

**Securities and Exchange Commission Historical Society**  
**Interview with Irving Pollack**  
**Conducted on January 16, 2002, by David Silver**

**DS:** Irv, starting at the beginning: Why and when did you go to work for the SEC?

**IP:** I went to work for the SEC in October 1946. I came there because my brother, who had started in the SEC many years before the War, told me that it was a great place for lawyers; that all the lawyers he knew were ecstatic about their ability to operate and the challenges they were able to handle at the SEC. So I took an exam, which was an oral exam, and I was interviewed by a board, which included Milton Cohen and some others. I was able, apparently, to satisfy them that I had the qualities or qualifications. I received an offer from them and joined the Commission, as I said, in October of 1946.

One interesting thing in that is that I came from a non-highly respected law school, Brooklyn Law School, and the general counsel's office, in which I was offered the position, had mostly people from the elite law schools in the country. The reason they were interested in me is that I had been asked whether I would be willing to work on criminal matters and I said I would. Apparently the others in the office, who came from the other schools, felt that criminal cases were not really the kinds of things they wanted to work on. They were all excellent appellate lawyers. They were *fantastic* people who had *great* abilities and talents. So it was just that odd circumstance that permitted me to get into the General Counsel's office, which was a very small office of about ten or eleven lawyers.

**DS:** Had the Commission moved back to Washington by that time?

**IP:** No. We were in Philadelphia, where we stayed until January of 1948. I spent a year or so in Philly, and then came to Washington in 1948.

**DS:** You were in the service before you came here?

**IP:** I was in the service before that, and I had been in the eminent domain practice. When I went back after the war to work in the firm I had been a clerk at before I got admitted in 1942, I just felt that it wasn't the kind of practice for me, so that was the reason I was most attracted to the SEC.

**DS:** You mentioned your brother. When did Harry start working at the SEC?

**IP:** About 1934 or 1935. He started, it's interesting, his career as a mimeograph operator, as I recall, and went to night school and got a degree in accounting and eventually was put into the personnel office. I think at my time of joining the Commission he might have been an assistant director or something. As you know he came to work for the division and had a fabulous career at the SEC. I received, after he died, many unsolicited letters from people who said how their careers had been enhanced by the advice and the assistance that he had given them in their own careers at the SEC. He typified, I think, the SEC's early entrance into trying to help the underprivileged and minorities. I think

we were among the leading people in that area, and that permeated all through my career as well as his.

**DS:** When you joined the Commission, what would you say was the major emphasis of the Commission's work at that time?

**IP:** There were two primary areas. One was the Public Utilities Holding Company Act, where its constitutionality had been sustained by the Supreme Court, as I recall in 1938, I believe. The Commission was engaged in really making that Act work. You may recall it was referred to as the "death sentence" for public utilities. Under the SEC's wise administration of it, it turned out to be the saving grace for the public utilities and made them really into blue chip securities. The way they did that was to use Section 11(E) of the Public Utilities Holding Company Act, which permitted the companies themselves to come in with voluntary reorganization plans.

While I wasn't directly involved in that, I recall them saying that they used to go into the meetings and say to these people, "Now, you made these complicated structures. You created these complexities previously in order to fulfill your objective, which was to make it so that the states couldn't understand what they were doing and defeat their ability to do effective rate regulation. Now that you've done that, you've got the genius and the ability to come up now with a workable new utility company that can really accomplish the objectives that will fulfill the public policies that this Act was intended to fulfill." So

that's what happened. Even in my time, just as I started, there was heavy emphasis on that.

The second one, also very prominent, was the registration process. The Commission itself reviewed every registration statement that was filed. They spent a great deal of time in trying to improve disclosure aspects of the Act. Stop order proceedings were brought to attempt to protect the process from being corrupted by con men and other people who were trying to use it to accomplish frauds.

**DS:** Who was the General Counsel when you came to work?

**IP:** Roger Foster. I should take a moment to say that I think of all the lawyers I've known in my life, I would say he probably would stand out as being one of the top three lawyers, and that includes people like Abe Fortas, who became a Supreme Court justice. Roger Foster had an innate ability to take the most complicated kinds of factual situations and get to the core of the problem quickly. People who worked with him more intimately than I did, and I did work with him on occasion, which I'll mention later, said that you could go in to Roger and present the issue to him. He would then think for a moment and start to speak. If you took down what he said and just broke it up with commas and periods, you pretty much had a brief that you could file without any further drafting revisions. He was a remarkable person. And as brilliant as he was, that's how reserved he was. I remember when I brought my fiancée, my now wife, to meet him, I thought he was embarrassed in that meeting. He was so reserved when he had that sort of thing. But

he was a person, just as reserved as he was, that's how loyal, that's how friendly he was to every individual that knew him. I knew him well, because later on he came back to work for me in the 1960s, during Manny Cohen's administration.

I should take a moment to say that the remarkable thing about the SEC was its personnel. The people that I worked with from the very beginning, in my view, were geniuses. I remember being interviewed by a life insurance agent who said to me, "What grade do you think you'll be ten years from now so I can tell you what kind of policy you ought to take?" I said, "Really, I'm not going to be too far from where I am." I said, "You don't know this place. They are all geniuses here and there's no chance that I could ever compete in that arena."

The second thing that came into play is, remember, the agency was formed during the Depression. So many of these outstanding people who couldn't find jobs elsewhere came to the SEC and security was the most important thing for them. So, as brilliant and competent as they were, they remained at the agency. Take one example: We had the most outstanding oil engineer in the country, Tal White. He was so respected by the industry, nobody would ever challenge *anything* in terms of his knowledge and capacity. There are reams of stories you could tell about his activities at some point. It's unfortunate we don't have an oral history of him as an individual. Same thing with the mining engineer: he was also a very expert guy who the Commission had for many years.

**DS:** Who was the Chairman when you joined the Commission?

**IP:** When I joined the Commission, let me make sure now who that was. I think it was Caffrey. Was he the fellow that came out of New York, do you remember?

**DS:** I don't. Do you remember any of the other Commissioners at that time? In Philadelphia?

**IP:** Yes, McConnaughey is the one that sticks in my mind, who later became an acting Chairman. A very competent guy. I don't remember the others. Partially that's due to the fact that, as I mentioned earlier, the criminal work was sort of a subsidiary thing to the Commission. I might take a moment to describe why that was so. The Commission had hundreds of cases it was bringing criminally as well as civilly, but they were all in the regions. The Commission had chosen principally former assistant U.S. attorneys or district attorneys who had that kind of practice and put them in as in charge of the regions. In the area of enforcement, the regions were pretty much omnipotent. They didn't really have much oversight from the home office at all, except in the criminal area. In the criminal area, in order to protect the statutes from not being mis-applied or to create unfortunate decisions in the courts, there was a formal criminal reference program. That was principally the duty that I performed under Milton Kroll, who was my supervisor.

**DS:** The work of the General Counsel's office at that time was mainly. . .

**IP:** Some administrative law stuff that they handled, but most of the litigation was outside. I can't remember. If they had a proxy case, they might have had that here in the home office. They might have conducted that. But basically the work of the general counsel's office, which only had eleven lawyers in it, and that included me, was principally handling appellate stuff. There was still public utility litigation.

There was another field that they were very active in and I should have mentioned that. That was Chapter Ten. That was a big part of it. They spent a lot of time in the reorganization area. That was an area that was fairly corrupt before the Commission was able to get into it. Bankruptcy was an area that, since there was nobody protecting the pot, people would be vultures and take advantage of it. The Commission was in that area very heavily in an attempt to correct that.

**DS:** In the field there were injunctive proceedings, for example, and then there might be an appeal. Did the home office get into it at that point, even for the civil cases?

**IP:** Yes. The home office would get into it on the appellate level.

**DS:** In the early days of your career, do you recall significant actions or cases in the criminal line in which you participated or have knowledge?

**IP:** One of the significant cases which was lost in the criminal prosecution in the Southern District was a case involving Serge Rubinstein. It was a large-scale manipulation in New

York. The case was tried by the U.S. Attorney's Office there and lost, principally lost because of the then-practice in U.S. Attorney's offices of not having full-time employees. The lawyers were part-time practitioners who also practiced privately. The failure to apply themselves completely caused, I think, in my view, the loss of what was a pretty open-and-shut manipulative case that this guy had engaged in, without getting into the facts, which you can find in the annual reports of the Commission.

I can't remember the name of the case, but the most important thing we were able to accomplish had to do with the southern district of New York. The Department of Justice did not have the ability to direct the Southern District of New York on what it should do or not do. Therefore, it was very difficult to get that office to prosecute criminal cases. Rubinstein was a notorious case. Charlie Cossack, at the Department of Justice, who was in charge of the tort section at that time, was very open and friendly to us at the SEC. We were able to convince him that we should be able to go to the Southern District of New York and see whether we could get them to take on our case. The reason they didn't like the securities cases is that statistically they could prosecute all these other crimes, tax crimes, and they would get credit back in the home office. But if they tried an SEC case, even a smaller one, it required such a degree of manpower that they didn't want to do it.

What I did is that I visited the office. They had a managing attorney who carried over despite the political changes. I just don't recall his name.

**DS:** You're talking now the early 1950s?

**IP:** I'm talking now, yes, in the 1950s. The office operated politically. When there was a change in administration, there would be a change in the U.S. attorney and there would be constant new people taking over the cases, etc., so there was great turnover. The individual who managed the office was a very respected attorney, very highly regarded by the judges, who spoke with him off the record, *ex parte*, because they had great confidence in him. I personally in this case spent time up there talking to him until, I guess, he felt I was such a pest that he agreed to take a case. I don't remember the name of the case, but fortunately it was a successful case. They got a great deal of publicity on it and that opened up that office to our ability to do that.

Now, jumping ahead a little bit, the big impetus came after the Re case.

**DS:** We'll get to that later.

**IP:** In the beginning there was that opening up. I think the second thing that I ought to mention is, as I mentioned earlier, the regional offices really did the cases and then they'd send in a criminal reference report to be reviewed by somebody, who would sign off. What we tried to do then was not just to say, "You don't have a case here, you don't have this," but to try and service them from the office.

What I started to do was I read every Federal Report criminal case and I would make notes on them. The West Publishing Company had a lousy note system, because it only covered legal items. But you find a case, for example, that would say, if you go after all

the people, that's an additional fraud. Now, you couldn't find that in the index. I would make a note of that on a card, and so we developed a card file. As the people in the field became more comfortable with us in the home office, that we were not trying to serve against them, we were not trying to obstruct them, that we were really trying to help them, they would call in when they had trials and say, "If the judge says we can't put this in, do you have any case we can give him?" We'd look at the cards and might find something in there and would say "Cite this case to the judge." We developed a relationship which we could feel was very good. That can become very critical, as I'll get to later on when we get into the national enforcement program.

**DS:** Was the U.S. attorney in New York at that time Paul Williams? Or his predecessor?

**IP:** I can't remember.

**DS:** And the assistant you worked with, was that Sil Mollo? Or was he later?

**IP:** He's later. No! Sil Mollo. It is Mollo. Mollo was the guy.

**DS:** He was the civil servant that went through the administrations.

**IP:** Yes. He was the guy that went through. It was Mollo. Yes. Later I became great friends with him. When he would make a talk, he would say, "You know, it was because of his standing at my door all the time that we got this relationship going." You're right, it was

Sil Mollo. Williams was the U.S. attorney. But when we get to set up the office up there for fraud, the judge who came down here, and I can't remember his name . . .

**DS:** When you came in and into the 1950s, what was the relationship between the regional offices and the home office? For example, the regional directors, did they report directly to the Commission? Or was there any control on the staff level? How did it work?

**IP:** In practice there was no control. They were really independent operators. You know the story of two guys going down into the Atlanta region and not reporting to Bill Green, the regional administrator? Do you know that story?

**DS:** No.

**IP:** Two people from the home office went down to do an investigation. I don't even remember who they were. This was before my time, so I only know it vicariously. They went to a brokerage firm there, in the Atlanta region, who they didn't know from the home office. All they knew was Bill Green was the regional administrator. I learned that from a story I can tell you later. So the broker calls the Atlanta office and gets a hold of Bill Green and says, "We have two fellows down there, wherever they were, and they say they're from the SEC." Bill Green says, "Who are they? Never heard of them! Throw them out! Call the police!" And that's exactly what they did. He had a rule that you can't come down to his area unless you tell him.

He was probably the most, how shall I say, dominant guy there. He ran really a fiefdom. If you called him and you got to know him . . . I'll tell you later. About in 1954 I went down there, after we had established a more productive relationship. He asked me to go down and assist in a trial of a con man in Atlanta. I did that. Not because so much he wanted the assistance, as he wanted me to get out there to see what the problems were and what the difficulties were. I spent six weeks in Atlanta on a trial. Convicted a guy for it. That was the kind of individual that Bill Green was. That was true of the other areas. There was very little . . . maybe in the broker-dealer area there would be service.

**DS:** In Boston. I was trying to remember as you were speaking, there was the regional administrator who lasted for a long, long time.

**IP:** And in Fort Worth, for years. They were all . . . well, we had here in Washington Kelly, Russ Kelly. In those days, incidentally, the Commission investigative people normally worked in duos. It was always a couplet. For example, the famous couplet was Eddy Jaegerman and Tim Callahan. In Washington it was Russ Kelly and Duncan. They had this operation and they were terrific trial people. Kelly was probably one of the most excellent trial people I ever knew. Had the innate ability to take a file that he had never seen before, that Duncan had prepared . . . because there was such a symbiotic relationship, he knew exactly how Duncan operated and Duncan knew how he operated. They would go into court. Kelly would not have prepared. He would just open up the file and start his case.

He had a famous case in Florida, I remember, where the clerk said to him, “You’re not going to convict this guy.” It was a broker-dealer case and there had been high mark-ups. It was one of those things. He said to the clerk, “If I haven’t convinced you the first day that we have a case that we’re going to win, I’ll buy you a dinner.” That’s what happened. He was just a fantastic guy. That was an ability that he had that was essential.

If you went into a southern court and came from Washington, there was an antipathy toward you. For example, when I was in Atlanta at that six-week trial, I stayed completely anonymous. I sat there, but I was not known to anybody from the jury, that this guy came from Washington. That was something you avoided.

**DS:** I was under the impression, I think maybe I had heard it on the staff, that in the early days a lot of the investigative personnel came from the Alcohol and Tax Prohibition days, and when that was repealed . . .

**IP:** I didn’t know about that.

**DS:** That’s where Tim Callahan came from.

**IP:** As well as I knew Tim, I never asked him where he came from. That’s incredible. I never knew that. That’s probably logical, because they picked people from the U.S. attorneys.

**DS:** Irv, we were just talking off the record when you went to take this telephone call. We were talking a little bit more about the regions. I think you mentioned how strong the regional administrators were and you just mentioned some of the names of the long-term regional administrators. You seemed to say the presidential administrations would come and go, chairmen would come and go, but the regional administrators stayed on and on. You might mention the names.

**IP:** Judge Allred in Forth Worth, Phil Kendrick in Boston, Don Stocking in Denver, Tom Hart in Chicago.

**DS:** New York?

**IP:** New York. You see, Caffrey came here. The New York regional administrators were appointed to the Commission, some of them because of their political connections, probably.

The other thing I want to mention, while I mention political, is that in my years it was not a political agency. It was Roosevelt's favorite agency. He pretty much told everybody to stay away from the SEC and not attempt to interfere in its work. I think it was considered one of his jewels in terms of that. I never knew who anybody's political affiliations were, nor did they know what mine were. Interesting, as an aside: people didn't even know that I was related to my brother until many years later. They never made the connection,

even though we had the same name, unusual as that might be. That might be typical of the way the agency never looked at those things.

**DS:** We were also talking a little bit about the Chairman and you commented on the shift in the balance between the regional offices and the home office. Has the role of the Chairman changed during the period you were at the SEC?

**IP:** I would think so. I would think in the early days, excluding the very early days of Kennedy, Douglas . . . taking that early period out, I think the Chairmen there were very, very instrumental. Douglas was a very important person in the development of the early days of the SEC, when they were laying the groundwork, really, for the enforcement of the statutes. I think it was critical to have a person like him. And they had, for example, Frank, who was on one of the boards.

**DS:** Jerome Frank?

**IP:** Jerome Frank. And they had Pecora. They had really a very strong Commission. I wasn't there, but I learned from history of people that were talking to me about it, how impressive they had. One person went on to become . . . Leon Henderson became the OPA. They had a very good group of Commissioners and in those early days it was very critical. After I joined in 1946, I don't have that impression of the Commission being that critical. I think the staff at that point was, as I said before, fabulous. They had just tremendous quality of people, that you really didn't have to do much. The staff was

really moving the things in these areas. Whether it was registration or whether it was broker dealers, they were establishing the principles for shingle theory, for the mark-ups, for self-regulation. All of that was pretty much being generated by the staff. And, as I said before, the regions were very effective in going after all these local crime things and also establishing criminal principles in the area of fraud, etc. in the prosecution of the oil brands, which was a big element then.

**DS:** I realize, of course, that Chairmen differ from each other, problems differ from generation to generation. But was there a change or shift from what one might call the institutional role of the Chairmen of the SEC vis-a-vis control of the Commissioners, control over the operations of the agency?

**IP:** Yes. I think that the Chairman has become more dominant in his leadership role, particularly in recent years. I think if you go back to the Cary days and the Cohen days and the Garrett days and Judge Budge, and Casey . . . Casey was a very dominant person and probably started what I would think was the control of the Chairman over the agenda and really in the policies of the Commission more. People like Cary, because of their personal abilities and their personality, were able to exercise effective policy moves on the part of the Commission. So with Cary coming in, you have a much more intensive participation in the strategy and policy movements of the Commission. And, of course, you have Manny Cohen and that period, which was very effective. That period was a period of great activity really greatly influenced from the top by the Commissioner. And then in Judge Budge's time, he came, remember, from Idaho. He had a feel for the

smaller person and the smaller broker-dealer and that was helpful, because he was emphasizing, "Go after the big guys. The little guys can't do that much damage, the big guys are the ones." That western philosophy was helpful.

Budge was a very decent individual. Indeed, when I was nominated for the Commission, people were trying to submarine that appointment. He went to his former Congressional group that was headed, I forget the name of it, Gerald Ford was one of the members of it, to dissipate that kind of thing. Stanley Sporkin was the person who told me about that. I didn't participate in it, but Stanley apparently got Judge Budge acquainted with that.

Casey, of course, had an ability to use other people's brains. He picked on people to try and do that. He came in, you remember, under a cloud that he wasn't going to do the job and came out pretty much being recognized as having tried to do a good job.

**DS:** Since you mentioned the Chairmen, if you had to pick out three or four of the Chairmen you've known all the time you've been associated with the Commission, what three or four would you say were the most outstanding Chairmen and what were their contributions?

**IP:** Well, I'd start with Cary. I think he really was the person who established the foundation for insider trading prosecutions and insider trader adjudication. That's something that I would give him a great deal of credit for. Manny Cohen also had the great quality of having tremendous knowledge of the historical experiences of the Commission and was

largely responsible for the unfixing of commission rates. It was under his administration that that program really got going and he was very effective. It was really an area, too, where there were great strides made in expanding the enforcement area of injunctions and the remedies and all of that on that area. Casey was also instrumental in some of the areas. But I would say two of the outstanding ones, in my view, are Cary and Cohen.

Garrett is probably the other one who I would put in the top three. Garrett came in at a time when, in the history of the Commission, it was the first time there had been any scandal at the top. That was with respect to the appointment of Brad Cook. That got involved with the Nixon's contributions, Stans, Mitchell, and whoever the third one was. Garrett really ran a great Commission table. Al Sommer was a great lawyer. Phil Loomis, who was a tremendous lawyer, was very capable. John Evans was a very principled person with an economic background.

I think that was a period recognized to have one of the best Commissions in the history of the Commission, when you're talking about the Commission as a whole. Garrett would listen. And remember, he was responsible for my appointment. There would be cases where I would take positions different from his in various matters. For example, let's take in the foreign corrupt practice area, that kind of stuff. Having come from Chicago, Garrett's view was, you know, this goes on all the time, bribery and this other stuff. You can't get too excited about that. My position was that if you allow that to happen, once you get that corruption, it's going to spread in the organization. You can't have these little things going on and have it permeate up the line from the top on down.

Whatever the differences were, it was a pleasure, because it was a very excellent discussion. You would have different views but they would really be considered. I think we reached excellent judgments with good analysis of stuff in that. That area was also one in which the Commission's reputation *really* took off, despite the Brad Cook episode.

**DS:** You talked about the Chairmen. Of course, there were five Commissioners, usually. You mentioned Phil Loomis as having been good on the Commission. And Al Sommer. Who were some of the other Commissioners who stand out in your mind who made significant contributions?

**IP:** I think Barney Woodside is one that would stand out. It's unfortunate I don't have all the names in front of me.

**DS:** You might say a few words about Barney.

**IP:** Barney took over from Baldwin Bane, who was the first administrator of the corporate finance division. Barney Woodside had been the person who was directly in charge in Japan of setting up their securities regulation area after World War II so he had tremendous basic knowledge. But he also had a personality which was very easy to deal with.

One thing about the Commission when I joined it was there was no hierarchy. You could walk in to Barney Woodside's office, a little guy like me, just came in and knew nothing

about this area, and present to him your views. They would be received just as if you had been in the top echelon some place else. It was that kind of thing that permeated the Commission. Nobody was addressed as Mister or Mrs. It was always first names and everybody was on a very even level.

Barney had a tremendous administrative ability and the knowledge of the operation of the registration process, and he was also a good analyst. He knew the business well, so that he was able to do that. He was also a very calm person. He didn't get excited. He would analyze things and had excellent judgment. He could reach good decisions. He was one of the outstanding people that I recall as a Commissioner.

I'm trying to think of . . . Owens, Hugh Owens was just a basic guy, also with the right feel and the right approach. I think it was on Texas Gulf that he really wanted to send the people to jail. It was that kind of a reaction that he had. I remember him well.

I haven't mentioned Ralph Demmler, who was the Chairman who . . . interesting thing about him was that he came in and received a great deal of vitriolic mail about the staff, particularly the General Counsel's office. People were writing to him and suggesting they were Communists and that sort of stuff. He came in too with the feeling that there was over-regulation in the broker-dealer area. To his credit, after six months on the job, when he saw what was going on, he reversed his position so that he understood the need for regulation and was very effective in doing that. I think he also did a good job. I'm trying to think of the others. If the names were mentioned to me . . .

**DS:** I'll throw two names at you: Frank Wheat and Jack Whitney.

**IP:** Well, I think Frank Wheat was a very capable guy. Whitney was a more excitable guy. Wheat, of course, did an institutional investor study which was very good. He was a very competent and easy person to deal with. I remember having excellent relationships with him and always respected him. Whitney, I don't recall anything in the way of a particular program or something that he would push. You take somebody like Smith, I don't remember his first name, he just was also a little bit like Whitney. I remember when I was trying to get the suitability rule adopted for one of the SEC-only brokers. It must have taken me six times to convince him that, since the NASD had a rule like that for the brokers, why couldn't you have one. A sort of conservative approach to positions.

You know, I served under thirteen, at least thirteen, I think, different Chairmen of the Commissions. At this stage they all kind of mesh together, except for the ones that stand out for a particular reason.

**DS:** You mentioned Hugh Owens' connection with Texas Gulf. Why don't we switch to enforcement for the moment. I think Hugh Owens sticks in your mind as Texas Gulf, but he was actually in the chair. Manny Cohen was recovering from his heart attack when the case was actually brought. Why don't we talk about the enforcement area? Why don't you tell me about what you think the most significant cases that you were involved in or took place while you were at the Commission which achieved some change in legal doctrine? Not necessarily just the most spectacular cases or personalities.

**IP:** There's no question that Texas Gulf was a seminal case. Not only did it effectively get to the insider trading as an endemic industry, but it also established some of the basic principles. Incidentally, it was Cary who wrote the earlier decision in the insider trading case that really laid the groundwork. Texas Gulf we lost in the district court and we only won it in the court of appeals. That was basically because of the Cady Roberts decision that Cary had written to establish sort of the groundwork for it.

The other thing on insider trading cases, we were attacked by all the economists who claimed that by not allowing this information to get in through the purchases of the market by people who had the insider information, we were preventing the efficient market from working. I and others had to go around the country debating that. I had a debate, I remember, with Abe Fortas, who was representing some people in that position. I think that opened up a whole area which attacked, really, the fiduciary obligations of the financial community and how they were abusing their position through insider trading. It was a nefarious, corrupt practice which even today exists. And, of course, we didn't have the statute like they have it today, so we laid the groundwork in Texas Gulf for that. I would say of all the cases in the civil area, Texas Gulf.

In the other civil area, there weren't individual cases, but we established the restitution, disgorgement, the ancillary remedies, and that was critical. We pushed that way to where it is, and I think now you see it's accepted today. In our days it was heavily litigated. I remember one Commissioner named Adams, who came from New England somewhere. When I presented the first case where I was asking for a receiver he said, "Where in the

statute does it say we can get a receiver? We have an Investment Company Act. You don't have any other act where it counsels that." I said, "Well, look, it's an ancillary remedy. If the court says we can get it, we'll get it. If the court says we can't, we can't. There's nothing to prevent us from asking for it." And we were successful, of course, in getting it.

The other remedies had not been used in the early days, if you'll look, and I don't know why people hadn't thought about it. There was no meat to our injunctions, there was no effectiveness. It just said, "Don't do it again." I think that was an effective thing. I don't remember any specific case that did that. I'd have to go back into the annual reports to know the first ones that we brought that established that principle.

In the broker-dealer area, I think the important thing that was accomplished there was we first brought, without any statutory power, the supervision principle, that the people up top had a duty to make sure that their people were obeying the law and so on. Eventually we were lucky in getting that codified into a statutory provision. I think that was a very important element. It really put teeth behind the statute in terms of the principles that were allowed.

One of the things that I think we didn't do effectively, maybe because we didn't get regulatory support for it, was in the mark-up area. I still think that's an area that we failed to do well. We didn't do much in the penny stock area. It was not that important in the totality of what we were dealing with. But I think that's an area which we tried

later by rule to do something and got opposition because it would impede the activities of the other brokers. Today we have a better rule on that, but I'm not sure that isn't a cesspool.

I'm mixing enforcement and other things, because you can't really distinguish them too much. I think the over-the-counter area, which was a *real* cesspool in the 1960s, and resulted in the Special Study opening up that area and really giving us a better understanding of it. And the fact that technology, the great movement there was in getting the NASDAQ system started. That was a really tremendous accomplishment. I think that gave us the ability to remove all the secrecy and clandestine activities and all of the fraudulent activities that were going on in trading markets.

In the criminal area, I think first back under Cary . . . that's, too, why Cary in my mind is outstanding: he had the foresight to see there was a deficiency in the way the Commission was approaching the criminal area and the investigative area. That was all sort of factionalized. If regions wanted to do a job, they had to ask the office in New York, for example, to do something for the office in San Francisco. Very inefficient. The FBI, incidentally, also did it that way in years past, a most inefficient system. Cary saw the need for more national programs. When you get the Re and Re case in 1960 or 1961, he suggested that I should go down and become an associate director of the trading and markets division so that we could do more of the enforcement down there with the criminal activity.

Joining the Division of Trading and Markets in both those roles permitted the division to coordinate all of the enforcement activity, including the criminal activity, because the division was then responsible for the criminal reference work to go to the Department of Justice or the U.S. attorneys. In the enforcement area we set up a very small unit, first to do the national enforcement cases. That eventually grew into a much larger unit and, I think, really took off when Stan Sporkin became the associate director.

**DS:** When you started, was it Tom Ray who was the first one in that office?

**IP:** Yes, yes. Tom Ray was the fellow and then he left to join one of the brokerage firms that had had a problem. We had sued a brokerage firm named Anea Pasovine and so they wanted somebody to go in and help their compliance. They took him.

The interesting thing there is, when I asked him, he was the chief enforcement officer, at that time I was director, 1965, who he would want to appoint as his successor and he said there were two people: Larry Williams and Stan Sporkin. With some ambivalence he thought maybe Stan Sporkin was the guy. That was, of course, the best decision that we ever made on that side. And while I'm at it, on the other side, of course, we had Gene Rotberg, who was equally the best decision that anyone could ever have made.

One of the luckiest things I had was that when I had the two of them, I had Manny Cohen as Chairman. I'm not sure I could have done this with another Chairman. I remember calling him and saying, "Look, I've got to have two associate director jobs." He only had

one associate. I said, "These guys are *just fabulous* and I can't afford to appoint one over the other. In their fields they're just absolutely the greatest people you could have for the jobs." Manny was good enough to recognize, with some assistance on my part, that we probably should do it and put those in. The results of that, as you know, were *absolutely fantastic*. We couldn't have done anything better.

So what happened is, going back quickly to summarize, we were able, because of all our national activities, now to really establish the prosecution of white-collar crime. In the Department of Justice, Pete Rosenberg, who was the chief of the appellate section, became very close with us and we were really in a symbiotic relationship establishing law in the white-collar crime area. The U.S. attorneys would be referred by the Department of Justice to us in the litigation stages, and sometimes in the appellate stages, for assistance in their white-collar crime cases. The SEC became really the epitome of the agency that had the best white-collar crime prosecution. After that period, we developed the whole white-collar crime prosecution, including organized crime, where we also participated. We had some infiltration of the organized crime people in later years and so we worked with the people in the various task forces in organized crime as well.

**DS:** It always struck me, and you can correct me one way or the other, that the SEC enjoyed a unique relationship with the U.S. attorneys around the country which none of the other agencies which weren't directly in law enforcement enjoyed.

**IP:** We had excellent relationships both with the Department of Justice and with the U.S. attorneys in the field. For example, in New York, Morgenthau, that was almost like an additional office to us. We would go up there and he'd give us grand juries that would be handling on cases. He would make his office available for our own investigative people. We, of course, sent our people into the U.S. attorneys' offices. In the early years some of our people had been appointed special assistants to the U.S. attorneys in some of the areas. But during Judge Clark's, when he was the assistant attorney general there, there were some problems with some investigations of the Department and so he felt that wasn't a good practice. In more recent years I know they picked that up again and have done that.

We also had an excellent relationship with the other parts of the Department of Justice, the Solicitor General's office. Because of the competence of the people at the SEC that I mentioned earlier, we were one of the few agencies that the Solicitor permitted to argue cases in the Supreme Court. Roger Foster had argued the public utilities American Power and Light case in the Supreme Court and had won that, of course. From time to time they permitted the SEC lawyers to not only write the briefs but occasionally to argue cases before the Supreme Court.

While we're on the Supreme Court, so I don't forget it, in the beginning, of course, with the conservative Supreme Court, the Commission didn't have good success. But after their change in the hierarchy of the Court, they did get a period where the Supreme Court was very supportive, particularly when Douglas was on the Court, and so they were

getting good cases decided. For example, during that period when Justice Goldberg was on, they had the capital gains research case, which was tremendously important in establishing the fiduciary responsibilities and anti-scalping things. Now more recently you've had the cycle go the other way, where the Court has eroded the effectiveness of 10b-5, holding you couldn't have aiders and abettors, for example, except now under the statute, and has also limited its application.

You get cycles in this thing. I think now we're in a down cycle, where the courts are not as focused on giving the liberal interpretations of the Act that was intended in Roosevelt's message when he adopted it. You may recall he said that this Act is intended to be liberally construed.

**DS:** You mentioned before, and this is interesting, that in the enforcement activity you started to appeal the courts not taking specific relief in the securities statutes but looking to the general equitable powers of the courts. In other words, it always struck me that you were saying when you went to court, "Treat me like I'm another litigant. As a litigant I would be entitled to all kinds of ancillary relief in a proper case." That always struck me as a very creative approach for an agency who, in one sense, is bound by the specific words of the relief specified in the securities statutes. I was just wondering how that developed in the Commission to look to the judicial power, as it were, for your relief, rather than believing you were constrained by the words of the securities statutes.

**IP:** In part it came about, David, because we were getting these decrees but they had no teeth in them. You always look about for something that can help you: what is it you can do. In looking at other cases, I was reading all the advance sheets, for example, I would run into cases where I would see these relief measures had been asked, some had statutory powers to do them. But in discussing the statutory power, you'd only find language in the cases that would say this isn't part of the old equity relief.

Using that background and taking cases that were really egregious . . . that was an important thing in enforcement. You picked your cases, if you were going to make it. Just like they did in the public utilities case: they took the best case. They were being sued all around the country, you may recall, but they took the best case to take to the Supreme Court.

We tried to do that in the enforcement area as well. We would take those cases. As I mentioned before, one of the critical things was the attitude of the Courts. We were still in a period where we had good support from the court: they were looking at the statutes in their totality and their global aspects as what were they were intended to do. They were intended to protect investors. The conference report on the securities laws said, "We're going to do away with caveat emptor now, we're going to have caveat vendor." That was recognized by the courts for many years. As happened there for a period of time, courts forget that and so you get more technical and constrictive reactions and interpretations in the courts.

We were fortunate in those years that we had courts that were acceptable to fulfilling the purpose of these statutes. To do that, if you were an equity judge, there was no reason for you to say that I can't use my powers. Remember, we were not asking them for expansion of the SEC's powers. We were saying, "Judge, you have a case. It's your injunction, you ought to make it effective." I think we were successful in that, incidentally, just as we were successful in getting the Tunney Amendment passed by the anti-trust laws as a result of the case that we had brought in the Vesco action, showing that there had been influence by, or attempted influence, by IPT on a decree.

I think the agency from the very beginning, as I mentioned, very early had these tremendous people with such brightness, skills, abilities, who were looking at this in the area of how do we make it effective, how do we accomplish not just the technical part of the statute. What we want to do is create a culture in the industry that we're responsible for that quality, good faith, integrity, will in the long run give you greater profitability. I think we have established that, as a general thing, despite all of the restrictions and all of the failures that we've had, we still have the best capital markets in the world, recognizing that there are great deal of problems, as the present activities in the accounting areas show.

I think that's one of our failures: that we were unable really to establish an effective system for the auditors to keep their independence so that they would perform in that function.

**DS:** We will come back to what the Commission might have done in other areas a little later. I wanted to get back . . . you mentioned the Special Study a couple of times. Of course, we had this Roundtable on the Special Study, and I think you made a lot of your views known, as you were moderator at that panel. But looking at the SEC itself internally, what impact do you think the Special Study had on the operations of the Commission going forward from the Special Study?

**IP:** I think the Special Study was really responsible for the unfixing of commission rates, ultimately. I started to say, if my recollection had been better, I would have remembered that you forecast in the Special Study that there was going to be this tremendous back office catastrophe and the clearing catastrophe. It came as a shock to me when I first was alerted to it as a result of reports that I received on a weekly basis of what the complaints were in the particular areas and recognizing that area was such. We sent out a request to the brokers who were on the top ten of the list to tell us why they were having these problems. It was only then that I backed up and I went to the Special Study and read your report, which laid it right out as if it was contemporaneous. I think that the whole capital markets trading system was affected by the Special Study. We wouldn't have pushed the NASDAQ thing had it not been for your people; we wouldn't have pushed the national market system, as I said before; we wouldn't, as I said before, have unfixing the commission rates.

I think the whole tenor of the Commission was changed because it now got, as a result of that tremendous study, a better understanding of what was happening in the markets. I

don't think the Commission had that knowledge. It didn't understand it. I think the Special Study just opened up a whole new area. And, of course, Milton Kroll, when he came up with the integration of the '33 and '34 Acts, also set the groundwork for that development, which has become very, very important to the Commission's accomplishments.

I think the Special Study really started the Commission off on a whole new approach to its regulation of the markets. Took the emphasis off of the registration process, which was the big thing they were concentrating on, and put it into the context of really understanding how the markets operated and what the problems and issues were that the Commission had to attack. I think it was really the greatest contribution of any study since the pre-Securities Act legislation, in terms of directing the Commission's focus.

**DS:** The Commission during the 1930s had been involved in lots of regulation with respect to the New York Stock Exchange and the specialist system, etc. What happened after that to de-emphasize that area that then had to be almost rediscovered, as you put it, by the Special Study?

**IP:** I think because the emphasis initially was on real corruption. You had the Whitney case, and so that was in the corruption part of the operation. It didn't really go to the operation of the Exchange. I don't think the Commission really had the trading expertise or the knowledge of how that system worked, even in the days that I was there. I think we didn't have as intensive an understanding of the internal operations of the specialist

trading and some of the activities that were going on that were inimicable to proper trading. You know, even with the NASDAQ you have problems in terms of the trading abuses there. Trading activities are such a sophisticated area that not many people know about it. When we were doing the unfixing of the commission rates, it was just astounding how the people who were running the broker dealer firms had no knowledge of how the trading was being done. There again the Special Study was really an education superb to the Commission in giving it an understanding of how the markets work, in addition to educating the staff.

**DS:** To pick up something you were talking about before, that Bill Cary, in effect, sat you down with your General Counsel and sat down with the trading division. That you might say was sort of one step in the centralization on the national approach to enforcement. Then, of course, some years later that was followed up under Bill Casey by the establishment of a separate enforcement division altogether. Was that a development that was sort of in a straight line from Cary's first steps to then the creation of a completely separate division? How did that all come about?

**IP:** Well, from my own personal discussions with Casey, I think it came out that one of the reasons, may not have been the sole reason, was because I was both in the regulation and enforcement areas. We had some divergent views on how far things should be pushed in the regulation area. He was about to leave the Commission and he felt that if I was still in the regulation area, I might influence its subsequent successes to un-do some of the

things or to push in areas that I might have been more aggressive in than he was in terms of that.

My personal feeling at that time was that he wanted to get somebody else to do the regulation so that my impact would be less effective in that area. The enforcement didn't change. I mean, the scope of the enforcement was the same. He may have felt that by concentrating it in a single division, getting it back, might give it more effectiveness. I remember talking to him when he was about to leave, saying, when we were discussing this, saying, "I don't think, Bill, that you're going to be able to keep some of the things that you now have, that events are going to overtake it." Institutional membership of exchanges, you remember, was a big thing, and so in one way or another they were going to get it. Casey was that kind of a candid, open guy and I had that relationship with him, and he said, "You're probably right, Irv, but it's too late for me to change my mind, in effect, or do anything else."

I think the advantage in having the enforcement and regulation together, particularly when you had two brilliant people like Stan Sporkin and Gene Rotberg, was that you could see the interaction of the two, and regulation could support enforcement and enforcement could support regulation. You didn't have to go convince somebody else to do something. You saw it right there together on how one could complement the other and make them more effective. I thought that the two together were excellent.

In terms of administrating both of them, maybe today Casey is right and that the exponential growth would have made it impossible for a management person to really do as good a job as two different people could do, concentrating in their particular areas. Even though he may have done it possibly for other reasons, I think maybe the division in the long run proved to be an appropriate one.

**DS:** Again, staying with the development of enforcement, when you went down to the trading division from the general counsel's office, did the regional offices perceive at that time that this was going to result in a shift in the centralization in Washington? Did they ever perceive that? Or did it just sort of grow by itself?

**IP:** In the initial stages, of course, we were fairly limited in what we were doing as a small group. Eventually, you're right. There was some jealousy that developed, I can remember, from, let's say, the New York office calling Stanley and complaining that the office was doing some cases. But as you recall, I mentioned early on that we had kind of shifted the home office from a supervisory role in the enforcement area to a service role, and that helped us. When we began the national program, most offices were so great in having us have somebody that could help them or take over cases from them and they had enough to do. It was only when we really got a big case . . . and I would say principally this was New York. I never remember any other regional area ever calling Stanley or calling me and saying, "Why are you guys doing this particular case? Or why are you doing that?" It may have been because New York was more prominent in the people who were coming in and going out, more of a turnover than we had in the other offices, where

they had established their reputations and didn't need that kind of stuff. But you're right that the centralization will always have that problem, that people will say, "Why did you steal this case from me? We should have done it, not you," particularly as these cases became much more important in the public arena.

**DS:** Visible.

**IP:** Yes.

**DS:** What would you think, and I'm not talking now in terms of a particular Chairman or a particular Commission, what areas do you believe, looking backwards now, which is unfair, of course, to the people who were there at the time, what areas do you think the Commission under-emphasized in the years past?

**IP:** We were probably not as rigorous in the trading area as we should have been. I mean, we were attacking the over-the-counter area. I don't think we really put enough emphasis in the exchange area. And then probably not as much emphasis in trying to push the national market system in that area. Also in the analytical area I think we missed the boat. We didn't understand some of the conflicts in the analysts' community that are now surfacing. I think that we probably were not as effective in the IPO area and you see it . . . the technology IPO area probably could have been prevented in part if there had been more intensive inquiry and investigation of how these IPO's were being promoted and what the interests were in the particular people who were doing that.

That gets back to my point that one of the failures is to prevent things from happening because you don't see what's going on. You're so involved in handling the particular day-to-day matters that you don't understand the others. That was the genius of the Special Study. We were able to divorce a group of people and put them out so that they understood that. Now we're seeing some of the IPO practices belatedly that probably could have stopped some of the over-reaching that occurred and some of the bubble that occurred in the technology area.

I think, generically speaking, as I look at any agency, I think the ability to divorce off and get a group of very bright, talented people to really try to understand the basic operations of an area from the ground up is critical to the agency to be able to do its job. Otherwise it's kind of trying to hit the particular problem of the day.

The accounting area is probably the epitome example of that. We now have an accounting practice that is breaking down. The orderly function is breaking down. If you go back and look at it, it kind of crept up. When I was there, one of the problems we had was with independence: how far should we permit the accountants to go in their auditing and non-auditing services. I see now it was a mistake to open that area up. The more you open that area up . . . once you let somebody get in the door, it starts to expand, where now the non-auditing functions are really the profit in that business and the auditing is second-class. I think probably that inroad has caused the present problems as much as anything else. It's critical to maintain that independence of the auditor, and the conflicts are so great.

I was just reading in the paper, I think today, where somebody said the conflict is so tremendous. Remember, the managing partner, if he lost Enron as his client, he's out of business. He's lost his whole thing. That conflict exists, particularly now when you have non-auditing services that are probably giving more revenue than even the auditing, you have that critical function. I think the accounting area is also one where those mistakes were made, but that's hindsight.

**DS:** The Commission has always leveraged its scarce resources by depending upon, in a sense co-opting the professionals, the lawyers and the accountants. To sort of paraphrase the line of Stanley's in the Keating case, "Where were the lawyers, where were the accountants," how would you characterize the Commission's success or lack of success? You just touched upon it with the accountants. Do you have any further thoughts on how the Commission itself has been successful or unsuccessful and, as I say, in leveraging its resources by working through the professions?

**IP:** I think I have to start at an earlier point. I think the Commission was successful in establishing a principle of self-regulation or self-discipline in the brokerage community. I think that was a basic success. The Commission, as you pointed out, with its scarce resources, can't be there looking every day over what's going on. I think we do have a better culture in the management of financial institutions, including, for example, the mutual fund area. I mean, there I think the success has been absolutely unthinkable in terms of how well it has worked in that area. In the broker dealer area, it has probably not been as successful. You still have that culture that was instilled because of the

supervision responsibility initially and the recognition that if you've got good compliance, it's going to keep down the costs and lawsuits that would result from your malcreants, who you'll always have in those areas.

Turning to the legal profession, I think that was a critical development. You did have reputable people in this industry in the professions who were advising their clients in the highest ethical standard. And you had a group of lawyers out there, some of whom were adversaries initially, some of whom were trained at the Commission and then went out, who established that kind of culture among the professions, that the best advice for their clients was their compliance with the law and not an attempt to corrupt it. That may be being eroded now because of the change in the business competitive area that the profession has taken on. I think that is a deleterious thing that somebody as old as I am recognizes.

I remember back in the early days, those ethical things were ingrained in me. I see them being eviscerated in the tremendous drives, because they're now becoming more of a business entity than a professional entity, if I could describe it in general terms. I think that's been the greatest change in the profession. I think the SEC still has a group of professionals out there who respect the agency and understand their clients' best interests. But whether it is as great as it was some years back, I'm not sure.

**DS:** Getting back to your career now, personally, how long did you serve as a Commissioner?

**IP:** From 1974 to 1980. Six years.

**DS:** During your time as a Commissioner, what activities or actions taken by the Commission itself do you think were the most significant, if you can separate all the rest of the time you were at the Commission.

**IP:** It's very difficult for me to pick out certain things. You know, I can remember the negatives more than I can the positives. For example, my own personal view, and I think it was shared by Evans, is that our failure to be able to convince the Commission it should oppose the enactment of 28(E) of the Securities Exchange Act, I think was a basic error and I still believe it's a basic error. Partially based upon my experience in the enforcement area, I realize it was opening up a cookie jar and it was the worst thing to do. I'm not sure now that the 12(B)(1) plans, which I also was against, was not a bad practice.

I remember the negatives now. The positive areas? No, I really can't think of anything. That may be because I remember the things I was personally involved in. When you're sitting at the Commission, it's more in a consensus area.

I think one of the accomplishments, but this I give basically to Stanley, is the Foreign Corrupt Practices Act. That he single-handedly was able to do with Proxmire. I think Bill's objective wasn't in favor of it and Stanley as a result of the enforcement cases that we had brought was able to do that. That, I would think, is an accomplishment. Oh, the

other thing, really in the international area, although it really wasn't a Commission function, was that we established a relationship, first in South America, with the people down there, trying to create commissions. That was effective in getting the first real oversight of the capital markets in that area going, as a result of the organization that was set up with the Canadians, South Americans, and the SEC in doing that. That, of course, ultimately has led to IOSCO, because everybody else wanted to get in. That was one of the accomplishments to demonstrate to the world that the SEC's regulatory system was one that was probably the best in the world. For example, the British had thought it was lousy, now even they have come around to it and the rest of the world has. I think that is one of the accomplishments that was started certainly by the Commission and in our participation in the various groups that were set up. I really can't think of anything other that we did that I think was so extraordinary.

Of course, the commission rates were unfixed in 1975. But that had pretty much started before, so I think we were just piggy-backing on that and had done that. There was some movement in that area in setting up the composite vote system, but most of that had already been started and so the impetus was there.

I can't remember anything, without going back and looking at it. The funny thing is, I can remember the older stuff better than I can remember the new stuff. If I look at the annual reports, I could probably point out some of the things, but I can't do that off the top of my head.

**DS:** What effect on the Commission itself did things like the Government Sunshine Act or the Freedom of Information Act have?

**IP:** I think the Government Sunshine Act really was not completely positive. I think what happened was that, instead of having the discussions in the open meetings you would have to do them indirectly through clerks or somebody else in discussing that.

**DS:** You would have discussions in closed meetings?

**IP:** Yes. Well, in a closed meeting you can only discuss things that were exempted.

**DS:** Now.

**IP:** Yes. But in the days that I was there, you could really have a good discussion on things other than enforcement matters in a closed discussion so you could get out a lot of the things. You've got the surface of "open" in the Sunshine, but you still have this being done in some way other than in an open discussion, because they're going to do them by memorandum or something else that's going to serve. So I think that was not a completely beneficial Act. Whether it prevents corruptive activities in the nature of it, I'm not sure. It did have a limitation. It's always that the agencies find a way around it. They can still do it indirectly, if they can't do it directly in the open meeting.

I think the FOIA is probably beneficial in preventing things from being concealed.

There's always conflict between open discussions and the ability to sit down and really have an intensive discussion where you can argue things out and get the benefit of it.

Maybe with the FOIA we don't really need the Sunshine Act.

But, you know, today you see things in the political area that cause you to have concerns, when people don't have to reveal all of the contacts that they've had. The Commission, at least the SEC, is in a different area, because it doesn't have the ability to lobby it as much, I guess. There was a long time, and I think I may be wrong on that . . . you can probably call up a Commissioner and talk to him and there's no inhibition on that. I think it's a mixed bag.

**DS:** Over its history, the SEC has had a few internal integrity problems, but by and large it has an *incredible* record of being free from those kinds of problems, as against other agencies of government. To what would you attribute this very clean record?

**IP:** First of all, that was one of the most critical things for us. In my stay at the Commission we had only one case where we criminally prosecuted an SEC employee. It happened to be the legal assistant to a Commissioner, who attempted to influence the Joey Abrams case. Of course, we found out he got the pay-off through assistance in buying some property here in Washington. Nate Sametti, I remember was the person who we used to get the facts, and we successfully prosecuted that case.

The Commission, whenever we had anything like that . . . I also had another individual, also an attorney, who had engaged in trading without reporting it. Once I got the suggestion that there might be something going on, I put people on that, from other things, and put that in emphasis, and discharged that person. There was always an emphasis that in our own practices we had to be in the highest integrity.

It reminds me of something that I used to say when people would raise the question with me: Is it legal to do something. Is it legal to do this? I said, that's the wrong question. We have to ask is it fair, is it proper to do it. Whether you can legally do it or not, as a government agency, we can't tolerate this. We have to have the highest standard. You don't do it if you don't think it's fair. That really helped us, because before they had the duty to advise people of their rights, we were doing that. We did all of those things in anticipation because we saw them coming down the road, that they were going to do them, so we did that. It was a priority project in the Commission that if you saw something that wasn't right, you went after it.

That reminds me of Brad Cook. When that began to break, he called me up to his office. He had some person who was his assistant, I don't remember the name of the fellow, all I knew about it was I had seen a little article in the paper about the Stans and Mitchell thing and his apparently meeting with them in Texas somewhere. I said to him, "Look, I don't know what you did, but my advice to you is either . . ." I asked him first had he now met with Stans, I think it was Stans. I said, "Was there another person there when you met with him?" "Yes." I said, "Well, they're trying to set you up as the fall guy

here.” I said, “You have your choice: You should either go up and tell the U.S. attorney everything that happened, or you can claim self-incrimination.” Not the same.

I saw him the next day. As I was coming to the Commission, he was coming out. He said, “I’m going to take your advice. I’m going up there and tell them.” Instead of doing that, as you know, he perjured himself in various things. It’s that kind of thing that we attacked. After that, of course, we were working with the U.S. attorney on the case and we were responsible for bringing the indictment against these people. While we weren’t successful, because of his perjury, it opened up to later prosecutions that were successful.

I think the agency always put integrity in the forefront. If we’re going to regulate, we have to be the cleanest ones in the business. Wherever there was even a smell, an odor, of anything that was inappropriate, that’s where we put all our focus. I think that’s been probably what’s responsible for maintaining its integrity: that culture.

When I came, there was never a suggestion of corruption. These people weren’t in that job for money. They could have gone out and eventually made more money. They were in there because they believed in the efficacy of these Acts and their purpose. That was its great strength. It came from the beginnings of the Commission. That instilled the culture that carried on for years. Among people who stayed there for years, you had that intense public interest, public service. I think you found that over the years there were people who remained who had the same philosophy and who found the same satisfaction in terms of being able to do that kind of a job.

Indeed, when I used to speak with assistant U.S. attorneys who would revolve over and over again, the one thing that they would say about their own professional activities was that they missed the fact that they could be in a professional job where they were really doing something that was accomplishing something in the public interest and that was really something very challenging and substantial and significant, instead of representing some person here on some little rinky-dink kind of case. I think that culture helped to keep the Commission from the usual corruption that you found elsewhere. Also had, of course, very rigorous rules on what you could do when you were trading, and I think that helped it, too.

**DS:** There was always, of course, from time to time, attempted political interventions at the Commission. I remember you were involved, going way back, involving Bobby Baker. Was that on a registration statement?

**IP:** Well, technically what happened is people learn very frequently that was the worst thing to do. The minute you try to put some political pressure, whether it was Dixon Yates years later, it eroded, whether it was Bobby Baker, or whether it was somebody else. What used to happen . . . I think it was reflected when I was nominated to the Commission. I went over to the Hill. I had, remember, no political base. Garrett had been the one who really was pushing. He was the one who was responsible for it and helped writing it. When I went over there, I received an open sesame vote from the Congress and from the press.

What you mentioned was so true: they looked at our agency . . . even the press had a respect for the agency that had been engendered by its reputation over the years. The Hill was over there, and if I would get a call from some Congressman's assistant, I would just say, "This is not a case for the Congressman to become involved in," and that would turn it off. We had, over a long period of time, excellent relationships. Now, when we had the Otis case and they went over to the Hill and got the chairman of the House Appropriations Committee to try and cut our budget and that sort of stuff, that was an aberration. I think over the years our relationships with the Congress were excellent. I mean, they relied on us. They wouldn't come over and investigate. They would come over and say, "Can you tell me about this or help me how to do this."

Also the way we operated, incidentally, with the FBI. We turned the FBI around. You know, under Hoover they couldn't do anything with anybody else, that sort of stuff. Clandestinely the people used to come to us and we would help them. They understood we were that kind of an institution.

All of those things kind of fit into the overall reputation that you refer to of the SEC. And you remember it was rated in every investigation as being the most outstanding independent agency of its time. Indeed, there was one occasion when the GAO came in and spent a year or so going over our records and, I guess, filed a report with the Hill. We received a call. The call said, "Would it be helpful to you if we released the report or not?" We didn't know what was in the report, but we told whoever the congressman was it wouldn't be helpful. It never saw the light of day. You will recall, you can remember

the name of the person who was responsible on the Hill for going the Special Study route. The Congressman from Chicago. Remember that? Remember his name?

**DS:** Chicago. Harris?

**IP:** No. You remember the name. I couldn't remember. He called Bill Cary and said to Bill Cary, "Would you like to have a legislative investigation as a result of the Re case?" Cary happened to call me and I said I thought it would be better to have the Commission do it and that's, of course, finally what was accepted by that Congressman. To his credit. He could have made a big deal about it and had a lot of publicity brought to it. Instead of that, he yielded to the Special Study.

**DS:** On the Congressional side, relations with Congress, not involving specific cases or anything like that, investigations, it's my impression, and I wonder if you share it at all, that over the years the Congress has become much more active in regulatory matters falling under the Commission's jurisdiction than in the past.

**IP:** Yes, I think part of that, David, was due to the fact that, remember, as you grew exponentially, businesses came lobbying Congressmen. For example, when the FASB tried to do something in the accounting area that the community didn't like, they would go over to the Hill, partially because they knew it was difficult to do anything at the Commission, that the Commission was by then so damned independent, you couldn't do it. The Congressional area was one in which they went. I think you're absolutely right,

that in recent days they became much more interested in it than they were in the early days, although, in the very early days of the SEC, they were very instrumental in getting the legislation through. That's the whole Corcoran-Cohen period, which is before my time.

**DS:** We were just speaking at the end of tape one that you left the Commission after how many years at the agency, and my question was: how did you find things on the outside as being different after you were on the outside from the view from the inside, so to speak?

**IP:** Well, I had been at the Commission almost thirty-four years and it was really my major activity. I had had short legal practice before that and, of course, was in the service for four years. Part of what I found is based on what I decided I didn't want to do: I did not want to go to a law firm, because I wanted to have the freedom to choose the kinds of things I wanted to work with. It just happened coincidentally that Don Regan of Merrill Lynch wanted somebody to come up there and assist them in their compliance area. I agreed I would do it only on a 50 percent basis.

**DS:** Don Regan was always one of the smartest men on Wall Street. He went after the right guy.

**IP:** Well, thank you. But I said to him that I didn't want to be one hundred percent. I said I would give them fifty percent of my time, roughly. By the time we actually worked it

out, he had gone to Treasury as Secretary of the Treasury. When I went up to meet with Bill Shrier and Dan Tulley, who were taking over, I followed up on that.

I think if I tell you a story about our meeting, it will demonstrate what I found on the outside that was kind of helpful in terms of understanding. The first thing he said to them, when he was there and they were there, is “Irv, tell them your shoe story.” I don’t know whether you know my shoe story. I told them my shoe story, that when I got out of college, couldn’t find a job. I had a friend whose father owned a shoe store and he showed me how you purportedly fit shoes.

I went out and got a job on Saturdays at an outfit called A.S. Beck that sold shoes for \$2.95 or something. It was probably the most expensive thing we had. That store had a rule that you couldn’t sell a customer a shoe unless you measured her on the instrument that you used, with the name that escapes me at the moment, and you had to give them that size. Now remember, we’re selling shoes for \$2.95 and we had that. I once had a lady who didn’t want that wide a shoe. She measured, let’s say, for a 4C or D. She didn’t want that, she wanted a more narrow one. Under the practice in the store, I had to take the shoe with the sales slip to the manager and had to say, “This lady takes a 4-David, she wants a 4-Charlie, and she insists on that.” He would come and say to the lady, “This is going to hurt you. You’re going to bring them back. But if you insist . . .,” and they’d stamp the damned sales slip and the shank of the shoe and all that.

I worked on Saturdays; that was the only day I made any money. What happened in this particular case was the next Saturday the woman came back and she said the shoe didn't fit her. Of course, I'm trying to wait on four or five customers at the same time. She, of course, is getting more and more excited when I tell her, "You know, we told you this wouldn't operate." Eventually we had to give her back her \$2.95 and take the shoe back. That night when I met with the manager, we were taking inventory, I said, You know, "We're stupid. You know what she did is she disrupted me. I must have lost four or five sales while I was trying to deal with that complaint. Why don't we send her across the street the next time, to the shoe store across the street, and let them have the problem."

I told that story to Don Regan, when I was saying in a broker dealer outfit, sometimes the best thing you can do is to send the customer across the street when they wanted something. He had never forgotten that. That story, of course, exemplified what I was finding at Merrill. They wanted to have a compliance thing that really worked. They had thousands of broker dealers out there and they needed a system that would really be able to supervise them. That was an eye opener to me, in going out there and working for a broker dealer firm. They really wanted to build a culture from the top, recognizing that with thousands of people they were going to have these problems, as they have them today, with renegades or miscreants. And so that was good.

Then I did work for the NASD. For example, I did short sale problems. Wanted a short sale report. I did that for them. Most of my work was preventive and less defensive. I had some litigation stuff that I was doing, investigating stuff with various people. But I

found in the people that I was dealing with, and maybe it was because of me, I don't know, I didn't find the kinds of things that would be upsetting. Nobody came to me and said they wanted to do some rinky-dink and would I help them. I didn't find that.

**DS:** Well, we've gone on for a long time, Irv, although not nearly long enough to cover your career at the Commission, and we haven't gone into your many very well-deserved honors over the years. You made some notes. I'm sure there are a lot of things I didn't ask you about, so what did you have?

**IP:** I don't remember. You know, you asked me about cases. I think one of the cases that came to mind, showing what we were able to accomplish, was in the interpositioning area. Remember, was it the Delaware Management case?

**DS:** Yes.

**IP:** We had that. That was an important thing. One of the first criminal prosecutions was the Cosby case. That just involved a guy who was setting up a corrupt mutual fund, as I recall. But, you know, the interesting thing is you don't have many criminal cases in the mutual fund area. The system has really worked there and I don't know . . . you probably have a better knowledge than I do as to why it has worked so effectively.

I think part of it is due to your organization that instilled that same kind of culture. The ICI had more of a non-trade association and a more regulatory atmosphere, although your

members may resent that description. When I used to go and listen to your speeches, they sounded more like an SEC guy than it did like the president of an ICI. I think that's one thing, talking accomplishments, that shows how an industry, if it's properly run and advised, can really profit. What the hell has happened in that industry. It's just incredible to see what that is. That's one thing I wanted to mention.

Now, I didn't mention the extradition case in Canada. You know, that was a big problem in the early days, the boiler rooms coming out of Canada. We had this extradition case, that wasn't successful, against two fellows named Link and Greene in 1954. That created a better atmosphere in Canada, because they threw them in jail up there. And then, I can't remember who was the inspiration for this, it might have been Stanley, he set up a Canadian-restricted list so that people would be alerted to that. That ultimately became the foreign restricted list.

**DS:** Peter Adolph.

**IP:** He was the guy that suggested that?

**DS:** He worked on it, I know.

**IP:** And then in the criminal area, we of course had the United Die, the Turner case, that ran for eleven months and established the principle that the length of the case didn't mean you didn't get due process. They argued on appeal that it had been eleven months, how

could someone get a fair case. So we had that. And then Alan Levenson was responsible in an investigation he was doing for a perjury case in which he established the principle that an answer that says "I don't remember," if done enough times, you can convict the guy of perjury.

It's that kind of stuff, I don't remember all of them, that created an area out there where we were really advancing the criminal law. Here's this independent regulatory agency, pushing all these things, and with the cooperation of the U.S. attorneys doing that.

After the Re and Re case, when Peter Morrison went up to the U.S. Attorney's office and prosecuted that case, as a result of their desire to try to set up an office, that of course opened up the whole area of criminal enforcement of SEC cases. That was the start of the U.S. attorneys' tort section, which now has become a major part of their prosecution area. See if I can think of anything else.

Then you had the Doyle Canadian Javelin case that Gene Rotberg had been responsible for and also had that . . . we also did something too, I can't read my note here, but we prosecuted professionals, the Benjamin case, I remember it now. That's another thing. You raise it and it's so right: where are the lawyers and the accountants. If you have a corrupt lawyer out there, he's going to do damage by just advising people how to engage in criminal conduct.

The Benjamin case was a case like that, where he was giving legal opinions to people that it was okay to sell securities. We successfully prosecuted that case. The court of appeals judge wrote a wonderful paragraph on the ability of lawyers to be as detrimental as a robber with a gun or something. I don't remember. Very much better done than I'm doing it. Can't remember his name. But seminal things. It's that kind of stuff that I think you'll find as you go through the SEC's history, that it accomplished so much not only in its own area but in the ancillary area of criminal prosecutions. And even today I think it's accomplishing the same thing.

**DS:** I think one of the things that exemplified your approach, if I can jog your memory a little bit, I think Jerry Landin told me, who was an assistant U.S. attorney, that when Suterma was convicted, he said, "You got me for spitting on the sidewalk." What was that kind of thing?

**IP:** Well, sometimes you couldn't make a case directly, so you had to be ingenious in picking it up. He failed to file Form 4 report, and so when we were trying to prosecute him, we picked him up. We filed a complaint first, as I recall, on failure to file a Form 4 report, picked him up, and prevented him from fleeing the country.

We did that on a lot of things. For example, we had a Canadian case involving a boiler room down here. We were able to find out up there who the perpetrators were and got a hold of the telephone slips. When we brought him in before the grand jury, instead of just going on the substance of the case, we asked them whether they had ever been in

Canada. They didn't know where Canada existed, that kind of stuff. We indicted them for perjury and that, of course, broke the case.

Had the same thing in a corruption case, in one of our corruption cases. I've forgotten, this is a second one. We prosecuted a young fellow from the Corporation Finance Division who had leaked in the Georgia Pacific case. His mistake was that he had gone before the grand jury and testified. I guess he had convinced Milt Freedman that he hadn't done anything wrong. Milton Freedman was his counsel, permitted him to testify. We, of course, were able to show that he had falsified it because, again, coincidence. He had been in a car pool with me and I remembered on Fridays that he was always going with a bag of something up there. We tied that in and showed that he had had the associations that he denied. Little things like that. You always had to look.

That's why Stanley and Rotberg were so tremendous. These were imaginative ingenious people who could come up with novel approaches to traditional things. I think that that was the genius of the Commission: that we had people like that who were not stereotype and were not pedestrian. They always could think of ways of doing it.

When we had the back office crisis, Stanley goes back to the statute and said we can suspend the broker dealer. So you get in somebody like Lehman Brothers, a tremendous thing, and you say to them, "Hey, unless you clear this up, we're going to suspend you." Well, they don't want that. They've got five hundred accountants or fifty accountants on the job the next day.

It was that kind of stuff that the Commission had. Going back even to the pedestrian registration statements, they came up with the letter of comment, which had never been thought of. Then you had the ability to come in and get a no action letter. Manny Cohen was responsible for that kind of stuff. There was a lot of that going on in the SEC, David. You, of course, are aware of that, that it was just a place that had that kind of germs of thinking, seminal kinds of documenting. We weren't restricted by whatever was out there. They'd always look for a way to avoid it. That was one of the critical reasons it was so successful over the years.

**DS:** In this area I remember a personal interaction with you on this enforcement technique. We were afraid that the Res were going to leave the country, in the Re and Re case, after the commission expelled them. And, indeed, one of them applied for a passport. The question was what to do. The criminal reference report wasn't really ready yet. It was still in an informal stage. You kept on asking Ira Pierce and myself: is there anything simple you could allege that is clear illegal beyond all doubt. We came up with, under the Exchange Act, a specialist cannot take a discretionary order under a specific prohibition in the Exchange Act. Ira swore out a complaint and we had them arrested for accepting a discretionary order. The evidence was there. That held them in the country.

**IP:** You mentioned something that I think is critical. When you're dealing in a complicated area like the securities area, you've got to make it simple. Even if you're trying criminal cases, you've got to make it simple. That was one of the geniuses of Stanley is that he could take a very complicated case and get to the core of it very quickly.

You know, the only reason that worked is because of our relationships with the U.S. attorney. I don't know whether today they could walk into a U.S. attorney and get the same thing accomplished. We had those tremendous relationships. For example, when we had the Burrell case, they wanted me to go down to Brazil to try and convince him to come back. We had the Gilbert case. Morrison and I went down there. It was that relationship. They had tremendous respect for the agency. It was that cooperation that made a lot of the cases so easy to prosecute. I mean, somebody else wouldn't have spent eleven months on a case, if you hadn't had that pre-relationship with them. Once we got that tort section there, we didn't have to go to try to convince them to take the cases, as they did it on their own.

**DS:** Irv, I want to give you a chance to sum up. But I would mention specifically that in a book published about three years ago, which won a Pulitzer Prize, called *Freedom from Fear*, by this guy David Kennedy, I think his first name is David, who went through the Depression and the New Deal and discussed the achievements of the New Deal agencies. He specifically points out that the experience of the Great Crash and the Depression really undermined the confidence of the American public in the securities market. He observes that one of the greatest contributions of the New Deal in this area through the SEC was to bring some integrity back into the basic information available to the public through the registration process and the policing efforts of the SEC. That, therefore, made accessible to the general public the kind of information that only the most wealthy investors enjoyed before the Great Crash. He seems to believe that the SEC is an agency

that really did make a difference in preserving our free enterprise system. What are your thoughts about the role of the SEC since its creation to the present time?

**IP:** I think it was critical in the area. I would second what he said. I think that's so. I think you have to recognize, however, that we get cycles where, somehow or other, people forget their responsibilities and . . . I'm reminded of Judge Learned Hand's statement when he was asked about the bribing of one of the judges on the second circuit in the basketball scandal. He said, "You know, every ten years you get this kind of thing, where people forget and they engage in these criminal activities."

I think the agency has been tremendously successful. However, in any kind of activity, you're going to get the problems such as we're having now. I think the agency at this point is confronted with one of the biggest challenges it has ever had, which is the failure of its auditing system to protect the markets, particularly since things have become so complicated and complex that you have to analyze financial statements in a way that you couldn't do before. And I think that . . . you may have mentioned this, but I think Harvey Pitt is on the right point in saying that you've probably got to change the disclosure system now into a more continuous disclosure system, at the same time. If you're going to preserve the private sector's auditing, you have to do something to really make them successful in re-establishing the confidence in them. You can't have successful capital markets without sustainable, recognizable, reliable financial information in public areas. I think you're right the SEC as an independent agency has had an incredible influence in

maintaining the global stability and things in financial markets' pre-eminence in the world.

**DS:** I think with that we can close. We've been at it two and one-half hours.