

ADDRESS

of

SAMUEL O. CLARK, Jr.

Director, Reorganization Division

Securities and Exchange Commission

before

S.E.C. UNION, LOCAL 5, UNITED FEDERAL WORKERS OF AMERICA

Washington, D. C.
December 13, 1938

35673

The Reorganization Division was created on June 25, 1938 by the Commission. Upon its creation there were transferred to it all the members of the Protective Committee Study, consisting of 8 lawyers and 3 stenographers. The Division has been continuously expanding since that time and now consists of 85 persons. It is still growing.

Of its total membership 49 are lawyers, 10 are analysts, 5 are accountants, 21 are secretaries, stenographers, typists and clerical employees.

In building up the staff of the Reorganization Division it has been our policy to give primary attention to the members of other divisions of the Commission who were interested in the Commission's work under the Chandler Act. The results of that policy are shown by the following figures. Of the attorneys now employed by the Division, 22 were transferred from other divisions of the Commission's staff. Likewise 8 of the accountants and analysts were on the Commission's staff before joining the Reorganization Division. All members of the stenographic and clerical force of the Division, save one, were on the Commission's payroll at the time of transfer to the Reorganization Division. In summary, of the Division's 85 members, 50, or well over half, were transfers from other divisions.

In considering requests for transfer to the Reorganization Division, there are two primary considerations: first, the fitness of the applicant for the work of the Division. (I shall later describe generally the kind of experience and qualifications which we look for). And there is, secondly, the question of whether the applicant can be released by his own division without unduly interfering with the work of that division. Obviously, the older divisions cannot spare the services of trained members of their staffs without impairing to a greater or lesser degree their efficiency. Although at times I have been accused of conducting raids on other divisions, I have found a most cooperative attitude on the part of the division heads. I have found them willing to give careful and sympathetic consideration to requests for transfers to my division.

In connection with transfers from other divisions, I should point out that as a matter of inter-departmental courtesy, a person who is interested in our work under the Chandler Act should first speak to his own division head before discussing the prospects in the Reorganization Division with me.

In accordance with the Commission's policy of promotion from within - a policy with which I heartily agree - two secretarial positions were posted and filled in the usual way. As the work of the Division increases, there will be additional positions posted and filled in this manner.

So much for the establishment of the Reorganization Division and the building up of its staff.

Joe Weiner and Bob Winn have already described to you the functions of the Securities and Exchange Commission under the Chandler Act. As they have pointed out, the Commission is given a significant role in the reorganization of corporations under that Act. Our two principal functions are to appear as a party before the court where the reorganization proceedings are being conducted and to write advisory reports on plans of reorganizations. I want to describe briefly the nature of our daily work in carrying out those functions and the kind of experience and training which best fit a person for a position in the Division,

Now a petition to reorganize a corporation under the Chandler Act may be filed in any one of over 80 Federal Court Districts scattered throughout the country. This means that we may be appearing simultaneously as a party to corporate reorganization proceedings in practically every region of the United States. In fact we now are a party to 17 cases divided among the following states: California, Texas, Arkansas, Illinois, Indiana, Michigan, New Jersey and New York, and court hearings are being held this afternoon to determine whether we should be made a party to a reorganization pending in Portland, Oregon, and another in Boston, Mass. It is necessary that our attorneys be available to attend court hearings in all these courts. Obviously it is necessary that an adequate force be stationed in the field and, accordingly, we have created reorganization units in every regional office of the Commission except Denver, and one will be established there as soon as the need arises. The importance of our work in the field is shown by the fact that of the total number of persons assigned to work under the Chandler Act, 46, or over half, are stationed in the field. In some offices we have at present only one attorney, in others we have several attorneys and one or more accountants and analysts. In New York, for example, the unit consists of 12 attorneys and three accountants, and we have on several occasions sent an analyst from the Washington office to help out. New York, as you might expect, will probably be our busiest office, although it so happens that we are actually a party to more reorganization cases (8 in fact) in the territory covered by the Cleveland office than in any other. But New York is catching up. We entered two large cases in New York City last week as a party. One of them was McKesson & Robbins, Inc., which is now receiving so much attention in the newspapers. That is the case where \$18,000,000 of property appearing on the books of the company has simply vanished into thin air. The petition to reorganize that corporation was filed last Friday morning. Before the end of that same day the court granted our motion to admit us as a party to the case.

I shall now discuss the division of work and responsibilities between the Washington and the field offices. In general, the men in the regional offices man the front line trenches, while the Washington office acts in effect as the general headquarters of the Reorganization Division. A most important function of the field units is the investigation of the facts of reorganization cases. Let us first consider the investigation made before we become a party to a reorganization case. Reorganization cases are being filed at the rate of almost 1000 cases a year or over 3 every working day. As Bob Winn pointed out, every petition that is filed is carefully examined on the same day it is received in Washington by a group of attorneys who write a report outlining the salient facts revealed by the petition. Our first concern is whether or not we should take steps to become a party. Many of the cases filed involve small companies without a public investor interest, that is to say, there is no class of securities outstanding held by members of the public. We do not feel that we can serve a useful purpose in those cases so we classify them as inactive. On the other hand, all cases involving an investor interest which is at all substantial, we classify as active with a view to the Commission's participation as a party. Frequently the

extent of the public interest does not appear on the face of the petition, so we write a letter to the field office requesting a report on the face amount of securities held by the public, and if the information is available, the number of investors, and whether most of them are concentrated in one place, say the city where the company is located or whether they are scattered throughout one or more states. We also request the field office to report to us any other facts which would have a bearing on the desirability of the Commission's participation in the case.

The regional office upon receipt of our letter directs an attorney, or sometimes an accountant or an analyst, to assemble the necessary facts. This is done by studying the various papers which have been filed with the court clerk in the case and when necessary by interviewing the private parties or their attorneys who are interested in the reorganization. A report is then transmitted to Washington. The facts it contains, together with all data which our attorneys and analysts have assembled concerning the case here from the files of the Commission and from secondary sources, such as Moody's, are then considered and a decision made whether or not to recommend to the Commission that we become a party. If the decision is in the affirmative, all members of the Division here in Washington, who have worked on the case, appear before the Commission and present that recommendation. If the Commission agrees with that recommendation, the regional office is notified and an attorney appears before the judge in his chambers or in some cases in open court and presents the Commission's motion to become a party. So far all the motions have been granted without any difficulty. However, the motion which is being presented today in Boston is being opposed by the attorney for the company and we have not yet heard whether we have been successful.

Once we are made a party to the case, the scope of the investigation by the field office is expanded. Obviously in situations as complex as the typical reorganization, extensive knowledge and information is necessary in order to act intelligently on the numerous questions and issues which arise in the proceedings, especially those involving the plan of reorganization. Accordingly, a detailed study is made of the corporation's organization, history, the reasons for its financial distress, its financial condition, the kind and amount of securities which it has issued, its earnings in the past and the chances of its making a profit in the future. The attorneys study all the legal aspects, the accountants frequently make an examination of the books and records of the company and the analysts cover a variety of facts, such as the nature of the business of the company and whether its management has been competent or incompetent. Someone from the field office usually inspects the property of the debtor constituting its principal asset and such inspections to date have covered such varied properties as a toll bridge, a warehouse, an oil well, an athletic club and a hotel. When a plan of reorganization is proposed, both an attorney and an analyst subject it to a detailed scrutiny, giving particular attention to such questions as the concessions made by each class of security

holders compared with the benefits received, whether the plan is feasible - that is, can the company operate under it without the necessity of another reorganization in the near future, and whether the terms and conditions of the new securities adequately protect the investors.

When all the relevant facts concerning a case are assembled by the field staff, they are embodied in an inter-office report to the Washington office. In two cases to date these reports have been so comprehensive and informative that, with the Commission's permission, we have handed them to the interested parties and to the judge.

This fact finding work of the field office requires talent of a high order. It requires painstaking effort, the use of imagination to comprehend what may be lurking below the surface, the ability to assimilate and understand complex factual situations and to express intelligently in writing the findings and conclusions of the investigator. This work also demands the ability to get along with people so that the necessary facts can be obtained without creating unwarranted antagonisms. The investigators' task may not be as spectacular as that of the attorneys who represent the Commission at court hearings on reorganization matters. Nevertheless it constitutes the backbone of the Division's work for, as I have stated, without a complete understanding of the facts we cannot pass intelligently on a reorganization plan or on other issues arising in the case.

The functions of the Washington office in connection with the field investigations are to follow the course of the field work as closely as possible, to suggest leads to be followed and to study and become thoroughly familiar with the reports submitted by the field.

As a party to a reorganization case we have a right to present our views upon every issue which is presented to the court. Many of the issues will not concern us but we ordinarily would have one of our field attorneys present at every court hearing to act as an observer. On issues which do concern us, our attorney would be in there cross-examining witnesses and making arguments of law and of fact. Let me illustrate this work by describing our activities in connection with a hearing on a reorganization plan - the most important issue arising in a reorganization. The plan would receive the close attention of our attorneys and analysts in the field. Their findings would be reviewed by our attorneys and analysts in Washington. We would then recommend to the Commission whether to approve or oppose the plan. If the latter, we would probably express to the Commission our opinion as to what a fair plan would be. Let us assume that the Commission authorizes us to oppose the plan. We would then convey the Commission's instructions to the field office. Ordinarily we would inform the private parties of this before the court hearing so as to give them an opportunity to modify the plan in accordance with our views, if they so desire. In two cases to date we have been successful in this end and have avoided an open court fight. Failing this the attorney in charge of the case in the field would appear in court and oppose the plan. He would

probably cross-examine the witnesses presented by those favoring the plan. He might have to put one of the Commission's accountants or analysts on the stand to give expert testimony on various aspects of the case. He would explain to the court why the Commission believes the plan unfair, referring to any pertinent legal precedents on the fairness of the plan. And finally he would indicate the Commission's views as to necessary modifications of the plan.

A description of these duties suggests the kind of ability we desire for the representation of the Commission before the courts. The attorney should be able to think on his feet, to examine and cross-examine witnesses so as to develop the pertinent facts and to present facts and arguments clearly and persuasively. In other words, he should be a good court lawyer. We would expect the important court hearings to be handled by lawyers with previous court experience. However, there will be a number of issues of lesser importance which can be assigned to the younger attorneys, who can thus gain valuable experience in court. As their abilities are evidenced, more and more responsibility can be placed upon them.

In the course of our work it will frequently be necessary to prepare memoranda of law for our own information or briefs for filing in court. The necessary legal research and the actual writing may be done by the field attorneys and reviewed by the attorneys in Washington, or all the work may be done here.

When a plan is referred to us for a formal advisory report after a court hearing on the plan (and I should point out that we have had no occasion as yet to write such a report), the final drafting of the report will be done by our attorneys and analysts in the Washington office, based on the facts of the case developed by our field staff. Such reports, of course, will be presented to the Commission for approval before they are released.

I want to discuss briefly the general functions of the Washington staff. As my previous remarks have indicated, its principal functions are to follow and review the work of the field offices, making such suggestions as are necessary from time to time. Questions of policy are worked out here. All matters which must receive Commission approval are whipped into shape by the Washington staff for presentation to the Commission. It also coordinates the work of the various field offices to see, for example, that one office does not approve a plan of reorganization while another office is opposing a similar plan.

To expedite the work in Washington, we assign an attorney, and if the case is important enough to warrant it, an analyst, to every reorganization case as soon as it appears that the Commission may participate as a party. It is their task to become thoroughly informed as to the case, and if the Commission becomes a party, to follow the case throughout its entire proceedings. Thus each attorney and each analyst will be handling a number of reorganization cases and will

examine every important step taken in those cases.

Now as to the type of experience and training which is desirable for the work of the Division - let us first consider the attorneys. As you no doubt have realized from my previous remarks, our attorneys do very similar work to that of attorneys in large law offices which handle a number of reorganization cases. True our approach to the problems involved is different as we have no private clients to serve, but the problems are the same. Hence previous legal experience in corporate reorganizations is desirable. In fact, with very few exceptions, all attorneys above the grade of junior who were appointed to the Reorganization Division from outside the Commission had had reorganization experience. This, however, does not foreclose from our consideration Commission attorneys who lack reorganization experience, as I believe that brains and general ability outweigh experience alone. However, a general knowledge of corporate law and acquaintance with corporate finance are desirable.

As to the accountants, the work is similar to that performed by members of the staff of a public accounting firm. Accordingly experience with such a firm or previous work along similar lines would be desirable.

Our analysts have to perform such a variety of tasks that it is difficult to describe the kind of experience that would be useful. Generally speaking training in analysing securities, studying corporate setups, and, of course, previous experience in analysing reorganization plans would be helpful.

As to our stenographic positions, since so much of the dictation will involve legal matters and legal terminology, previous experience in working for attorneys, either within or outside the Commission, would prove advantageous.

I emphasize these matters because the Division is constantly expanding both in Washington and in the field. Our present force is barely able to keep up with our present burden of cases and we are getting into more reorganizations all the time.

---c0o---