

January 25, 1937

Prof. Abe Fortas
Yale Law School
New Haven Connecticut

Dear Abe:

I hope you received yesterday a new draft of the Corporate Trustee Bill. I think that this is a great improvement. I haven't gone over it carefully since Ed Burke has incorporated various changes. I do know, however, that the last paragraph on page 12 does not conform to any convictions as to the proper way of handling the exemption matter.

The Reorganization Act is now in the process of revision. I spent the weekend going over this material. There are a lot of very difficult and interesting problems involved. We will forward you a draft within the next two or three days. Meanwhile, there are two rather important phases of it which I would like to get before you so that you can be thinking about them.

The first deals with the disqualifications of, say, the parent company, which owns all or substantially all of the stock of the issuer from proposing a plan or from soliciting proxies or deposits in connection with a reorganization. In the draft you now have I believe that such parent company is disqualified. Certainly, if the parent company is not disqualified there will be a very large loophole in many situations. At the same time, to disqualify the parent company would, in certain situations, disenfranchise so to speak, all or substantially all of certain classes of securities. The matter is one of greatest difficulty and importance. I have wobbled back and forth on it recently.

The second deals with the Commission's report on the fairness of a voluntary plan. In the present draft provision is made whereby the Commission may, though it need not, make such report. As a practical matter, in many, many cases the Commission would be under very great pressure to make a report and it might be exceedingly embarrassing not to do so. As a practical matter the administrative load would be very heavy.

I am inclined at the present writing towards making a review by the Commission on the fairness of voluntary plan mandatory, and then restricting the class of cases on which such review shall be made so as to include only cases of national interest. In other words, the class of cases might be similar to or the same as the class of cases referred to the Commission by the 77B courts under our proposed statute.

Various people here in the Commission who have not worked on the Bill have read it and none of them can understand it. I will give you their names on request.

Yours faithfully,

William O. Douglas
Commissioner