## SAUL STEINBERG
FROM PAGE 83

the communications, the military problems, everything. And we've got the techniques to solve the poverty problem, too. We can bring out brainware to bear on the ghetto *block by block*!"

He paused for a moment, catching his breath. "I used to be a selfish little kid," he continued, "but I've developed a real social conscience."

It couldn't have come too soon. Saul P. Steinberg will be 30 years old in 5 months. ●

---

## UNITED FRUIT
FROM PAGE 33

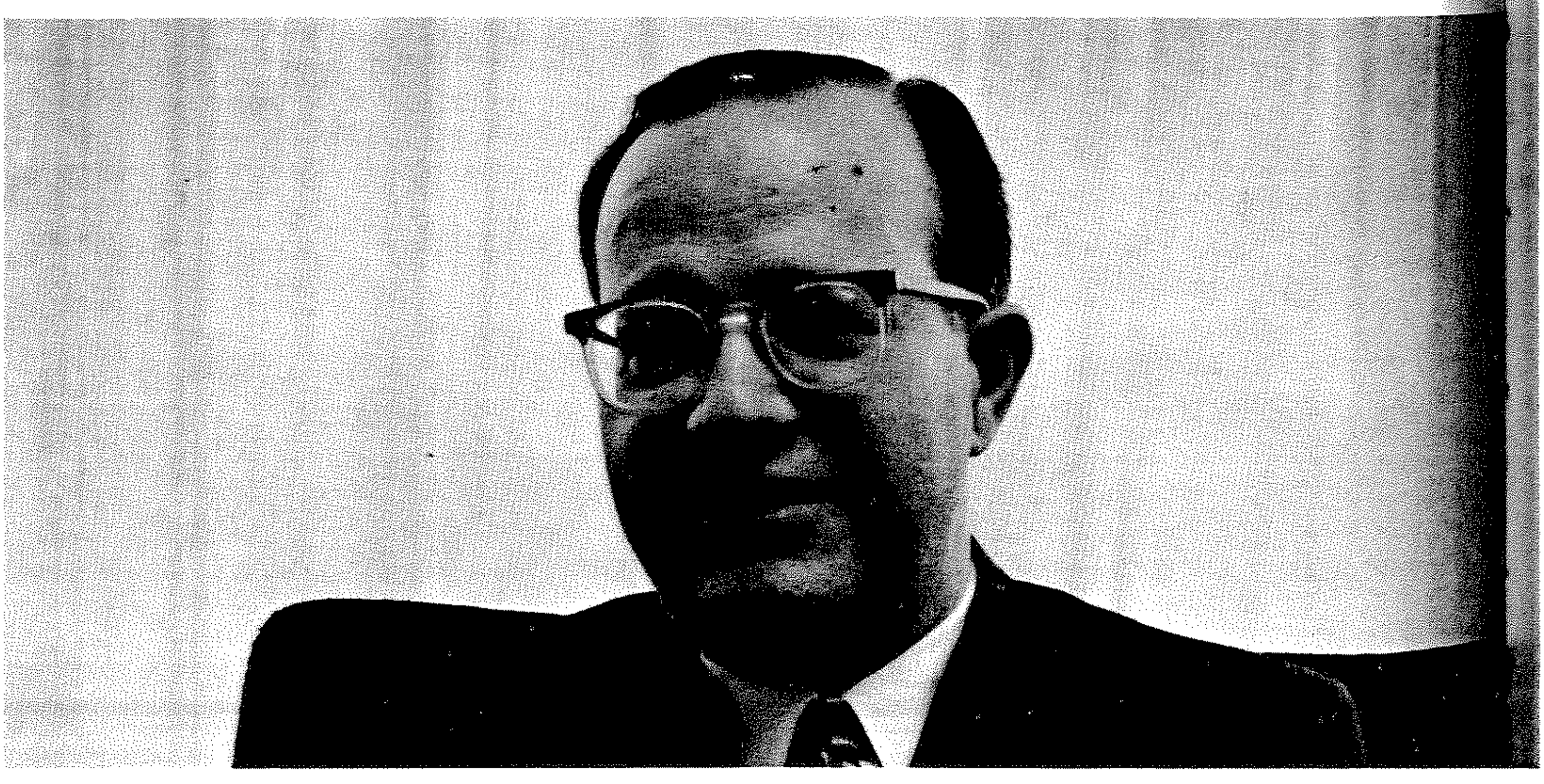
for the AMK offer, which the press reported as being worth around $90 per United Fruit share.

Typically, AMK's announcement was on the wire several hours before announcement of Zapata's new package. While AMK was clearly in the lead at this point, it appears certain that Zapata's downfall was ensured by the construction of its security package. It turned out to be Zapata's most disastrous single error.

Zapata during the fall had filed its first offer with the SEC, but Lehman rules requiring audits less than six months old resulted in a considerable delay. The last audit of Zapata was a year old, and the new audit, which had to include Anglo Norness and Paramount Pacific, its two recent sizable and quite complicated acquisitions, was very time-consuming. Lehman meanwhile realized that its offer of 18-month notes had a basic weakness: it would require a $420 million refinancing in eighteen months. It was decided to withdraw the original offer and come up with a new package based wholly on equity.

Michael Thomas thus created a somewhat unorthodox new security which he called a "$2 noncumulative preference stock," one share of which was to be exchanged for each share of United Fruit common. Beginning on February 1, 1971, *but not until then,* it became convertible into $120 worth of Zapata common or .75 shares, whichever was greater. Beginning on February 1, 1976, the conversion rate would be that previously in effect, or the rate determined by dividing $175 by the current market value of the common, whichever yielded the greater number of shares. Got that? Zapata expected the offer to be tax-free.

*Eli Black of AMK*



On the surface, the security offered many ad-
ntages:

- With United Fruit selling in the low 80's, it nounted in effect to a kind of a bond that in 'o years was guaranteed to be worth $120, al- ough Zapata common would have to double to 60 for the ¾ share provision to become orthwhile. The noncumulative nature of the vidend, plus the restrictions on Zapata's divi- end-paying abilities, plus its ranking behind apata preferred, all made the $2 a little shaky, ut even without this, the security offered a uaranteed 20-plus per cent annual return, hich would undoubtedly be attractive to many istitutions.

- It was virtually resistant to market decline, nce the lower Zapata went, the more common hares preference holders could convert to.

- It did not load the consolidated company up 'ith a lot of debt.

- It was a difficult security to arbitrage, which opefully would protect Zapata common — which is relatively thin — from a rash of short selling during the period of the exchange offer. Arbitrageurs hopefully would be scared off by he lengthy conversion time.

- Potential earnings dilution from the security night not have to be reported until 1971, which vould have many delightful effects on the con- olidated reported earnings per share. "Zapata igured it would take us two years to get Fruit vhere they wanted it," says Thomas.

In some circumstances, with some companies he convertible preference stock might have een very effective. But in this case, it proved to ave more bugs than the TFX.

With its financial data audited and complete, Zapata, on Dec. 16, hustled its prospectus along o the SEC several weeks before AMK had com- pleted filing all the components of their offer. It was at this point, and only this point, that AMK was truly vulnerable. If Zapata could have been open to tenders for a couple of weeks while AMK was sitting at the SEC, it just might have walked away with the bananas.

But trouble developed. "It took us sixteen business days to get through the SEC," says Robert Gow of Zapata. "*Sixteen days*. Every two or three days the SEC would come back at us with questions, not simple ones but long, detailed ones. We often stayed up all night to come up with the answers and get them back to Washington." Some members of the Zapata faction hint darkly that the long hand of Gustave Levy was involved. Levy vehemently denies any interference. "I don't have any influence down at the SEC," he says. "I wish I did."

**Inflationary threat**

It is undeniable, though, that the Zapata prospectus presented a number of complex issues that required resolution. Many involved the convertible preference security. The SEC said that like any other convertible preferred-type stock, it was residual and its dilution of earnings would have to be reported. Further, to determine the conversion basis, Zapata would have to use the lowest price of Zapata common during the reporting period. Zapata began to appreciate the main weakness in their racy new issue. It was an open-ended liability. If the company should happen to suffer a sharp reversal, it could find itself in the perhaps fatal position of having to issue an incredible number of common shares to converters. If Zapata sunk, *horribile dictu*, to $10 it would be required to shell out *100 million shares*, 25 times the total now outstanding. It would be to dilution what the Weimar Republic was to inflation. "They might have had to give away the whole company," says one investment banker.

Zapata thus altered its proposal by making the preference stock convertible in 1971 into the greater of .75 shares of common or the number of shares created by dividing $120 over the market price of Zapata common *with two shares as the maximum amount*. And, according to the prospectus, "the conversion rate at any time in effect shall be subject to adjustment in certain circumstances to protect against dilution." Curiously, the "certain circumstances" were never spelled out.

These changes protected Zapata and its stockholders, but they made the preference stock much less attractive to United Fruit stockholders or potential institutional buyers. The $120 was no longer guaranteed, and any annual increase in the security's value could be wiped out by a drop in Zapata common or some unforeseen "adjustment." The element of safety was gone. The security was like any convertible preferred, only more cumbersome.

By the time Zapata finished with the SEC, the date was January 9. Meanwhile, AMK finally had submitted its completed figures to the SEC on January 8, had wisked through in just over 24 hours and was ready to accept tenders on the 11th. It is the feeling of some participants that the SEC deliberately arranged for both to come out simultaneously so that Fruit shareholders would have an opportunity to choose between the two. The SEC denies this. In any event, the stage was set for the final round. Both offers were to expire on January 24.

continued page 86

The teams were not exactly evenly matched. As one observer describes it, "on one side you had Goldman, Hornblower, Lazard, and Paine Webber. That's a pretty wicked crew with lots of muscle and a lot of selling power. Zapata had Lehman, who is no slouch, but that wasn't nearly enough. Lehman tried to round up assistance, but they never really got their side organized." Adds one of the close participants: "You could always get an immediate answer out of the AMK side because Black was clearly in charge. But with Zapata, you were never sure whether Thomas, Mize, or Gow was really calling the shots. It really became very confusing at times."

The Zapata forces soon realized not courting the arbitrageurs was an extremely costly mistake. Arbitraging during tender offers is no longer a rarefied art practiced by a few members of the financial elite. It has became a game for everyone including bank trust departments and private speculators, and the large number of tenders insures there will be plenty of profitable spreads to go around. As United Fruit had moved from the 60's to the low 80's, many of the company's traditional shareholders had happily taken advantage of the historic highs and sold out. Much of the stock had been picked up by professional and nonprofessional arbitrageurs — some Wall Street sources guess the final figure may have been as high as *half* of Fruit's eight million shares. At least a million were in the hands of such professionals as Bear, Stearns & Co. and Kleiner, Bell & Co. "There was a tremendous amount of stock with no allegiance to either side," says Marvin Davidson of Bear, Stearns. "It was in the hands of people who just sit down with their slide rules and figure out the best offer, and the guy with the best offer is the guy that gets our stock."

But price is not the only consideration. "The main thing is to close your position as soon as possible in the best way you can," says Richard Graham of Kleiner, Bell, who had found the Zapata security attractive before the limitations were imposed. "This means that both price and liquidity on the sell side are key. You often have to make value judgments on the market value of the security you're getting when you turn in your stock." The AMK package was quickly convertible into AMK common and cash, and there appeared to be a respectable market in the when-issued securities. But a person who turned in his United Fruit for Zapata preference would not be able to convert for two years. The question was, then, what would be the liquidity and, indeed, the value of the new security? Nobody was sure. And nobody wanted to be the first to tender to Zapata to find out.

"We structured our security, perhaps naively, on something that was best for the United Fruit stockholders," says Robert Gow. "It wasn't designed for arbitrageurs." He claims he received widely conflicting advice from investment bankers on the importance of arbitraging and in the end had to make up his own mind to ignore them. "I admit that a fault of our package was that you couldn't arbitrage it," says Michael Thomas.

**Cultivating the arbitrageurs**

Eli Black, on the other hand, was well aware of the power of the arbitrageurs. "We cultivated them, talked to them from the beginning, tried to make them our friends," he says. "Of course loyalty from them is about one point deep, maybe only a fraction of a point. But if all other things are equal it can make the difference." Goldman, Sachs, which has one of the most active arbitrage departments on the Street, was especially helpful. "We know all of these fellows very well," says Gus Levy, with just the trace of a smile.

Zapata had other dilemmas. It was no secret that many Zapata stockholders, like those of Textron and Dillingham, regarded their company as being blessed with a certain degree of glamour, and were less than thrilled about being encumbered with a big load of bananas. Pro forma statements indicated a slight dilution of Zapata's current earnings. During the course of the United Fruit battle, they had observed with apprehension the slippage of their stock from 80 to the low 60's. AMK on the other hand, despite much short-selling, had remained remarkably steady around 50. (Some allies of the Zapata side attribute this to such dark maneuvers as enemy shorting of their stock and enemy borrowing up of AMK stock to prevent its shorting.) Even some of Zapata's top executives were sometimes doubtful. "I used to go home at night and think, God, we're paying too much for this crazy company," says Gow. "But then I would come in the next day and realize what we could do with all that money."

One effect of all this was to unsettle and disorganize the efficacy and execution of Zapata strategy. But more importantly, it had a direct effect on the judgment of the arbitrageurs and other Fruit stockholders on the convertible preference stock's value. Approval of the new issue was contingent on a favorable vote during a special stockholders' meeting on January 21, and there were rumors — which AMK certainly did nothing to deter — that shareholders would vote it down. Zapata executives deny this was ever a possibility but, according to one ranking member of the Zapata camp, "we were as close to Zapata as anybody and, frankly, we were scared to death."

All of this meant that anyone tendering to Zapata might simply get his Fruit stock handed back to him at perhaps depressed prices. While many arbitrageurs were simply long on Fruit, those who were short had shorted AMK with the expectation of closing out their positions through AMK.

By the week of January 13, the Zapata side knew that unless they could come up with something swiftly, they were done. Faulkner, Dawkins, and Sullivan, long-time boosters of Zapata, assumed some of the strategic management of the Zapata side and devised a bold scheme: if they could grab a million shares held by the arbitrageurs and cross it into hands friendly to Zapata, this would not only be a gesture of tremendous psychological importance but it would also virtually guarantee a strong and sufficiently liquid market in the preference stock.

**Zapata's last stand**

To entice friendly buyers, who would probably have to buy at a slight premium, FDS agreed to give them a put on $90 worth of Zapata common if they would buy Fruit at $90. One of several attractions of the put was that its holder would, says Wilbur Ross of FDS, "be able to sharpshoot at the common" as the common got knocked down by arbitrageurs taking profits. To make this scheme work, and to generally improve their offer, the Zapata people agreed to make the preference convertible in 90 days.

Though it had not consulted yet with Zapata, FDS was all ready to go with this idea and asserts it had lined up the stock — "the phantom million shares" as it came to be called by skeptics. But snags developed. Zapata allies claim the only real hindrance was that the Stock Exchange would not allow them to offer this sort of special deal without offering it to everyone. There are, however, other, perhaps less dramatic ways to execute such an order. The principal trouble was that many potential buyers for this block demanded that the two share conversion limit be raised to three to give them some market protection, nonexistent with Zapata at 60. (It would have been impossible for everyone to borrow enough Zapata common to lock their profit in for 90 days.) When FDS tried to arrange this, the large Zapata institutional holders (who own 25 per cent of the common outstanding) rose up in anger since they feared a potentially ruinous dilution.

By the weekend, nothing had been resolved. The AMK side, meanwhile, was well aware of the Zapata scheme and decided to administer a final, authoritative coup de grace. "If nothing else, their move could have raised enough dust to keep people from tendering to us," explains Black. "We felt we could undo this strategy by getting people friendly to us to buy a big block."

Quietly and efficiently, Black and his associates snatched 370,000 shares of the million share block from willing arbitrageurs and lined up friendly buyers, friendly enough to pay, on Monday morning, January 20, $3 a share over the previous close. When the trade crossed the tape, Bear, Stearns was identified as representing the sellers, and Goldman, Sachs as representing the buyers. Goldman, Sachs, as a dealer manager of the AMK offer, is prohibited from soliciting orders, and the firm's role in the trade elicited audible grumbles from Zapata supporters. Gus Levy maintains the deal was completely unsolicited. "Black called me and said he had some stock he wanted me to handle," Levy adds.

To the most important Fruit holders, it was now obvious that the Zapata idea had been aborted, that even though AMK now had only a sure 15 per cent, the tide was running irrevocably toward their side. "That deal blew us right out of the tub," sighs a Zapata man.

Maneuvering continued for the rest of the week, though, and Black calmly crushing whatever meager signs of life the Zapata side was able to bring forth. On Tuesday, Zapata announced the new offer, which would allow the preference stock to be convertible in 90 days into 1.4 shares of Zapata common, and which raised the conversion values two years hence. (Zapata men admit even the 90 days was too long but they were still worried over sudden pressure on their common.) Black, who all along had said he would "match or exceed" anything Zapata threw on the table, raised the principal amount on his debentures from $30 to $38 (which would cut pro forma per-share earnings by 19 cents). On Tuesday, his stockholders approved this revised package, and Black happily announced he had "assurances" of getting 40 per cent of the Fruit stock. Black was quoted — misquoted, he claims — in the *Wall Street Journal* that his offer would expire Friday, an impossibility because of the new offer.

Zapata, meanwhile, was committing the last of its blunders. That same Tuesday, the special stockholder meeting was to have approved the preference stock issue. Zapata allies were shocked when the meeting was adjourned with-

FROM PAGE 87

out a vote until February 4. According to Zapata executives, this much time was necessary to allow shareholders to consider the new offer. One executive admits the proxy material was "unduly restrictive" in this regard. "We didn't fully anticipate the changes we would have to make in our offer," says Gow.

Gleefully, persons allied with AMK telephoned the large Fruit holders. They said Black had it won and that the Zapata offer would never be made. "I must have gotten a thousand calls on this," says Gow. "I told the people we would honor our offer and that I didn't believe Black had 40 per cent. But they were worried. They had to have a lot of faith to believe me because a lot of their money was at stake." (The preference issue, incidentally, was eventually approved by a 72 per cent vote.)

The net effect of the week's events was not so much a rush to tender to AMK, though Black did get close to the 40 per cent he had promised. (Zapata allies assert the *Journal* story, of which no disclaimer was published, was responsible for much of this tendering.) But practically nobody wanted to tender to Zapata. Zapata's total at weekend was a mere 31,000 shares. "To give Fruit stock to Zapata at this point," says one arbitrageur, "you had to be fantastically, hopelessly in love with Zapata."

AMK's sweep was especially remarkable because in the opinion of many on the Street, the value of its offer that week was actually a few dollars below Zapata's. Says one arbitrageur: "It's the first time I ever saw a higher work-out tax-free deal get beaten by a lower-work-out taxable deal. I mean, when that happens something really is wrong."

On Saturday, Black called Mize, said he had won, and offered to discuss a friendly surrender. There was some haggling, but Zapata was ready to capitulate. "Forty per cent was our upset figure," says Michael Thomas. "That would have meant we would certainly end up with a minority position. So we decided to get out with honor and a little cash." At a special meeting at the Hotel Pierre in New York at 7:00 a.m. Monday, the Zapata board agreed to sell AMK its Fruit stock (they eventually received 270,000 shares) for $85 a share, payable with a 6⅞ per cent for expenses.

Assuming eventual 100 per cent ownership of United, AMK's final cost for $340 million worth of United Fruit equity, based on recent prices of the various securities, was:

| | |
|---|---|
| Convertible debentures (at $75) | $240 million |
| Common stock (at $32) | 150 million |
| Warrants (at $12) | 150 million |
| | $540 million |

"In a contest such as this, strategy and aggressiveness are very important. Zapata was a valiant foe. But often you win not just because of your own abilities but because of the other side's mistakes." Eli Black was sitting in his office overlooking Park Avenue and was talking about his fight for United Fruit in the matter-of-fact way Vince Lombardi used to discuss, in the old days, the machine-like victories of the Green Bay Packers. Even the sharp drop of AMK stock since the collapse of Zapata — attributable by some to the inherent unglamourousness of meat and bananas — did not bother him. He said it was the natural result of the flood of new AMK securities and the clearing out of arbitrage accounts. "The underlying values are there," remarked Black, who is generally acknowledged to be AMK's chief underlying value.

While observers have suggested he will shake up Fruit from top to bottom, in the same way he has done to Morrell, to improve its operations, Black maintained that he still considered Fruit's management to be "excellent." Cornuelle will be chief executive and Fox will join AMK as vice chairman. Fruit is in such good shape, he went on, that he will able to move right ahead in putting some of its money to work. One of his new moves had, he went on, just occurred.

Again with the encouragement, even the *invitation*, of management, friendly Eli had bought, from a once-aspiring raider who had given up after management protests, a big block of stock in Long Island's Security National Bank, with $840 million in assets. A merger may come unless restrictive bank takeover legislation is passed. Black had gained the confidence of management, he said, because "we'd been a real friend, no end runs, no tricks, no foul plays."

Black's office is what you might expect: clean, white, spare, sharp, metallic, modest. On the walls are oils and watercolors by his wife: controlled, carefully executed abstracts of boxlike diagrams. There is only one interruption to the smooth flow of lines and shapes. Leaning against Black's desk is a three-foot-high, bright yellow, plastic banana. ●