

WHAT HAPPENED TO GEORGE AFTER 1932?

By
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George

As 1932 came to an end, George was associated with the law firm of Cotton, Franklin, Wright & Gordon and his major assignment was passing on the so-called "Legal Transfers" for the Chemical Bank & Trust Company. At that time, the Corporate Trust Department of the Bank was panicky over a potential liability of ten million dollars for some improper handling of collateral under a Collateral Trust Agreement, and they asked George to come on to the pay roll of the Bank as Legal Advisor to the Corporate Trust Department of the Bank and to review all of the trusts under which they were acting and to set up procedures which would prevent any recurrence of the improper substitutions which had resulted in this liability. This proved to be an interesting job, particularly after the passage of the Securities Act of 1933 and the Securities Exchange Act of 1934.

In the early part of 1935, my parents urged us to come down to Fort Lauderdale, Florida, to see the new house they had just built for their retirement. We drove down, and on the way back, stopped off in Washington to see Allen and Billie Throop. Allen had been an associate of Cotton, Franklin and was then Assistant General Counsel of the Securities and Exchange Commission. As we sat around his fireplace chatting about the problems of the world, I told Allen that I thought he had been very wise in joining the staff of the S.E.C., as I thought that, in the issue work in which we were both interested, the S.E.C. was bound in the future to play an increasingly important role.

Some weeks later, Allen called from Washington and, reminding me of our conversation, asked whether I would be interested in a job in the General Counsel's Office, and suggested that, if I were interested, I come down to Washington on the midnight train and talk to the General Counsel. This I did, and to my surprise, the General Counsel

started off by saying "I don't know a thing about you but Allen Throop says you are a good man, so you're hired. Now the only thing is how to get you by Judge Healey. Do you know anyone who knows Senator Harry Moore of New Jersey?" I assured him that I did not and had no political connections whatever. He said that didn't make any difference; that the Commission had turned down six men recommended by Senator Moore and that it would be very easy to get a letter from him because he wouldn't think it would do any good, whereas Judge Healey would like nothing better than to write Senator Moore thanking him for sending them that "nice Mr. Parlin" whom they had just hired on his recommendation.

All the way back to New York I tried to think of somebody who might know Senator Moore but to no avail. That night, coming out to Glen Ridge with Howard, I told him of my interview and acceptance of the job. He said that his firm had just taken on a new man in his department who was a good friend of Senator Barbour. Would that do as well? I said that wouldn't help as Senator Moore was a Democrat whereas Senator Barbour was a Republican. We dropped the matter there but a few days later, I got a telephone call from Allen Throop. He said, "I thought you said you had no political connections. If so, how did you ever get that letter from Senator Moore and a letter from Senator Barbour besides!"

A day or two after I reported for work in the General Counsel's Office, Joseph Kennedy resigned as Chairman of the S.E.C. and was succeeded by Jim Landis, who had been the top man in my class at Harvard Law School—Class of 1924. I was somewhat apprehensive about my tenure with the Commission in view of the fact that Sam Symes and I had put Landis and Leach (the two top men in our Class) out of the Ames Competition. Whether or not the two letters in my personnel file, showing that I was sponsored by both the Democratic and Republican Senators, had anything to do with it, the fact is that in the thirty years I was connected with the Commission, I never felt in danger of losing my job except once, and that was long after Jim Landis had left the Commission. That exception is part of another story which I may get around to writing some other day. For now, I shall stick to giving my appraisal of the contribution which Chairman Kennedy made to the work of the Commission.

For the first year after the passage of the Securities Act of 1933, everyone in the underwriting business was afraid to file a registration statement with the Commission. That isn't quite correct, as two registration statements were filed but neither became effective and my recollection is that they were filed by promoters who did not use an underwriter. Then in 1934, Kennedy was appointed Chairman and he persuaded the underwriters that they could safely register an issue for sale. This broke the back of the "underwriters' strike" and by August, 1935, when I went to Washington, a number of registration statements had been filed and had become effective. I had hoped to work on the processing of some of these registration statements but instead was assigned to the newly formed Forms and Regulations Division.

My first job was to prepare a registration statement to be used by foreign governments and municipalities. I prepared a beautiful form but the ambitious program which the head of the Division visualized, never materialized and to this day, foreign governments and municipalities, when they register securities for sale in this country, as many of them have, have to use their own imagination as there is no form for them to use.

My next attempt was more successful. I was asked to prepare a form of annual report for listed securities to keep up to date the Form 10 filed by all listed companies for registration under the Securities Exchange Act of 1934. This annual Report Form was called Form 10-K and, although it has been amended many times during the intervening years, is still basically the Form 10-K which I drafted.

The name of the Form has an interesting history. The system used under the 1934 Act was to designate the forms by the number of the Section of the Act authorizing it, followed by a letter corresponding to the subdivision of the Act. The Annual Report was required by Section 10, subdivision 13 of the Act.

Harold Neff, the Assistant General Counsel in charge of the Forms and Regulations Division, said that the new form should be called Form 10K and it went through several drafts that way. When I called his attention to the fact that the letter M is the thirteenth letter of the alphabet rather than the letter K, he flew into a rage. The form continues to be called Form 10-K but I was sent back to New York to act

as Interpretive Attorney where, under various titles including Assistant General Counsel, Assistant Regional Administrator, and Chief of the Interpretive Section, I spent more than twenty-five very happy years.

As I look back on it now, it seems impossible that the passage of two relatively simple Acts like the Securities Act of 1933 and the Securities Exchange Act of 1934, could have caused such paralyzing fear in Wall St. Basically, this fear was that you couldn't tell the truth about a security and sell it. I visualized my job as being a conduit between the Commission in Washington and the securities industry in New York. I passed on to the securities industry in New York, the views of the Washington Office; and I passed back to the Commission Staff in Washington, any information I could gather about the feeling in Wall Street which might be of use. I rarely got involved in any enforcement case but there were a few that possibly should be noted for posterity.

Jack Kelly was the Assistant General Counsel in charge of Enforcement Cases in the New York Regional Office. In one criminal case in Newark, he had been named as a Special Assistant U. S. Attorney for the purpose of conducting the trial as he was a member of the New Jersey Bar. In the middle of the trial, he became panicky and persuaded the Commission that I must come over and act as an expert witness on the meaning of some section of the Securities Act of 1933. Much against my better judgment, I went over to the Federal Court in Newark and was immediately put on the stand and qualified as an expert. I modestly admitted that I was one of the world's greatest authorities on the meaning of the Securities Act of 1933. Then I was turned over to Counsel for the Defendant for cross examination. He proceeded to ask three hypothetical questions under Regulation T. Now Regulation T is not an S.E.C. regulation but a regulation of the Federal Reserve Board which had asked us please not to interpret their regulations and I didn't know the answer to any one of the three questions. With the permission of the Judge and the defendant's attorneys, I agreed to clear the questions with the Federal Reserve Board and submit to the Court a letter which could be introduced into evidence. In the end, Jack got a conviction; the defendant got a one-year sentence; and I learned a lesson I never forgot. Never again would I be talked into acting as an expert witness for anybody.

Another criminal case I got involved in, also proved educational. One day Vic Schwimmer asked whether I would talk to a Mr. Bronson of the Bagdad Copper Company who did not believe he was required to register a stock issue proposed to offer to the public in New York. After listening at length to Mr. Bronson, I advised him that he not only should register the proposed issue but that he had already violated the Act in selling some other unregistered shares. He was very unhappy with my advice and assured me that I was wrong and he would go to Washington and have me reversed. He did go to Washington but he was given the same advice that I had given him. Reluctantly he filed a Registration Statement but it was so bad that the Commission ordered a "Stop Order" proceeding. In the course of that proceeding, Mr. Bronson committed so much perjury that the U.S. Attorney started a criminal proceeding against him.

At this point, Jacob Mandelbaum, Bronson's attorney, made a serious mistake. He figured that Vic Schwimmer and I would be witnesses and that he could scare us out of testifying. So he sued us jointly for six million five hundred thousand dollars. What Mandelbaum did not know was that I would not be needed as a witness and that Vic Schwimmer, who played goalie on the Lehigh Lacross team, didn't scare worth a darn. He also did not know that Howard Larry, the Regional Administrator of the Denver Office of the S.E.C., and a highly respected mining engineer, would die before the perjury case could be tried. Larry had made the physical examination of the Bagdad mine and was to have been our star witness. Without him, our case seemed hopeless. If it had not been for the pending civil suit against Vic and me, the U.S. Attorney would have dropped the perjury case but by that time I was in the Army and John Cahill, the U.S. Attorney who had been an associate of mine at Cotton, Franklin, refused to drop the case.

One day when I was driving along a dusty road in Italy, trying to locate my unit, I saw a sign reading, "A.P.O. 594" which was my A.P.O. NUMBER AT THAT TIME. On a hunch, I stopped the jeep and inquired whether there was any mail for Major Parlin. To my great delight, the postal clerk handed me a large package of letters including one from the U.S. Attorney in New York stating that the civil case against Vic and me had been dismissed with prejudice. At the time it

didn't seem very important as compared with ending the war and getting home to my family. However, when I did get back and saw Vic again, I asked him what had happened. He said that the Commission had gotten another mining engineer to repeat Larry's investigation. The engineer made a splendid witness and the jury promptly returned a verdict of "Guilty." Then Mandelbaum asked the U.S. Attorney to join with him in asking for a light sentence. The U.S. Attorney said that he wouldn't even talk to him until the civil suit against us was dismissed with prejudice—which it promptly was. Then the Judge and Counsel agreed on a one year sentence.

The moral of this tale is, don't try to defend a criminal case by bringing a civil suit. It may backfire.

But this is getting a little ahead of myself. There is at least one more matter that should be chronicled before I start on the story of how I came to be in the Army in Italy.

Because the Securities Acts were so new and considered so radical, the Commission adopted the policy of answering any question relating to our Acts, rules or forms whether from a lawyer, an accountant, an underwriter or any other person having any legitimate question. My job was to answer those questions for persons in the New York Region. The partners in the member firms were, themselves, reluctant to call and usually had a second echelon person call for them. In this way, I came to have a broad telephone acquaintance with the Cashiers and Senior Margin Clerks of the member firms. I enjoyed doing business with these boys. Their attitude was: I don't care whether the answer is "Yes" or "No". "All I want to be sure of," they said, "is that I do the right thing and if the Managing Partner calls you, I'll know that you will tell him the same thing." On that basis, we got along fine and when an irate partner of a firm called to check on what he thought was an unreasonable position of his Cashier or Senior Margin Clerk, I never hesitated to tell him that the Cashier or Senior Margin Clerk was quite right.

Both the Cashiers and Senior Margin Clerks had their own organizations and they had a fine grapevine for disseminating information as to how the S.E.C. wanted them to handle matters. Particularly the Senior Margin Clerks would get together for dinner about once a

month and afterwards would discuss their problems. Somewhat timidly at first, they would invite me to dinner when they had a discussion scheduled which was affected by our Acts. I persuaded the Commission that I could do more good than harm by accepting such invitations and it soon became a standard practise.

At one of such dinners, I met Birl Shultz, the author of a book entitled, "The Work of the New York Stock Exchange." At that time it was, and probably still is, the definitive text on the operation of the Exchange. He was the head of an organization known as The New York Stock Exchange Institute. It was originally formed by the Stock Exchange for the purpose of enabling the page boys to continue their education.

Dr. Shultz always attended the meetings of the Senior Margin Clerks and we learned a lot from each other. After one of such meetings, he asked me if I would be willing to teach a course in his Stock Exchange Institute on the Federal Securities Laws. I said that I couldn't, without the consent of the Commission but that, if he could get it, I'd be happy to. I never dreamed that the Commission would authorize it but, to my surprise, they did. It turned out to be a most constructive move.

The first Class had a very distinguished group including a member of the Board of Governors of the New York Stock Exchange, the President of the New York Curb Exchange (now the American Stock Exchange), a large part of the senior staff members of the New York Stock Exchange, Grayson Murphy (a senior partner of Shearman & Sterling), Mel Steen (now a senior partner of Cleary, Gottlieb, Steen & Hamilton), Gorgison and his partner, Nye, who had the largest firm devoted to the solicitation of proxies etc.

Upon the completion of the course, the Class tendered me a dinner in my honor and a jovial affair it was. From that day until my retirement in 1965, those men remained my friends and we had a most happy relationship. For them, I was a friend and advisor they could safely tell things knowing that I would not breach their confidence; and for me, they were a vast source of knowledge of the current problems of the Securities business. I may be immodest, but I felt then, and I still

do, that this had a great deal to do with the eventual acceptance by the "Street", of the fact that it was possible to carry on a securities business under federal regulation.

The one exception to this, was Mr. Cuppie, the President of the Curb Exchange. Some months after that dinner, Mr. Caffrey, the Regional Administrator, asked me if I knew my way around Montclair and could definitely identify Mr. Cuppie. I assured him on both points and he asked me to serve some papers on Mr. Cuppie at his home in Montclair. Jim Caffrey never trusted me any more than I trusted him, so he gave me a sealed envelope and merely said that it was a subpoena to be served on Mr. Cuppie personally and that he would prepare an affidavit of service for me to sign when I returned to the office.

I went home to Glen Ridge, got my car and drove up to the address I had been given. I was a little apprehensive when I saw a big limosine with its motor running, standing in front of a garage at the end of a long driveway. So I left my car blocking the street end of the driveway and walked up to the front door and rang the bell. A butler let me in and, when I told him I wished to see Mr. Cuppie personally, he ushered me into the living room. In a few minutes Mr. Cuppie came in clad in a dressing gown and we shook hands. Then I gave him the envelope and explained that I was unfamiliar with the matter but that I understood that the envelope contained a subpoena for him. He ripped open the envelope, glanced at its contents and said that he had been expecting it and was quite familiar with the matter.

I never did know what the matter was all about but Mr. Cuppie resigned as President of the Curb Exchange and some time later I heard that he had gone to Argentina under an agreement that he would never again set foot in the United States. His firm was the highly respected E. A. Pierce which later merged into Merrill, Lynch to become the largest brokerage firm in the Securities business and is usually referred to as, "We the People."

When I took a job with the S.E.C. in 1935, I had decided to stay with it for five years. I figured that to stay with it for less than that would hardly be fair to the organization. I didn't want to leave as soon as I had learned the job but by 1940, I would just about have to establish some permanent connection. However, by 1940 it seemed pretty clear to me

that we would soon be in the war and, if so, we would all be in it one way or another. So, while I had a few interviews about another job, my heart wasn't in it and I never followed them up. Perhaps, as things turned out, it was just as well that I didn't.

In May of 1941, when they started to draft the young men for a year of military training, the Glen Ridge Battalion Forum (an outgrowth of World War I) sponsored the organization of what became Company B of the New Jersey State Guard. When they came to me with the story that they needed one more man in order to activate the Company, I enlisted as a Private for one year. We drilled one night a week and Saturdays. In January of 1942, we were called into active service to protect the Perth Amboy bridge. Every night ammunition barges went under the bridge on their way from the Atlas Powder works to load the naval vessels standing off in New York Harbor. Fortunately, no one attempted to sabotage the bridge which would have tied up the network of New Jersey roads on which much of our defense industry depended. Perhaps we scared the Germans off, I don't know, but the first night was as tough soldiering as I ever did. We were issued live ammunition and we meant business. It was six degrees below zero in the town of Perth Amboy and when I started my first two hour shift in the center of the bridge with a 40 mile gale roaring down the river, it must have been substantially colder. When the Corporal of the Guard ordered the man I was to relieve at midnight, to unlock and unload his piece, all he could say through his chattering teeth was, "I can't. My fingers are so cold that I can't even feel the lock."

In the course of the next few days, we got the place organized. One of the men got the telephone company to send down enough equipment to hook up the command post and all the sentry stations. Another in the lumber business, sent down enough lumber to build a shelter at each sentry post. A man in the scrap iron business had his office send down a pot stove for each sentry box. Another, who was in the coal business, had his office send down a couple of tons of coal. From then on, we soldiered in comparative comfort for two weeks until our Company was relieved.

I slept for a solid weekend and on Monday morning reported back to the S.E.C. but by that time it was hard to get interested in helping

people to comply with the Securities Acts. Then Congress passed an Act authorizing the transfer of any government employee to any place in North America where his services were needed in the war effort . All that summer of 1942, I filled out questionnaires for various organizations engaged in war work. Then one day in October, my secretary burst in on a conference and said, "Washington is on the wire." I replied that I would call back when I had finished the conference. She said, excitedly, "You better take it. It's the War Department calling!"

But that's another long story and deserves a chapter by itself.