led him on and statements that he made were for the most part untrue or half true as I then suspected and subsequently discovered.

After I had served Eugene Untermeyer with subpoena for Guggenheim and Untermeyer and for himself, I went over to a certain egg company at 60 Hudson Street and found Bernard Henick. From him I got the names of the persons whose certificates of deposit had been purchased and read the letters which had been written to these holders. This aspect of the transaction is unquestionably on the up and up. The people appear to be genuine, simon-pure holders of certificates of deposit, living in points scattered from Florida to Maine. I had originally thought that I would check up on these holders to see whether there was any connection with the Committee or its counsel, but after looking at the depository and reading their letters, I think this would prove to be fruitless. I was furthermore somewhat sorry to find that every penny received from Bechtel was turned over to these holders, less transfer taxes. Henick is gathering together documents in response to the subpoena and I will examine them in New York on Friday. But I am virtually certain that I will find nothing of interest.

After leaving Henick I went to the Title, Guaranty and Trust Co., depository for the Committee. After my conversations with Untermeyer and Henick I felt sure that the Committee had not received deposits since September of 1935. With the very kind and able assistance of a man at the Title, Guaranty I checked through their records and found that this fact was true. I also took occasion to check the certificates of deposit which had been purchased with Bechtel's money. I found that they had been transferred to Bechtel and that a few days after transfer they had again been transferred, this time to a stock exchange firm by the name of H. Hentz and Co. I checked the record of H. Hentz and Co. and discovered the rather interesting fact that they held \$900,000 of the Colby Committee C.D.s. Thereby probably hangs a tale, attached to the body of Lee, Higginson and Co.; but we shall probably never be able to trace it down. If I have time on Friday, I shall stroll over and talk to Mr. Hentz.

I next went over to see Sigfried Hartman. Mr. Hartman is having his suite of offices redecorated. I called this fact to his attention and he assured me that it was merely for the purpose of preventing the ceiling from falling. We might recall Haugh to investigate this matter. I had my most interesting and illuminating conference with Mr. Hartman. He had called in his partner, Mr. Craven, apparently to check my facial expression. Sigfried was very pleasant and accommodating; he doesn't think that he has any relevant documents. - None of the lawyers to whom I talked during the day made a memorandum of conversations and none of them kept a diary.- The latter fact is a departure from customary practice as I understand it. This departure is probably due to the fact that the subpoena expressly mentions diary entries. Sigfried told me that he was principally concerned lest the bankers consider him a Judas. It was he who made the settlement. I eased him into saying that it was in the latter part of 1935, subject to check. If he will say that on the witness stand, we shall try to change the age old story and crucify Judas as well as Jesus. He lamented his excessive zeal. There was no necessity, according to him, for taking care of the various debenture holders who had rights of rescission, particularly in view of the fact that they had already waived their rights, in connection with acceptance of a distribution of the estate and had proof of claim in the bankruptcy proceeding. But Sigfried knew that we were solicitous of these persons who had rescission rights and thought that it would be a fine thing if they could be helped out. He told me that Joe Proskauer, on behalf of R-T, had made the

arrangement which was finally consummated. According to him, lawyers do not ordinarily disclose that settlement has been made; and although there was no agreement to this effect, it was implicit in the situation. Tearfully he beseeched me to refrain from making him appear as a Judas; and I promised to do all I could in this respect if we could get the whole story without difficulty. I qualified this by calling attention to the impossibility of committing myself to any particular line of questioning or approach. But I shall be very willing to agree to conceal the fact that information concerning the purchase of the C.D.s. came to us through Hartman, if Hartman will testify that he arranged the purchase after he had resigned as counsel to the Committee in order to avoid conflicts while he was acting as counsel to the trustee, and if he would testify that the purchase was agreed to before the registration statement was filed. If he does not testify to these facts, I shall not be aware of the necessity of shielding him.

In the afternoon I went back to the Commission's office and got my good friend McDuffie to give me subpoena duces to Bechtel and Proskauer. I then went over to see Lee, Higginson. I walked into the beautiful offices of the Lee, Higginson Corporation and after telling a couple of employees that they would not do for my purposes, I was finally allowed to see George Murnane. Mr. Murnane was in a rather whimsical mood. He told me all about himself and advised me that he was spending some time every day winding up the affairs of Lee, Higginson and Co. He is not associated with the corporation. He knew nothing at all about the Global payment or the purchase of C.D.s. All of these matters are, you know, handled by counsel. He assumed that Lee, Higginson and Co. had reimbursed Mr. Bechtel for the purchase of C.D.s but he didn't know anything about it. I subsequently had reason to believe that this was a lie. I served Mr. Murnane and suggested that he appear at the hearing in response to this subpoena, in order to save me the trouble of serving a subpoena ad testificandum on him personally. I then asked him to introduce me to an executive official of the Lee, Higginson and Co., so that I might serve the corporation. He did so and I served the subpoena on the corporation for the production of relevant documents. I advised the official of the corporation that Mr. Murnane, although he was not an official of the corporation, might appear as their representative for purposes of the hearing, producing such documents as they discovered. I also arranged to call Mr. Murnane on Friday for the purpose of examining such documents, if any, as he might discover, after conferring with counsel. I expect nothing from this source. I am considering the possibility, however, of bringing out at the hearing Mr. Murnane's fear of rescission suits which he expressed to me. He told me that he and the other partners of Lee, Higginson and Co. had survived this terrible ordeal because of their clean hearts, and because their backs had not been broken by judgments against them. I understand that all of the former partners are doing very well. I think that the interests of the people and the purposes of the Commission require that mention of this fact be made at the hearing.

I then strolled over to see Mr. Bechtel. He is a very aristocratic gentleman of the old school, the typical senior partner who is not accustomed to rough stuff. Mr. Bechtel was terribly distressed when, after we had conversed for a while, I advised him that he would be subjected to the annoyance of a subpoena. He produced certain documents at which he gave me a hasty look. One of these was a letter dated August, 1936, from Eugene Untermeyer to Joseph Proskauer. In this letter Eugene recalled an agreement made between Proskauer and Hartman "about two years ago" for a purchase of certificates of deposit subject to rescission rights. Eugene then suggested that maybe they ought to go through with this matter now. A penciled note from Proskauer to

Bechtel said that the weather at Lake Placid is very fine and Bechtel ought to be there and how about talking with George Murnane and fixing this matter up. I encourage Mr. Bechtel to talk a little more, surprising him with the fact that I knew he had sent his personal check for \$24,000 in payment of the C.D. (as a matter of fact I was not sure that he had paid for it by personal check, but I thought a shot from the half light might produce desired information). He then disclosed that he had in fact paid for the C.D.s by personal check and had taken them in his name but as nominee for Lee, Higginson. He stated that Lee, Higginson had sold them to or through H. Hentz and Co. at about 42. I tried to probe a little as to the reason for paying the face amount of these C.D.s in view of the fact that litigation had been settled by purchase of C.D.s at considerably less than the first amount. Mr. Bechtel indicated that it was just a matter of trading and that the Committee's C.D.s could not be purchased for less. He agreed, however, that the fact that it was the Committee and not individual influenced the purchase at this price, which was more than twice the market value of the certificates.

I shall appreciate your observations and comments on the development of the case at this point. I am fairly certain that I have all the facts which can probably be developed at the hearing and perhaps more. On the basis of my impression as to the character and personality of Proskauer, I think that I shall get nothing from him.

Eugene Untermeyer wanted a postponement of a week for the purpose of making adequate preparation for the hearing. When I asked in what respect he needed preparation, he referred to the fact that the hearing was scheduled for the day after Washington's birthday. Perhaps he does not wish the hearing to come so close to the day which, above all others, stands as a symbol for the virtue of telling the truth, the whole truth and nothing but the truth. Sigfried Hartman has to spend most of the 23d in trying to get a pardon for a man who is about to be electrocuted. Mr. Bechtel has some important litigation pending. In fact, of the entire group concerned only McDuffie and I seem ready and willing to proceed with the hearing. If you decide to change the date in any respect, I have no objection.

AF:S