

# MEMORIES FROM EARLY DAYS OF THE SECURITIES AND EXCHANGE COMMISSION

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In this year 2004, the Securities and Exchange Commission commemorates the anniversary of its founding in 1934. Having been a staff member of the SEC from June 1936, near its beginning, until I joined the staff of the World Bank in 1973, I am using the occasion to relate some of my memories of the Commission's early years.

In 1975, the late Bernard Wexler, Director of the Office of Opinions and Review, one of my associates at the SEC, wrote a history of the SEC in its first 40 years which was published in 2003 and can be reviewed in the virtual museum of the SEC Historical Society. One should also review an outstanding publication "50 Years of the U.S. Securities and Exchange Commission" which contains an excellent account of the history of the SEC up to 1984, including many remarkable photographs of Commissioners, staff and SEC facilities over past years.

The purpose of my present writing is not to produce a history of the SEC. Rather it is to give present and former staff and friends of the SEC insight into some Commission activities, cases and staff with which I was associated during the distant past, including anecdotes, some amusing, well known to staff then, but soon to be lost in time. I do not intend to focus upon my own small part in the Commission's work, except as necessary to convey an understanding of some events in which I participated. Because these accounts go back many years in a life span, and are based primarily on personal observations, there may not be another chance for me or some other former staff person to relate them.

## **SEC Facilities in Early Years**

The SEC's original headquarters building, following establishment of the SEC by the Securities Exchange Act of 1934, was located in Washington, D.C. on the southeast corner of Pennsylvania Avenue and 18th Street, at the western end of the 1700 block of Pennsylvania Avenue (1778) one block west of the White House. It was an older eleven-story building previously occupied by the Interstate Commerce Commission, which accommodated the SEC staff until 1942 when headquarters were moved to Philadelphia during World War II.

Across 18th Street from the SEC headquarters was another old building, the office of the Federal Power Commission with which the SEC had contacts related to the regulation of public utility companies. Across Pennsylvania Avenue from the SEC was the Roger Smith Hotel, where industry officials who had business with the SEC would often stay.

On Pennsylvania Avenue next to the SEC building was “Mike’s” eatery, where staff members would often meet for meals or snacks, greeted by Mike. It was a relatively small staff in numbers in the early days. Down Pennsylvania Avenue on the same side was the “Wagon Wheels” fast food place which often served members of the staff.

The original SEC and the Federal Power Commission buildings have long since disappeared, razed in recent years and replaced by large buildings of the World Bank created after World War II. The other buildings on both sides of Pennsylvania Avenue in the SEC block have also been razed or completely reconstructed to make way for modern buildings.

The SEC building had no central air conditioning or even window units, as was the case in most all government and commercial buildings, as well as in private homes in those days. Staff would swelter on a hot, humid day until a certain combination of high temperature and humidity decided for agencies from on high was announced and the staff released to go to a home or apartment to swelter some more.

As indications of how long ago these times were, at the advent of the SEC in 1934, and in 1936 when I started there, Franklin Roosevelt was in his first term as President, and the government in Washington was busy on the New Deal legislation, including the Securities Acts assigned to the SEC. Street cars were plying the main streets of central Washington with the electric source in pits under the pavements. Today’s Metro system was in the long distant future. The means of public transportation, besides the street cars, were some bus feeder lines and a few commuter trains to and from Union Station for persons who had reasonable access to them at both ends. Car pools were used by many, but irregular hours were a problem, causing inconvenience and dissension within car pools at times. Wage rates for a year were generally lower than today’s rates for a month. Living costs were comparably lower than today’s. The CPI has increased more than twelve-fold since 1935.

### **SEC Staffing in Early Years**

The years of the 1930s were, of course, a period of severe depression. Some professionals -- lawyers, accountants, financial analysts and engineers -- hired by the SEC, as well as other government agencies, had completed their educations in the 1920s, while others started then or during the depression years. Administrative and non-professional staff were often secondary school graduates not able to start or continue college educations in depression times. In many cases, college educations, including my own, were commenced or continued by staff members in late afternoon or evening classes at local universities, usually George Washington or Georgetown in Washington and Temple in Philadelphia after the SEC’s move there in 1942. Successive

advancements in professional positions could be made with the additional education and experience.

The main leadership and expertise of the SEC staff were provided by professionals educated in prestigious universities, many experienced in business and industry, and some had been members of university faculties. Many important and key staff came from the Federal Trade Commission, which had conducted studies leading to Securities Acts legislation and administered the initial Act, the Securities Act of 1933, until the SEC was established by the Securities Exchange Act of 1934 to administer both Acts.

James M. Landis, a young Harvard law professor, who was a principal author of the 1933 Act, was appointed a Commissioner of the Federal Trade Commission in 1933 and then a Commissioner of the first SEC Commission in 1934. The other initial Commissioners of the SEC were George Mathews and Robert Healy, who had been a Commissioner and the Chief Counsel, respectively, of the FTC; Ferdinand Pecora, Counsel for the Senate Committee investigating the need for enactment of the Securities Acts; and Joseph P Kennedy, who was elected the first Chairman of the SEC.

Commissioner Landis succeeded Kennedy as Chairman in 1935; William O. Douglas was named Chairman in 1937 and served until his appointment to the U.S. Supreme Court in 1939, followed by Jerome N. Frank who was Chairman in 1940-41 until his appointment to a Federal Court of Appeals. Douglas, a Yale law professor, had initially directed the SEC's study of bankruptcy reorganizations. Both he and Frank were SEC Commissioners before they became Chairmen.

In these depression years, government jobs, although generally commanding less pay than those of persons able to keep or obtain jobs in private industry, were considered to be good jobs, more secure and promising. This aided the SEC in obtaining quality staff, very important to an agency starting up and expanding. Also, many people were attracted to SEC service by the prospects of playing a role in correcting gross abuses which were occurring in the securities and public utilities industries at the time and in past years, as disclosed by the investigations and studies which preceded the enactment of the several Securities Acts. By the spring of 1942, when SEC headquarters were moved to Philadelphia, the staff had increased from a few hundred at the outset to nearly 1,600, hardly enough to carry out the complex tasks that Congress had assigned to the SEC, including the addition of the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940.

### **Public Utility Holding Company Abuses and "The Murphy Memo"**

In 1935, the year after the SEC's inception, Congress passed the Public Utility Company Holding Act of 1935 (1935 Act) and added it to the Securities Acts administered by the SEC. Since my work in the SEC's early years was mainly on

Section 11 of the 1935 Act, requiring at the outset the important reorganization of the holding companies, I relate those activities here.

The Federal Trade Commission (FTC) had conducted, commencing in 1928, a comprehensive investigation and study, authorized by U.S. Senate Resolution, of the practices, financing and operations of public utility holding companies and their electric and gas utility subsidiaries throughout the country. The abuses disclosed by the FTC study were the principal basis for enactment of the 1935 Act. The sixteen largest holding companies controlled some 92 percent of the electricity generated and distributed by private utilities in 1932.

In brief terms, the 1935 Act required the registration of the holding companies, the ongoing regulation of the system companies and, most importantly, under the provisions of Section 11 of the Act, the integration and simplification of holding company systems and the fair and equitable distribution of voting power among the securities holders of the system companies. The operations of the holding companies were restricted to one or more systems whose operations were integrated and confined to a single state or contiguous states. Fair and equitable distribution of voting power required the elimination of subholding companies used as a means of exerting control over operating utilities with disproportionately small investments and the recapitalization of system companies where necessary to achieve these results.

Most public utility holding companies refused to register until 1938 when the Supreme Court upheld the constitutionality of the 1935 Act in the SEC's case against Electric Bond and Share Company. The FTC had found, and the SEC's investigations and proceedings confirmed and extended, the record of abuses by holding companies, which adversely affected the interests of security holders and rate-paying consumers of utility operating companies in the 1920s and into the 1930s. The core of these abuses typically found in the proceedings can be illustrated by the following example of the holding companies' practices in organizing and financing the system operating utilities.

In the 1920s, particularly, the period of greatly expanding demand in the country for electric service, holding company interests would purchase scattered electric, and sometimes gas, facilities in all parts of the country and combine the ownership of them in operating companies organized by the holding companies to operate the acquired properties. To illustrate this practice, a holding company would acquire utility properties purchased in several recent transactions at arm's-length at a total cost of, say, \$100 million, then cause an operating utility subsidiary it organized to record such property on its books at \$200 million, against which the subsidiary would issue to the holding company parent \$100 million of senior securities (bonds and preferred stock) and \$100 million, ostensibly, of common stock. The holding company would thereupon sell the senior securities to the public, usually through an investment banking firm, for \$100 million, thereby recovering its cost of the property it transferred to the

operating subsidiary and retaining the \$100 million of common stock and complete control of the operating subsidiary at no cost to the holding company. The facts would not be disclosed to investors or government authorities.

The operating utility subsidiary would usually be located in a different state than the holding company, and it would claim from regulators in its state rates of return for utility service based on the written-up cost of \$200 million of utility property, double the actual cost of \$100 million to the holding company. The records of the costs and other details of purchases of the properties would be with the holding company where the out-of-state regulators could not see them to verify the true costs. The holding company would benefit substantially from returns on the utility's common stock acquired at little or no cost and by the receipt of fees charged the utility for services of questionable value. This was done to the detriment of the utility's consumers paying rates on greatly inflated property values and the investors in its senior securities who were sold them on the basis of the fictitious values.

The above manner of organizing and financing the holding companies' operating subsidiaries varied among systems in the extent to which the properties were written up over cost to the holding companies and in the proportions of senior securities issued and sold to public investors. However, the common result, with few exceptions, was for the equity position and control of the operating utilities to cost the holding companies organizing them little or nothing, at the expense of the utilities' public investors and consumers.

The SEC's activities under Section 11 of the 1935 Act to bring the public utility holding companies into compliance with the geographic integration and simplification requirements of the Act probably consumed more of the time of the SEC staff than any other activity until its substantial completion by 1954. Many have considered the enforcement of Section 11 one of the most successful programs carried out in the interest of investors and consumers. Plans which complied with the Acts were formulated and were enforced by U.S. District Courts on the evidence with respect to the holding company systems adduced in the SEC proceedings on the individual systems.

The SEC's Public Utility Division was responsible for conducting the proceedings under the 1935 Act. The Division was divided into sections, each one to conduct research, investigations and hearings with respect to a holding company system or systems. The Section to which I was assigned to work in accounting and financial analyst positions from 1940 to 1954 dealt with the system headed by Electric Bond and Share Company (Bond and Share). It controlled the largest holding company system in the United States, consisting of about 190 utility subsidiaries, controlled through Bond and Share's interests in multi-state subholding companies. It controlled additional utilities in Cuba and Central and South America through another subholding company subsidiary. It also had a service company subsidiary, EBASCO, which for sizable service fees provided

services to most of the Bond and Share subsidiaries. The 1935 Act jurisdiction extended only to holding company systems in the United States.

The Public Utility Division's activities with respect to the Bond and Share system were headed by Milton Cohen, an outstanding attorney from Chicago. He later was Director of the Division from 1943 to 1946 and, after leaving the SEC, returned in 1961-63 to head the SEC's Special Study of the Securities Markets authorized by Congress. The Principal Attorney who examined most of the witnesses for Bond and Share and the system companies was Alfred Berman from New York City. The Division was staffed with attorneys, accountants, financial analysts and engineers.

The public hearings under Section 11 of the 1935 Act on the Bond and Share system were held almost continuously following Bond and Share's registration in 1938 and into the 1950s. Separate sessions were held on Bond and Share and each of its three principal subholding company subsidiaries, in turn controlling numerous utility operating subsidiaries in various parts of the country. The pattern in the 1920s and early 1930s was for Bond and Share and the subholding company subsidiaries to purchase, often through intermediaries, utility facilities and arrange the organization and financing of the operating companies into which the purchased facilities were placed. The key factor which enabled Bond and Share to profit from these transactions was the write-up of the purchased properties on the books of the operating companies substantially above the recent costs to Bond and Share and its subholding companies, enabling them to obtain the equity positions in the operating companies at little or no cost, in the manner previously described. This practice was not confined to the Bond and Share system, but was found to be that followed by public utility holding companies generally in the years preceding the Securities Acts when there was a lack of adequate financial disclosures in the financial statements of business enterprises.

### **“The Murphy Memo”**

In the early hearings on the organization and financing of the operating utilities by Bond and Share and its sub holding companies, the CEOs and other witnesses professed not to know about the use of “write-ups” of property accounts or their significance. However, in 1941, while the early hearings were in progress, I was sent by Milton Cohen and Alfred Berman to New York City to examine the records of Bond and Share in Manhattan. Among the files of its service company subsidiary EBASCO, I found a copy, overlooked by staff of Bond and Share and EBASCO, of a memorandum dated April 18, 1927 from Samuel W. Murphy, a staff attorney of Bond and Share at the time of its writing, later to become its President, to other Bond and Share counsel. The five-page memorandum was replete with statements damaging to Bond and Share by revealing its practices in organizing and financing operating utilities. While it involved properties in Pennsylvania, it also spoke of holding company practices in general terms.

For example, Murphy stated in the memorandum that “all agreements and all plans of reorganization should be laid so that no one will be able to separate one part of the reorganization from the other part.” The reason for this, he stated, is that “the increase of the Plan Account . . . is tremendous, and we must not forget that in Pennsylvania the Commission has the right to approve or disapprove the acquisition of utility properties by a public utility they might be willing to approve the reorganization of all your properties in Pennsylvania if it would be impossible for anyone to determine at what figure the various properties were going into the whole organization.” At a later point in the memorandum, Murphy stated, “I again wish to impress upon you the importance, in my opinion, of scrambling all these reorganizations together so that about the only thing the Pennsylvania Commission will be able to understand will be the result and not how the result was reached. Root’s (referring to EBASCO’s financial officer) reorganization, in my opinion, is too simple and too easy to follow, particularly the Plant Account of the Susquehanna reorganization from \$25 million to \$61 million through a merger.” Murphy stated that if the plan is clearly stated, “it might start an investigation into our whole rate and financial structure in Pennsylvania and lead to all sorts and kinds of consequences.” Murphy ends the memorandum by stating, “I merely repeat this in order that you may know that I feel very strongly that in states where we have commissions on reorganizations we should not attempt to get too much of our cost repaid.”

The memorandum became known as “the Murphy Memo” in the ongoing Section 11 proceedings before the SEC on the Bond and Share and other holding company systems and in financial circles interested in the proceedings. The Murphy Memo was even more significant in disclosing practices of the Bond and Share system in view of the fact that its author, Samuel W. Murphy, was, at the time of the SEC proceedings in 1941 when the memorandum was discovered, the President of Bond and Share. The Murphy Memo had statements in addition to those summarized above on ways to deceive outsiders, particularly state regulatory authorities, on transactions which could not bear disclosure. Handwritten notes by the financial officer of EBASCO appear in the margins of the memorandum, to the effect that its criticisms were already satisfied in the plans which had been devised. A reading of the memorandum reveals the illegitimate practices followed in organizing and financing system utilities. A copy of it from a 1943 U.S. Court of Appeals transcript is in the SEC Historical Society virtual museum.

The Murphy Memo caused concern among public utility holding companies generally when placed in evidence at the Bond and Share hearings. There were no longer doubts that these were common practices of such companies in the formative days of the utility industry. The memorandum was confirmation of deliberate practices the SEC was finding in the proceedings. The Murphy Memo had a reach beyond the SEC proceedings. It was received in evidence in Federal Power Commission and state regulatory commission proceedings to support

orders requiring restatements of the property accounts of operating utilities to eliminate the write-ups of the accounts. It was also included in briefs submitted by the SEC in enforcement proceedings in the courts.

The plans carried out by Bond and Share and other holding companies to comply with Section 11 of the 1935 Act resulted in the divestment by them of many public utility operating subsidiaries. These utilities became strong, independent companies without the constraints of absentee management and control formerly exerted by the holding companies. Their stocks have done well in the securities markets in the hands of public investors, except for the experience of some utilities in the last few years with government deregulation of energy supplies.

In recent years there have been pressures to repeal the 1935 Act by some who wish to profit by takeovers, and arranging takeovers, of controlling interests in utility companies. The Act does not permit the ownership and control of operating utilities in circumstances detrimental to the interests of investors and consumers, such as those prevailing when the Act was passed. Repeal of the Act would permit, for the first time since 1935, the ownership of controlling interests in public utility companies by conglomerates or companies in businesses having no relation to the business of utilities and located in regions of the country remote from the utilities or outside the country. It would also permit, contrary to the existing Act, the ownership of multiple utilities in separate parts of the country having no physical interconnections of their utility systems.

An investment publication recently in 2004 advised its readers that with the prospect of repeal of the 1935 Act, banks and investment firms hoping to profit by arranging takeovers, are fueling fever for the takeover of utilities. It concluded that repeal could see another 1920s-style buying frenzy with huge opportunities for takeovers of utilities as targets. There are serious questions as to the effects of unrestricted trading in ownership and control of public utilities on the stability of rates and essential services to utility consumers who have continued to benefit by the constraints of the Act since 1935.

### **SEC Move to Philadelphia and Back**

The SEC moved in the spring of 1942 to Philadelphia to make room in Washington for war-related agencies. The U.S. Information Service occupied the building the SEC vacated in Washington. That service became headed by Edward R. Murrow of London blitz radio broadcast fame during the early part of the war and TV network broadcasting after the war. The staff of the SEC at the time of the move was nearly 1,600, of which about 300 staff, mainly clerical, was lost as a result of the relocation.

The move to Philadelphia was into the former Pennsylvania Athletic Club (Penn A C) building facing grass-covered Rittenhouse Square in central Philadelphia. It was a large, solid building of thirteen stories, more like an older luxury hotel with



athletic facilities than purely an athletic club, not made or very suitable for offices. A minimum of renovations were made. The swimming pool was boarded over and became a large file room. Exercise and meeting rooms became hearing rooms. There was a bathroom in each of the many hotel-type rooms, which were used by the SEC for individual offices, with two desks in place of the beds.

Houses seemed to be quite available in Philadelphia. My family found a newly-built row house quickly in the Frankfort area of the city, which, as I recall, rented for \$75 per month, equivalent to at least \$1,000 in today's economy. Public transportation was good, with the subway/elevated transit system, buses and the railway system to and from the suburbs into the central city station.

In 1948, three years after the end of the war, and six years after its move to Philadelphia, the SEC moved back to Washington into a four-story building at 2nd and E Streets, NW, a "temporary" building constructed during the war, known as the "Tarpaper Shack". It was the least suitable building the SEC occupied. In 1966, the SEC finally moved into a new 8-story office building at 500 North Capitol Street, on Capitol Mall North, across the Mall from Union Station and a city post office. The SEC occupied that building, designed for an office building, for sixteen years when, needing more space, it moved in 1982 to its present location (a large office building) at 450 5th Street, NW on Judiciary Square, consolidating all headquarter activities into one building. The publication "50 Years of the U.S. Securities and Exchange Commission" contains photographs of all four of the headquarter buildings occupied by the SEC from 1934 to 1966, before moving to its present location.

### **SEC and Military Service in World War II**

Quite a number of SEC staff served in the military in World War II (WWII). It has been reported that the draft claimed about 600 of the staff during the war. Many of them returned to the SEC after the war. Others did not return for various reasons. It would be of interest for the SEC Historical Society to survey the wartime service of SEC staff in WW II and the wars since then. The SEC Personnel Office kept a record of the military service of SEC staff.

I had friends on the staff who served in the Army, Navy, and Air Force during WWII. I knew of two young staff members back in the late 1930s, before the draft, who succumbed to a drive by the Army for volunteers to sign up for a limited, one year of service, agreeing to discharge them at the end of the one year. The appeal was to go in now and get your service over with. The popular song of the time, probably instigated by recruiters, went "Goodbye dear, I'll be back in a year, 'cause I'm in the Army now." The trouble was that war clouds were darkening at the end of their year, and they were not discharged. It is likely those poor fellows never got out whole, with four years of hostilities ahead, including invasions of North Africa, Sicily and Normandy and other battles. I was lucky, not being in the Army in Europe until 1944-45 and able to survive the war.

## **The Kaiser-Frazer Case**

In 1948, there was a public offering of common stock by Kaiser-Frazer Corporation, which started as a seemingly routine offering, but developed into a major dispute between the company and a prominent underwriter, the abortion of the offering, protracted litigation and SEC investigations over the next few years. This case probably took more time and energy of SEC staff and the parties involved than any other single case in the Commission's history.

Kaiser-Frazer Corporation, which later became Kaiser Motors, was organized in 1945 to enter the field of automobile manufacturing, an opportune time with the early postwar pent-up demand for automobiles. In 1945, Kaiser-Frazer had its first public offering of about \$17 million of common stock, and in 1946 a second public offering of about \$36 million of common stock, both offerings effectively registered with the Commission under the Securities Act of 1933.

By 1947, Kaiser-Frazer had started producing automobiles profitably and placing them with dealers, the medium-priced Kaisers and Frazers and the more expensive, higher profit Frazer Manhattans and Customs. It needed more equity capital, and on February 3, 1948, its registration statement for a third public offering of common stock was made effective by the SEC. It had been filed with the SEC early in January, and amended in response to comments by the staff. Kaiser-Frazer entered into a firm underwriting agreement for the sale of 900,000 shares of common stock to the underwriters for \$11.50 per share with an option of the underwriters to purchase 600,000 more shares at \$11.60 per share. The principal underwriter was Otis & Co., with First California Company and Allen & Company taking smaller allotments. The group had been the underwriters of the first two successful stock offerings of Kaiser-Frazer.

The sale of the shares to the public did not go well. The underwriters started the sale of shares on February 4, 1948, the day after effectiveness, at \$13 per share. There was a general decline in the stock market on that day, and only 150,400 shares were sold during the day while the underwriters were purchasing approximately 45,000 shares at \$13 per share for stabilization purposes, after which the day's market prices of the shares on the New York Curb Exchange declined rapidly. The same day the underwriters announced that stabilization was terminated, the underwriting books were closed and the selling group was terminated.

On February 9, the date set for closing, a lawsuit was filed against Kaiser-Frazer in a Michigan court by a stockholder of Kaiser-Frazer, James F. Masterson, to enjoin it from selling the stock, and naming as defendants the company's directors and the three underwriting firms. At the intended closing that day Otis & Co. and First California Company declined to proceed with the underwriting and would not take up their shares. Their primary ground was the suit filed by

Masterson that day, which, they said prevented their counsel from giving unqualified legal opinions as contemplated in the underwriting agreement.

According to news reports, the financial world, Wall Street, was shocked by the refusal of the underwriters from the first day of the stock offering on February 4 to go through with the firm underwriting of Kaiser-Frazer shares. It was the first time within memory that an underwriter had failed to carry out a firm commitment to pay for shares it had agreed to underwrite. Persons prominent at the time in the industrial and financial worlds were involved on both sides of the matter — Joseph W. Frazer and Edgar F Kaiser, president and vice-president, respectively of Kaiser-Frazer, and Cyrus S. Eaton and William R. Daley principal stockholder and president, respectively, of Otis & Co.

Kaiser-Frazer within a few days, on February 13, 1948, brought suit against Otis & Co. in the Supreme Court of New York State, subsequently removed to the U.S. District Court for the Southern District of New York, alleging breach of the underwriting contract and seeking judgment in an amount exceeding \$7 million. After hearings on the matter, not held until 1951, the District Court in July 1951 found for Kaiser-Frazer and entered judgment against Otis & Co. in the amount of about \$3 million.

The District Court held that Otis & Co. had breached the underwriting contract, having procured the institution of the Masterson suit, so that it did not operate as a defense for Otis & Co. The District Court rejected contentions of Otis & Co. that the Kaiser-Frazer registration statement contained untrue statements of material facts which constituted breaches of warranty by Kaiser-Frazer such as to constitute a defense to performance by Otis & Co. These contentions of Otis & Co. related primarily to the retail merchandising of Kaiser- Frazer automobiles and the earnings summary in the prospectus.

Otis & Co. then appealed from the judgment of the District Court to the Court of Appeals for the Second Circuit. On April 7, 1952, The Court of Appeal decided in favor of Otis & Co. and reversed the judgment of the District Court. The Court of Appeals held that the registration statement and prospectus were misleading in regard to Kaiser-Frazer's profits of about \$4 million for December 1947, which could be derived from the Summary of Earnings in the prospectus, because it included about \$3.4 million representing primarily inventory adjustments allocable to the entire year 1947 operations, and in part to prior years, and not just December 1947. The Court found that the footnote to the Summary of Earning in the prospectus was entirely insufficient to disclose the source of the profit for December.

The Court of Appeals concluded that the underwriting contract was unenforceable despite Kaiser-Frazer's contention that Otis & Co. had full knowledge of the facts at the time it entered into the underwriting agreement. The Court stated that the sale of shares to the public would have been made by the

underwriters by means of a prospectus the Court found to be misleading, which would have been a violation of the Securities Act of 1933. Subsequently, on October 20, 1952, a petition of Kaiser-Frazer for certiorari was denied by the U.S. Supreme Court.

The SEC, recognizing the serious questions presented by the aborted offering of Kaiser-Frazer shares and the resulting litigation, had launched an immediate informal inquiry into the matter early in February 1948, followed by its orders in February and March 1948 for a formal public investigation. Hearings were held intermittently from April to July of 1948. They included testimony of officers of Kaiser-Frazer and Otis & Co. and their attorneys. No public report was made as a result of the investigation.

The findings on April 7, 1952 of the Court of Appeals, described above, upholding the right of Otis & Co. to terminate the underwriting agreement with Kaiser-Frazer because of misleading statements in the registration statement and prospectus, caused the Commission and its Corporation Finance Division a great deal of concern. In 1952, the SEC Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives, in accordance with a resolution of the full Committee, reviewed various aspects of the work of the SEC, including an examination of its work on the Kaiser-Frazer 1948 common stock offering. Its report, submitted to Congress on December 30, 1952 and published as House Report No. 2508 (82nd Congress, 2nd Session), raised questions with respect to the Kaiser-Frazer registration statement and the Commission's processing of it.

Donald C. Cook became Chairman of the SEC in 1952. He resolved that the Commission would take action as a result of the above Subcommittee Report and other criticisms of the Commission's handling of the Kaiser-Frazer stock offering in 1948. By order, dated March 25, 1953, the Commission directed that further public investigation into the offering be held, including all facts and circumstances pertinent to the preparation, filing and processing of the registration statement. The order directed Marvin S. Fink, Special Counsel, to conduct the investigation, to take testimony and offer evidence, including the incorporation into the record, where relevant, of that received in the earlier Commission investigation or in the Court proceedings. The Commission also assigned to the investigation Paul S. Davis, Special Counsel, and Karl C. Smeltzer, Financial Analyst. All three staff members were on the staff of the Corporate Regulation Division, previously the Public Utilities Division, and they had not worked in the Corporation Finance Division, which processed securities registrations, including that of Kaiser-Frazer.

Public hearings on the Kaiser-Frazer stock offering were held on various dates from June 1953 to January 1954. Officers of, and attorneys for, Kaiser-Frazer and Otis & Co., who had a part in preparing the offering, partners of Touche, Niven, Baily & Smart, the public accountants who prepared the financial

information, and staff members of the Corporation Finance Division who processed the registration statement, testified in the investigation. In the course of the investigation, the financial analyst of the investigating team went to Kaiser-Frazer's Willow Run plant in Michigan and determined the amounts and timing of entries in the records of the year-end 1947 physical inventory, which affected the controversial December 1947 earnings of the company. He also interviewed Cyrus S. Eaton and examined the records of Otis & Co. in Cleveland. The records included a copy of an internal memorandum bearing the stated date of "3/1/48", within a month of the February 3, 1948 effective date of the Kaiser-Frazer registration statement, indicating the precise amounts of the inventory adjustments and knowledge of them internally by Otis & Co. staff on or before the 3/1/48 date.

Following the hearings, investigating staff members, Paul S. Davis, Special Counsel, and Karl C. Smeltzer, Financial Analyst, submitted to the Commission and participants their report of the investigation, dated April 30, 1954, summarizing the evidence and stating the conclusions. The participants submitted replies to the report, and the staff filed answers. Marvin S. Fink had left the Commission in December 1953 to undertake a study for Harvard Law School on behalf of the World Bank concerning public utility rate regulation in Latin American countries. He had done an outstanding job of conducting this investigation and contributing to the investigation report.

This account of my work as the Financial Analyst on the investigation of the aborted 1948 Kaiser-Frazer stock offering would end with a summary of the conclusions of the staff report, the replies of the participants and the staff's answers to those replies. However, in answer to a notice of the Commission to the participants that the Commission was considering making the report, replies and answers public (they had been submitted under confidential cover), Otis & Co., by its counsel, Abe Fortas, and Kaiser-Frazer objected to making those documents public. This was despite the fact that Otis & Co. had for some time sought the public investigation, which was ordered by the previous Commission in order to clarify the events. The reports were, in fact, not made public by the Commission and its public investigation was terminated by its order announced in a public release dated July 8, 1955.

Accordingly, reference cannot be made to summaries or conclusions of the investigation report or the replies and answers, since they were held by the Commission to be confidential. The entire record of the investigation, consisting of over 4000 pages of testimony and more than 200 exhibits, continued as a public record. I have seen no attempts by others to analyze or draw conclusions from this record. The findings of the U.S. Court of Appeals stand as the only authoritative public conclusions. I believe the public records of the Commission's investigation clarify and supplement the findings of that Court.

### **The Philadelphia Company Case**

The SEC was a relatively small agency, at least until recent years when additional staff was required to deal with gross financial abuses by some corporations, their executives and related persons. Staff was too few for the many tasks assigned to the SEC by the Acts it was called upon to administer and for the substantial growth in the numbers of companies and individuals covered by the Acts. It was necessary to have considerable flexibility in staff assignments to accomplish the work with a limited staff.

The Commission's Office of Opinion Writing had the formidable job of review and drafting of Findings and Opinions for the Commission in many cases. With a relatively small staff and a very large number of proceedings, that Office was often shorthanded. In 1952, in the case of Philadelphia Company and its parent company, Standard Gas and Electric Company, both registered public utility holding companies under the 1935 Act, I was assigned temporarily to the Office of Opinion Writing to do the financial analysis for the Recommended Findings and Opinion on the company's plan to comply with Section 11 of the Act.

The task was primarily to research and value, on the basis of an extensive public record, three classes of preferred stock issued or guaranteed by Philadelphia Company. It had been ordered to liquidate and dissolve pursuant to Section 11 of the 1935 Act. The preferred stock had to be valued on the basis of Philadelphia Company as a going concern, not determined by stated liquidation values, in accordance with the standards that had been established by the SEC and the courts for liquidation compelled by Section 11 of the 1935 Act.

The objective was to assure fairness to the holders of the preferred stocks, who were to be allocated portfolio securities of Philadelphia Company and cash, considering the conflicting views of the holding companies and the stockholder's protective committees. The recommended Findings and Opinion was prepared in association with the staff of the Office of Opinion Writing and was adopted upon review by the Commission on April 7, 1952.

### **Investment Company Regulation and Pricing of Mutual Fund Shares**

In 1953, the Division of Corporate Regulation was organized as an extension of the Public Utilities Division, with the added responsibility for administration of the Investment Company Act of 1940. I was on the staff of the Division of Corporate Regulation, later, the Division of Investment Company Regulation and the Division of Investment Management Regulation, as a financial analyst until 1973, the last six years of that period as the Chief Financial Analyst of those successive divisions. A group of staff in the Division of Corporate Regulation in 1957 is in a photograph which appears in the SEC Historical Society's virtual museum.

The regulation of mutual funds and closed-end investment companies under the 1940 Act was a major activity of the above three divisions, successively. As we know, the number of mutual funds and the amount of their assets has increased tremendously, and there have been many problems of disclosures and practices of mutual funds, some relating to pricing and the basis of pricing of mutual fund shares for sales and redemptions. There have also been problems over the years with respect to closed-end investment companies, including whether companies in some borderline cases are, by nature of their holdings of securities, investment companies required to register under the Investment Company Act. Questions also have been presented under the Act as to the fairness of transactions between affiliated companies.

The pricing of mutual fund shares has received prominent publicity in 2004 on the matter of the discovery of illicit after-hours trading in fund shares to benefit insiders and other related firms and persons. This is a problem which was supposed to have been resolved by a change many years ago in the basis of determining the prices of fund shares. I have seen no references to that in recent financial news or publications on the matter.

Prior to the late 1960s, the Commission accepted a system of the sale and redemption of mutual fund shares at the last determined net asset value, as set forth in mutual fund prospectuses. This made it possible for sophisticated investors and professional traders to purchase mutual fund shares in a rising market at the last, previously determined, net asset value, while refraining from purchases in a stable or falling market. It was a system, unintended by regulators, which could result in the dilution of the shares of buy and hold investors already in a fund. We referred in the Division to this system as backward pricing of shares.

A group of us involved in the regulation of mutual funds urged the Commission to meet the above problem by adopting what we called the forward pricing of shares. This meant the determination of share prices at the net asset value next to be determined. This pricing system was then required by the Commission in 1968 by rule 22c-1 under the Investment Company Act and in mutual fund prospectuses and is still in place. It results in dilution only if orders for shares are illegitimately back-timed and sold at the last-determined net asset value in a rising market.

It is the disregard of the forward pricing system by some mutual fund managers to favor selected purchasers of mutual fund shares that has on occasion fouled the system, as has been discovered in 2004. When I was in mutual fund work for the Commission, we required, and on inspections randomly checked, the time-stamping of orders to see that they were properly priced at the next determined net asset value. Of course, improper, intentional back time-stamping could occur, and it can be even more difficult to detect today with orders recorded by electronic systems. Mutual fund management executives and the funds' public

accountants should be required to certify that the pricing of fund shares described in the prospectus has been properly followed for sales and redemptions of shares.

### **Orval L. DuBois, “Mr. SEC”**

No commentary on the SEC would be complete without reference to the 37 years of contributions of Orval L. DuBois to the Commission as it's Secretary, Press Officer and Congressional Liaison. As the national financial press came to know him and his value to the Commission, and his service to them, they astutely named him “Mr. SEC.” He was also referred to as “the civil servant's civil servant.”

Orval's contributions to the work of the Securities Acts commenced even before the SEC was established. He began with the Federal Trade Commission in 1931 and became the personal secretary to James M. Landis, a Commissioner of the Federal Trade Commission, which administered the Securities Act of 1933 until the SEC was established in 1934. He came to the SEC with Landis, who served on the first SEC Commission and became its second chairman in 1935. He was a young man, a business school graduate from Kansas, whose abilities were quickly recognized by Landis and every Commission he served. He was the first Recording Secretary of the Commission and soon became the Secretary. After 37 years of service with the SEC, Orval retired in 1971 with a send-off at the National Press Club in Washington, attended by a large part of the SEC staff and many members of the national press.

The services of Orval L. DuBois to the SEC and the financial press were invaluable. He was on top of the cases and other matters before the Commission over the many years he was Secretary. He had a helpful sense in recognizing problems in matters coming before the Commission. Commissions changed, but not the Secretary, and with these changes he provided continuity in what might otherwise have been troubled times. The press could always depend on receiving prompt and accurate answers from him on questions they had on pending cases or Commission decisions. Orval either knew the answers, or exactly which staff member to call who worked on and knew most about the particular case.

Orval was all business, but worked in an impersonal and friendly way with every staff member, and he had the respect of all, Commission staff, legislators and the press. The SEC had very good relations with the press in all these years, in which its reputation was enhanced as an outstanding government agency. Many have said that Orval DuBois was responsible for much of that. It was said by staffers at the time that after Orval retired in 1971, his work had to be done by several persons, and not as well. I believe that no one contributed as much to the Commission's work and success over so many years.



The contributions of Orval DuBois to the SEC and government service are summarized in the SEC's publication, "50 Years of the U.S. Securities and Exchange Commission," including a typical photograph of him at work. When Orval died in 1994 at the age of 83, tribute in recognition of his outstanding service to the SEC was paid to him in a letter to the Washington Post by several prominent former SEC staff members. A copy of the letter is in the SEC Historical Society's virtual museum.

### **The World Bank Connection**

The World Bank began operating at its headquarters in Washington, D.C. in 1946. The site of its main headquarters building is across 18th Street, NW from the original SEC headquarters at Pennsylvania Avenue and 18th Street, NW, and another large World Bank building is on the very site of the original SEC headquarters building. Both of the World Bank buildings are very large, modern buildings, constructed in recent years in place of the old buildings, which were razed or completely reconstructed.

Over the years, since the establishment of the World Bank, a number of SEC staff has had second careers with the Bank. Those within my knowledge have not been many, and an overall survey would be of interest.

Al Raizen, a friend with whom I worked at the SEC, was a financial analyst with the SEC from 1941 in Washington until 1964 (except for service in the military during World War II) when he accepted a position as a financial analyst with the World Bank. His work for the SEC included financial analysis for Commission decisions in the Office of Opinion Writing. He worked on various projects for the World Bank until the 1980s, including the Projects Department of the Bank, for which he reviewed the financial analyses of practically all proposed project reports by the various departments and regions of the Bank. In my view, he was one of the most competent financial analysts in either the SEC or the World Bank.

I had limited acquaintance with other former SEC staff with the World Bank. The one who served at the highest level of the Bank was Eugene H. Rotberg, from the SEC Division of Market Regulation, who became Vice President and Treasurer of the World Bank in the 1960s. Others I knew who served with the SEC, then the World Bank, in my time were Lester Nurick, Associate General Counsel of the Bank; Sheldon Rappaport, public information positions in the Bank; and Barbara Santos, attorney. The World Bank became a very large international organization before and during my time there. I was a financial analyst with the World Bank from the end of my service with the SEC in 1973 to my retirement in 1981, responsible for the financial appraisal and supervision of water supply projects in Indonesia, Malaysia and Thailand.

### **Anecdotes from Early Years**

I can recall many interesting and amusing anecdotes, looking back over a long period of years. I relate here some I recall from my early days with the SEC. I may overlook a few, but I hope they will not be many, and those will be the less memorable ones. As I stated at the beginning of this writing, all of the incidents I relate are true, either witnessed by me or known by my associates and described to me and others at or near the time of the respective events. I have given a very brief, appropriate title to each anecdote. The titles will serve to separate one anecdote from another.

### **The Chairman's "Stroke"**

Jerome N. Frank was Chairman of the SEC from 1939-1941, while the SEC was in Washington, D.C. One hot day at a Commission meeting addressing a few staff, he suddenly fell over onto the floor. The shocked staff members immediately thought he had a stroke or heart attack. They rushed over to give aid to their terribly-afflicted Chairman. The embarrassed Chairman, a chain smoker, quickly disclosed that a lighted cigarette hanging from his lips had fallen into his open-collared shirt, and he was frantically trying to escape the burning remains of it. The manner in which it was retrieved is not known.

### **The Intervener**

In the SEC days in Philadelphia in the 1940s, there was a frequent intervener, Sam, in the Electric Bond and Share proceedings on Section 11 of the 1935 Act. Sam was a New York City attorney, the holder of a substantial block of Bond and Share common stock. He started in early hearings representing himself in his appearances. He was an excitable fellow who would start his remarks in a normal tone, and then his voice would gradually rise until he was screaming. His Bond and Share stock had risen substantially in the market for some years prior to his appearances, and he would like to say at the hearings that he was buying his shares while the President of Bond and Share was selling his, "and they say I'm crazy."

As time went by, Sam became more disruptive in the hearings, to the extent that the Commission ruled that he could only be represented in the hearings by counsel, but Sam couldn't be quiet. At a Commission oral argument, when he interrupted, Commissioner Bob O'Brien, a big fellow, rose and moved menacingly toward him, which quieted Sam that time.

Then, at a hearing with large attendance, in the SEC building in Philadelphia, Sam interrupted in his usual way and kept going. Finally, the distinguished-looking, tall, white-haired Richard Townsend, the Hearing Officer (title of the presiding officer in those days), told Sam to sit down and be quiet. When Sam went right on, Townsend, in an aside, told an assistant to get the police to come and deal with a person out of control. The assistant went outside the building on

Rittenhouse Square to a nearby intersection where a policeman was directing traffic. He persuaded the officer to accompany him back to the hearing room. Upon arrival, there was a colloquy in the hushed hearing room, in which Sam asked the Hearing Officer whether he was directing the policeman to remove him by force. When Townsend replied that he should use any means necessary to take Sam out, Sam went peacefully.

There is no doubt that the most confused person in that large audience was the traffic policeman, being directed by someone in authority who looked something like a judge, but not quite like a robed judge, in a forum which looked something like a court, but not quite like a court. The uncertainty was resolved at that point by Sam's voluntary departure. The unusual turn in this hearing was a subject of staff discussion for some time, and I still recall it when I see a policeman directing traffic.

### **The Expert Witness**

In the early Electric Bond and Share Section 11 proceedings in the 1940s, an expert financial witness, Ted Mackoul, testified on behalf of interveners in class actions by groups of senior security holders trying to establish the fair values of their securities in the reorganizations. Ted Mackoul was a very good financial expert who had qualified as such in previous proceedings before the Commission.

In the latest proceedings, Mackoul was testifying again as an expert financial witness. The counsel, Joe Schreiber, for American Power & Light Company, one of the several large sub holding company subsidiaries of Electric Bond and Share Company, in an adverse position to that of the group for which Mackoul was testifying, was cross-examining Mackoul to show that he had little formal education, no Ivy League or equivalent degree. With this, old Judge MacLane, senior counsel for Bond and Share, although in common interest with Schreiber's position, and a bit hard of hearing, was heard to say in a loud stage whisper, "What is Schreiber talking about? Jesus Christ never went to school, either."

### **The Frustrated Witness**

Alfred Berman, the leading counsel for the Public Utilities Division in Electric Bond and Share Section 11 proceedings, was a talented, persistent and tenacious cross examiner in the hearings. Having established the facts, he invariably would not rest until he got the admissions he wanted from the witness.

At a hearing in the 1940s, involving National Power & Light Company, another sub holding company subsidiary of Bond and Share, P.B. Sawyer, CEO of National, was being cross examined by Al Berman. Finally, Sawyer, a big, husky man, stood up at the witness stand in frustration and said, "Mr. Berman, if you ask me that question one more time, I am going to come down from this stand

and hit you right between the eyes.” Berman replied, “You know what? When you get down here, I’ll be gone.” Fortunately, things settled down after that.

### **The Lunch Contract**

Mike Isaacs, Special Counsel in the Public Utilities Division while the SEC was in Philadelphia, was a persistent and legal-minded fellow in his personal life, which made him good at representing the Commission in Section 11 enforcement proceedings before the courts.

In those days, during the war, there was considerable overtime work to prepare the court cases. One weekend, Mike was working with two or three others at the SEC offices in Philadelphia, and lunch time was approaching. Mike agreed to call in for the items each one wanted for lunch, then to pick them up at a nearby lunch take-out. When time came for the pick-up, Mike was at the lunch place, which did not have the order ready. Mike waited patiently, and when the items were ready, they were not what Mike had ordered.

Mike refused to take the items and pay, explaining that he had a contract with them and they had not performed. They insisted that he pay, but Mike refused, so the lunch place phoned the local police department. When a police officer appeared, Mike still refused to pay, so he was taken to the police station. They held him for a while, then took him before a magistrate who turned out to be sympathetic when he heard Mike’s story. Mike still refused to pay, and he finally paid only when the magistrate said he, the magistrate, would pay the bill. Perhaps the staffers back at the office are still waiting for their lunch.

### **The Defective Desk Lamp**

The offices in Philadelphia at the Penn AC did not have overhead lighting and were quite poorly lighted without the use of desk lamps. In the usual case, staff below Assistant Director-level shared an office with a second occupant, each with a desk. In the Public Utilities Division, one of the offices was shared by accountants, big, burly Jim Goodpaster, and little, mild Earl McDonald (Mac). Jim could be quite demanding and often gave little Mac a bad time.

Telling the story later, Mac said he thought of a way to pull a trick on big Jim as a way to get back at him. Jim had a favorite mushroom-type desk lamp he invariably used in doing his accounting work. Mac went to the hardware store and bought an electric circuit breaker. Coming to the office early one day, he slipped it into Jim’s lamp cord at the wall socket and turned the lamp off. Jim came in, got settled and turned his lamp on to go to work. The lamp went on and off, and on and off. Jim turned the lamp off and tried again, with the same result. He then took the lamp by the stem in both hand and shook it vigorously, with no resulting correction.

Jim, not being an electrician or electrical engineer, then turned the lamp off and phoned the service section. He said his desk lamp had some kind of dangerous short circuit which must be fixed right away. He then left the room, and Mac slipped the circuit breaker out. When two men came from the service section, Jim turned the lamp on to show them the defect, and the lamp worked fine. They left, rolling their eyes at Jim. Needless to say, little Mac did not broadcast this, but told only two or three of his closest friends, saying, "Please don't tell Jim. He'll kill me."

### **The Compromise in the Hearing**

In the old days in a Commission hearing, there was a famous compromise between a Hearing Officer and counsel for the Public Utilities Division which left both of them off the hook. The Hearing Officer was old Judge Lobinger, a former judge with a walrus mustache, and the Division's counsel, Frank Field, a dapper, mustached attorney from Oklahoma. The morning hearing went well to the time of adjournment for lunch. When the hearing resumed a little late, the judge opened by stating, "Let the record show that this hearing has resumed late because Commission counsel returned late from the luncheon recess."

The hearing then continued on for an hour or so when the judge, who had been noted for nodding off occasionally, did so during the testimony of a witness. With that, Frank Field stated, "Let the record show that this hearing is held up because the hearing officer has gone to sleep." There followed a discussion off the record which ended with a compromise removing both statements from the record.

### **A Chief Accountant's Prop**

In the SEC's early days, there was some good-natured finger pointing and kidding by staff lawyers to accountants or analysts and vice versa. I don't know how much of that may go on in the present SEC, but things can't be all work. A favorite story being peddled in the early days, obviously by the lawyers, primarily was about the chief accountant of a prominent accounting firm.

As they told it, the chief accountant of this firm had frequent meetings in the office with the firm's accountants to be briefed on accounting problems they had encountered. The accountants noticed that in the course of these meetings, the chief accountant would occasionally open the center drawer of his desk, glance down, quickly close it, and continue with the meeting. They were puzzled. He kept that drawer locked. After thirty years, the chief accountant retired. After his retirement party and he had departed, they hurried into his office to see what was in the drawer. There they found a paper which, in large block letters said, "The debit side is the one next to the window."

### **The Car Pool**

In 1948, when the SEC moved back to Washington, we were all again looking for suitable housing, which was not easy to find in the postwar period in the Washington area. Some of us, associated in Philadelphia, learned of a new apartment development called Woodside Manor on Georgia Avenue, just two miles north of the business center in Silver Spring, Maryland.

A few of us with young families settled in Woodside Manor and formed a car pool to and from the SEC building at 2nd and E Streets, NW in central Washington. In addition to me, there were: Lanny Sarsfield and Leon Rubin, the three of us were financial analysts in the Public Utilities Division; Morton (Mort) Yohalem, Director of the Division; and Manuel (Manny) Cohen, then Chief Counsel of the Corporation Finance Division, who became a Commissioner and the popular Chairman of the SEC in the 1960s.

The five of us were in a car pool, which operated until we bought homes in the Washington metropolitan area. Sometimes, Paul Gonson (later the Commissioner's Solicitor) of nearby Garrett Park, Maryland was in a car pool with us. During the course of the car poolings, we solved many problems, not only of the SEC, but the entire world during the Cold War. We did not always agree on the solutions. As Lanny Sarsfield would say, "No statement goes unchallenged; pick your subject and your side." We remained good friends and associates during our many years at the SEC, until we finally went our separate ways.

### **The SEC'S "Brandenburg Gate"**

In the so-called "tar paper shack" into which the SEC headquarters moved in 1948 upon its return from Philadelphia, one of the first alterations to the interior of the building was by direction of the new, overly security-minded Executive Director. Inside the eastern entrance to the four-story building, he had a chicken-wire barrier installed in the stairway leading from the first floor to the upper floors, thereby blocking staff from walking from the first floor or ground floor cafeteria to the upper floors without first walking to the center entrance to the building. This was done despite the fact that the center entrance had no security guard to the first floor and the upper floors.

The Executive Director had a very German name, and we called his chicken-wire fence, "the Brandenburg Gate" as an extension of the then-famous Brandenburg Gate in Berlin, which was designed to prevent movement from East to West Berlin. The SEC's Brandenburg Gate lasted about three days until an anonymous SEC staff member brought wire cutters to work and cut a passage through it, following which the entire gate disappeared. Sometimes action is more successful than negotiations.

### **The Congressman's Ride to the SEC**

When the war had ended and the SEC moved back to Washington, some of us on the staff decided to organize an SEC American Legion Post. Paul S. Davis was the first commander. We decided to invite a congressman, who was a veteran of the recent war, to address SEC staff that were to attend the inaugural ceremony in the SEC cafeteria.

The invited congressman accepted our invitation, In the morning of the day of the ceremony, a telephone call came from the congressman's office saying that he did not have transportation to the SEC, and could someone from the SEC pick him up and take him there. We could not find anyone with a car at work, and there was no SEC car available.

We tried not to panic. We finally found that Frank Trainor, a Navy veteran who was to be a member of the Post, had driven his old jalopy to work that morning. Frank had to go to save the day. The car was an old pre-war model with lots of hard use, banged up in some places, and the street was showing through the floor boards.

Frank drove to the House Office Building and, embarrassed, picked up the congressman in his old, beaten up car. The congressman didn't bat an eye; it was as though it were a new limousine. They had a nice ride together to the SEC where the congressman addressed the audience. The congressman was a young member from Massachusetts, John F Kennedy, son of the SEC's first Chairman and a Navy veteran of PT Boat fame in the Pacific. The rest is history. Needless to say, Frank Trainor always remembered that day, as did the rest of us as the years went by.

### **The SEC Staffer, Jr.**

Harry Slater was the popular Special Counsel for the Public Utilities Division who, upon the move back to Washington, argued Section 11 enforcement cases before the District Courts. He had a very active and precocious young son about six years old, something of a "Dennis the Menace" of his time. He visited his father's office often, and became quite friendly with his father's secretary, Opal. He would telephone her frequently from home.

One summer, the Slater family went on vacation to their house at the beach. While the parents were away for a short time, little Harry, Jr. got on the phone and managed to call Opal in Washington. Opal couldn't get him off the phone, and she did not want to hang up very soon for fear he would just call back and incur more expense. When the phone bill finally came a few weeks later, and his father discovered the charge, he started to lecture young Harry about it. He said, "Son, do you know how much your call cost us?" Young Harry asked, "How much?" His father said, "\$45." The kid replied, "Yeah, plus tax."

With the family back in Washington, during a work day, young Harry's mother had to step out of their house for a little while. Harry, Jr. got into a dispute with his little sister and became infuriated. He went to the telephone, dialed "911" or whatever the emergency number was in that day, mumbled something about a dangerous fight at his house, and managed to give the address. Shortly, a police car with two officers screeched up to the house. They hurried in and found young Harry hiding under a sofa.

### **The SEC Ball Games**

After the SEC moved back to Washington from Philadelphia, the SEC had a softball team in the government league. The ballgames were played in the evenings on the Ellipse, south of the White House.

In one particular game, the SEC team was playing the FBI. The FBI had a seemingly tough-guy agent player who liked to show his aggressiveness. In the game, he reached second base as a base runner. Lanny Sarsfield, of the Public Utilities Division, was playing third base for the SEC, and handsome, clever Jack Ferguson, of Corporation Finance, was playing shortstop. Standing at second base, the FBI man said to Jack, "See your third baseman there? On the next pitch, I'm going down and knock him right out of the game." Jack (who was never at a loss for words) said, "Well, if you're going to do that, I can't stop you, but I wouldn't advise it." The FBI man replied, "Why not?" Jack answered, "Do you know who that guy is?" The FBI man questioned, "Who is he?" Jack replied, "He was middleweight boxing champion of the Seventh Fleet in the war, and he won all of his fights by knock-outs." (Not true.) The FBI man replied, "Is that right?" Then, when the FBI man went to third base, it was very carefully.

In another SEC game I recall, it was the last inning and the SEC team was behind by one run. Frank Trainor, of the Public Utilities Division, was the base runner on second base, with one out and one run needed to tie the game, or it would be over. The SEC batter hit a long fly to center field for the second out. As the center fielder caught the ball, Frank was almost rounding third base on the way to home plate to tie the game, and he was called out as he crossed the plate for not tagging up at second base -- as the ball was caught. Frank argued with the umpire for about ten minutes, saying he really left second base as the ball was caught by the center fielder, and that it was just that he (Frank) was a very, very fast man.

### **Abe Fortas Stories**

I got to know Abe Fortas quite well when he was counsel for Otis & Co., the underwriter, and I was the financial analyst of the Commissions' team investigating in 1953-54 the Kaiser-Frazer aborted stock offering in 1948, which Otis & Co. underwrote. It was while Fortas was in private law practice after his early career in the government, including counsel for the SEC, and before he



became a Justice of the U.S. Supreme Court as an appointee of President Lyndon B. Johnson in the 1960s. Fortas would reminisce about some of his early experiences in government which he found amusing.

One of Abe Fortas' early positions in government was counsel for the U.S. Interior Department. John L. Lewis, the tough old beetle-browed curmudgeon, was President of the United Mine Workers, and very prominent in the country at that time. He had dealings with the Interior Department on mining matters, often disputed. He could put an opponent down like no one else. Fortas laughed about a big meeting at the Interior Department in which there was a sort of oral argument on a controversial matter affecting the United Mine Workers.

After Fortas spoke at some length at the meeting, John L. Lewis got up and presented his case. He started out by stating, "Mr. Fortas says this. . .," and "Mr. Fortas would have you believe that. . ." He continued in that manner, using Fortas' name often. But whenever Lewis said the name "Fortas," he matter-of-factly (and deliberately) put together a four- letter word and a three-letter word that sounded like "Fortas." There was some snickering in the audience, but no one dared to call Lewis to account, and he would have pleaded innocence anyway. I hesitate to state the phonetics Lewis used to pronounce the name, but a little imagination will reveal it. I would not comment on the gross misuse of the name were it not for the fact that Fortas found it hilarious and did not hesitate to tell about the experience.

Fortas also laughed about his early days as counsel for the SEC. He was slightly built and young looking in those days. Sometimes a junior staffer would give him a docket or some other papers to carry to another part of the Commission, thinking he was a messenger. Whether he complied on any occasion was not revealed.

**Karl C. Smeltzer**  
**June 2004**