

**Securities and Exchange Commission Historical Society**  
**Interview with Karl Barnickol**  
**Conducted on June 3, 2013 by Robert Colby**

**RC:** This is an interview with Karl Barnickol for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm Robert Colby. Today is June 3rd, 2013, and our interview is being conducted at Mr. Barnickol's home in St. Louis, Missouri. Mr. Barnickol, thank you for being with us today.

**KB:** Pleased to help.

**RC:** I think we should start with your early life and education. Where are you from originally?

**KB:** Chicago. I'm a lonely Cubs fan in Cardinals' nation.

**RC:** Did you grow up with any interest in law or economics or business?

**KB:** I had an interest law from early on. I can't point to anything in particular that pushed me in that direction.

**RC:** So, you did your undergrad at Johns Hopkins?

**KB:** That's right.

**RC:** And what did you study as an undergrad?

**KB:** Political science, which at the time I thought was preparation for law school. It isn't but it's fine.

**RC:** (Laughter.) So you knew the whole time you were planning on going to law school.

**KB:** Yes.

**RC:** And you did your law work at the University of Chicago?

**KB:** Right.

**RC:** How did you come to be at the University of Chicago?

**KB:** A combination of ingredients, but partly I thought maybe it was time to go back to Chicago. I had other places I could go, but I thought it was time to go back there.

**RC:** While you were in law school, were there any courses or mentors that shaped your direction?

**KB:** I don't know that there's anybody in particular. There were two professors that stand out. One was a young man named Dallin Oaks, who had a quite a resume then. He had been a clerk to Chief Justice Warren, and he had another clerkship before that and by this time he was a professor at the University of Chicago Law School. He was from Salt Lake City, and ultimately he went back to Salt Lake City. First, as I recall, he became president of Brigham Young. Then he was a justice or maybe the chief justice of the Supreme Court of Utah, and then he became one of the twelve elders of the Mormon Church. He was a guy who had a lot of interest in the students, and it wasn't so much intellectual mentorship as it was just at a personal level.

The second professor that sticks with me—there were a lot of notable ones—is a man who's still alive named Phil Neal. He was the dean but he was also the professor of antitrust, and let's come back to antitrust because I know this is about the SEC, but there's some stuff that was going on about the same time that I think is relevant.

**RC:** Let's talk about that now, if that's all right with you.

**KB:** Yes.

**RC:** The antitrust matters you mentioned.

**KB:** You had a question on the outline, did the work of the Chicago economists ever intersect with the law school studies. They did and it was on purpose, because this was the early

days of law and economics and one of University of Chicago's claims to fame then and now was the development of the law and economics concepts.

In the antitrust course, they brought in one day a week a man named Ronald Coase.

Coase is still alive, he's 101 and he just co-authored another book; unbelievable. He had a collaborator, but he's an author and he's still publishing stuff at 101. I have to tell you that a lot of what Coase had to say at the time went over my head, but the basic concepts about law and economics did start to make a dent.

One incident that really stuck with me was—this is also the antitrust course—Dean Neal, after we'd gone through a bunch of merger cases, said, “all right, now what's the common factor in all these cases?” So, various people put up their hands and think they figured out what the common factor is and they propose where the common factor is, and he demolishes it. No, that's wrong, and he can immediately explain why you're out of your mind, you're way off the mark. So he goes through four or five of these people trying to propose common themes to these cases and he can knock them all down, and he finally says you haven't figured out what's the common theme in all these cases. The common theme is the government won every single one of them, even though there is no common economic theory. There is no common legal theory to any of them, or to this group.

Well, it stuck with me because to me the early eighties is a watershed period both in antitrust and in securities law, and one minor claim to fame is having been one of the lawyers involved in a situation in 1981 where Conoco was being pursued in a hostile

takeover situation by three different companies, Mobil Oil, DuPont, and what's the liquor firm in Montreal run by the Bronfman's?

**RC:** Seagram's?

**KB:** Yes, I think so. Seagram's had some industrial operations, but in any case there were three companies pursuing Conoco. Our involvement at Monsanto was that we had a very joint venture with Conoco, and we went to the Justice Department and said you must impose a condition on DuPont that they buy us out of this joint venture because if you don't, then they will be privy to all the information about our fibers business, and at the time DuPont and Monsanto were the two biggest producers of particular types of nylon.

Now, what happened was that Mobil bid higher than DuPont for Conoco, but DuPont got it because nobody at the time believed that the antitrust authorities would allow a big oil company like Mobil to acquire another big oil company like Conoco. Because of the way the thing was timed, DuPont got their clearance under Hart-Scott-Rodino ahead of Mobil, and as soon as they got the clearance everybody tendered to DuPont and they got it. A week or ten days went by, and I can't remember if it was Justice or the FTC, I think it was Justice, issued a letter that said Mobil's okay too, but they'd lost it by then. It was all over.

The reason that was significant was that was the first practical application of all this law and economics work on an actual antitrust matter, and it was because this was right after

Reagan was in and there was a new head of the Antitrust Division, a guy, I think his name was Baxter, out of the whole law and economics school. He brought in a bunch of economists and they all said, yes, they're two big oil companies but there are all these other big oil companies, and it really isn't an issue. And so they let it go through.

So, that was a real watershed in antitrust and allowed a lot of mergers to go forward that nobody would have dreamed possible based on the case law up to that point. That feeds a lot of the merger activity that takes off in the eighties. So, I finally have gotten back to the securities laws and corporate governance and transactional work, but that fundamental change in the antitrust law, in which there are ups and downs depending on whether it's the Democrats or the Republicans—the basic shift to a law and economics analysis of mergers comes with that Conoco-Mobil-DuPont case. The merger activity takes off from that standpoint; mergers among companies that you might have thought were competitors. That case isn't the one that says it, but that's also the death of objection to mergers based on vertical integration. There's a few cases after that but not many. It's pretty much dead.

So, this feeds all sorts of activity that wouldn't have been possible before. Before that, what's the classic merger of the sixties? It's the conglomerate, which continues to some extent into the seventies. You don't have to be a conglomerate. All kinds of things become possible that nobody thought were possible before. It's a long way around to respond to your question about what was really influential in law school and particularly the law and economics work; fifteen years later, there it was.

**RC:** That generation of students has started to come into the—

**KB:** Yes, and the people who were really in charge at that time had been students a few years before me, but yes, all of the sudden this stuff really becomes the new operative rules.

**RC:** So, was antitrust your major focus in law school?

**KB:** No. I don't know if I had a focus. When I was in law school, I thought I was going to go into real estate. That was ridiculous. Fortunately, it never happened.

**RC:** So, what did you do when you came out of law school?

**KB:** I was an associate at Kirkland & Ellis in Chicago. This is in the days of the draft, and I ended up applying and getting into the Navy JAG program so I went off in Navy JAG. And then when I came back, there was this nifty looking position within a subsidiary of Monsanto called Enviro-Chem in Chicago so I went there. Then after a couple years, as all big corporations do, there was a shuffle and the law department got shuffled and I ended up here.

**RC:** With Enviro-Chem, what were your responsibilities as a junior lawyer?

**KB:** That was really, primarily, an engineering and construction operation that had certain proprietary technologies in the environmental area, and so most of the work had nothing to do with governance. It was engineering and construction, contract negotiation and disputes, whatnot. Plus, there is a kind of a regulatory world unto itself for engineers and contractors.

**RC:** Right. And so after a couple years, you ended up in the law department in Monsanto. Did you continue doing the same sorts of things?

**KB:** No, I worked for four years, I think, with some different operations, primarily the commercial work and some transactional work for the parts of the Monsanto business that were involved in basic petrochemicals and plastics; plastics was a big business at that time.

**RC:** Right. So, at what point did you start to get involved more with the governance side of things?

**KB:** That was '75 or '76. I think it was '76 I shifted to the corporate SEC group in the law department and started doing that sort of stuff.

**RC:** What did that involve?



**KB:** It was the annual cycle stuff, 10-K, proxy statement, annual meeting, and financing transactions primarily, and some transactional work. There was a big chunk of my time in the early years when I was working on this Conoco transaction that I told you about, where Monsanto goes to the Justice Department and says you've got to force DuPont to buy us out because we can't be in the same joint venture. The joint venture actually by that time was a financial flop, so we wanted out. (Laughter.) Well, there was a beginning to that which dragged on and on, but a big chunk of time was spent putting together the Conoco joint venture in '76, '77; occupied a big chunk of '77, when everybody thought this was the answer.

**RC:** Can you tell me a little bit about what sort of the process is of putting together the reports and filings, how it works from the internal side?

**KB:** Well, the proxy statement in Monsanto, and I think most large companies that have significant inside counsel, is usually run by the law department. You start out with a series of memoranda to everybody who is in possession of information that has to be included in the proxy statement, and you run down a calendar to make sure you get everything in and it can be done in time. There's a calendar of deadlines, some of which are oriented around just the mechanics of printing it and that sort of thing.

The 10-K is usually a joint effort by the accounting group, the controllers group, and the lawyers to pull the information together, since the accountants take the lead obviously on the financial statements because they've got to produce the financial statements for the

year and negotiate with the auditors about any issues there. And then all the other stuff usually is pulled together by the law department in integrating the whole document.

**RC:** One of the things I was curious about is that in the late seventies, especially in the wake of the corporate payment scandals, people started taking a new look at how corporations handled—internal controls and accounting controls. Was that something that you dealt with?

**KB:** Well, yes. We already had, even back then, a program for annual certification, by all the management employees, of compliance with all the usual policies that were in place at that point, which included antitrust and securities law compliance, no insider trading, all the usual stuff, and all of those got revisited and beefed up in the mid-seventies I think, most places.

I'll just give you a thought with respect to your research, if you want to talk to somebody about this area, at that time the defense contractors were the leaders. If you wanted the biggest and best compliance program in those days, you looked to the defense contractors as the model because they had been hit, you know, about \$500 hammers and various ex-U.S. bribery—

**RC:** You mean in terms of reforming how things were done?

**KB:** Just developing bigger, better internal procedures to ensure compliance with law, company policies. Monsanto was one of the companies that filed an 8-K in 1976 with respect to questionable payments, and obviously at that point put in new policies to try to prevent that sort of activity. That was among the things that were done to beef up your compliance was getting a new program in place to capture that sort of activity.

On your outline you mentioned political contributions. I don't recall that that was particularly an issue at Monsanto. There were companies that had big political contributions in the '72 election and things like that. The famous case is Armand Hammer.

**RC:** So at this point are you yet the assistant corporate secretary, or does that come later? This is '76, '77.

**KB:** To tell you the truth, I don't remember. (Laughter.)

**RC:** Okay. You said also that you were involved in the SEC practice. Did you interact with the Commission very much?

**KB:** Well, in the seventies only on specific filings. In those days, you spent a lot of time negotiating reviews of S-8s, which cover the benefit plans. It was a terrible waste of everybody's time and fortunately that eventually went away. And then if you had a financing or something, you'd probably have a more substantive review.

**RC:** One of the things that you talked about was putting together the proxy statement. Were you involved in responding to shareholder proposals?

**KB:** Yes.

**RC:** Could you tell me a little bit about that?

**KB:** Well, yes. The shareholder proposals in those days tended to be on social or political issues. We had a South Africa proposal every year, and I've blanked on what the rest of them were but they really weren't governance issues, as it later became.

**RC:** So, you didn't have very many proposals like seeking to nominate directors?

**KB:** Not back then.

**RC:** Okay.

**KB:** Not in that time, no. Monsanto had a big enough profile that we would get shareholder proposals every year, but as I say, my memory in the seventies, and you're going to ask me eventually at what point does it flop over to be more governance oriented and I'll have to try to bring that back down, but at this point no, they're not governance issues. What's going on in governance at this time that is significant, or at least perceived as significant

is, you're shifting from a board of directors that is majority inside to a board of directors that's mostly outside people.

Now, in the case of Monsanto you can ask yourself whether this made a difference or not, and I'll give you an even older background story on this. When I got there the board consisted of something on the order of ten insiders and four outsiders, so you kind of think, well the outsiders are insignificant, powerless. Well, in fact the four outsiders, right after I got there, got together and decided the CEO was not up to the job and they fired him. Now there were ten inside directors who were buddies of the CEO.

**RC:** (Laughter.)

**KB:** Why didn't they vote this down? Well, they didn't. On issues like this, the practical reality was that the four outsiders were in control. Up until that time, being named to the board of directors was sort of like being knighted in Britain. It was an honor, and it was expected at a certain level. And it's about this time, about mid-seventies, that that is no longer considered good governance and companies don't fire the insiders, but they retire and they disappear and they're always replaced with outsiders.

**RC:** Was there something that was driving that, or was this just sort of something that companies realized was necessary?

**KB:** I think it's the latter. I don't recall that there was some particular event that was driving it.

**RC:** And where in terms of looking for independent directors, how did companies like Monsanto go about finding new independent directors?

**KB:** Initially it's a fairly informal process. Later on, people develop committees to go do this and hire search firms and so on and so forth, but at this point it's really informal and there are agreed parameters for what we want in the nature of an outside director. Typically, the preference was to get somebody who was the CEO of another major company or a leading academic, or sometimes a retired government official who had had some prestigious position. I think it was just kind of informal word of mouth process at that point.

**RC:** Okay, because there aren't the same requirements in terms of having a financial expert and things like that, at this point.

**KB:** No. In fact, about this time one of the outside directors that is brought on is the CFO of IBM. Well, he's a financial expert, sure enough, but nobody thought in those terms. They just thought, well IBM's a really big company and here's this guy who's the CFO, he must be a real powerhouse, which he was.

**RC:** And so besides the shift to a more independent board, are there other issues from your early days involved in governance that you think of or that stand out to you as important?

**KB:** No. I think in looking back, the big event of that period is this fairly rapid shift from majority inside to majority outside. But at least in the case of Monsanto, I'm not sure the practical effect was as great as you might expect because as I say, the four outsiders—going back to the early seventies, clearly—when it came down to a really big decision called the shots. That mid-seventies period, I think the shift from inside to outside. Obviously over the long haul it makes a difference. That's the big change of the mid-seventies to me.

**RC:** That has much more impact than any of the reforms sort of pushed by either the SEC or the Stock exchange or things like that.

**KB:** Somewhere in that period we go through one of these cycles where they try to beef up the compensation disclosure, and I think you can possibly argue about maybe some of the comp disclosure things that have come along lately. I don't know that I would make this claim for everything, but certainly the ones in the seventies and eighties and early nineties where the comp disclosure was beefed up, I think the practical result was that compensation skyrocketed. More data; we hadn't thought of that, look what they're doing. A lot of various people in Washington were pushing greater disclosure and their hidden agenda was that they thought these people were being paid too much. The practical result of more disclosure was higher compensation until, as I say; I think you

can argue about whether the last batch of these reforms had that effect. But all through this period, every time there was a change comp went up.

**RC:** Because the data could be used to justify the higher pay?

**KB:** Yes, more data. It wasn't that the stuff wasn't there before, but you didn't have the detail and especially you didn't have the detail on some of the deferred comp stuff.

**RC:** So going forward into the 1980s, we talked a little bit already about the antitrust issues, but more broadly with mergers and takeovers, was that something that you dealt with at Monsanto?

**KB:** Yes. In the eighties you get the beginning of the hostile takeovers, and so yes, that gets management's attention and everybody gets excited about that.

**RC:** Is it something that, in terms of for example, the takeover defenses, was that something that you all looked at?

**KB:** Yes. I think like many companies of our size, you went through the analysis of, well, all right, what should we do? In the initial phases of this, of course, people think well, we're too big. First they think, well, no competitor can take us out. Then the antitrust rules change and maybe a competitor can take you out. Then there's a kind of a well, we're pretty big so it would be hard for somebody to take us over. Well, then it turns out that



there's huge amounts of money to be raised in the junk bond market and so money is not an obstacle. And so then we get into the phase, and I'm going to get fuzzy on the years on this because I think this process continues on into the early nineties, but then companies adopt poison pills, staggered boards during this time period. And there was never a specific threat to Monsanto of being taken over, but people realized that there was maybe.

In those days there were three big German chemical companies, Hoechst, BASF and Bayer. All three of them were bigger than Monsanto, and they were bigger than anybody else in the chemical industry in the United States except DuPont. And for years people would ask, "You think the Germans will take us over?" Well, they never did; who knows why. But that was always in the back of people's minds where, here's the three big German chemical companies, they're way bigger than we are, they have huge financial resources because they've been very conservatively managed, and are they coming? Well, they never came. (Laughter.)

I ultimately was involved in a transaction with one of them, but their attitude was no, why would we have acquired you?

**RC:** (Laughter.)

**KB:** One share, one vote, I had forgotten about that one.

**RC:** Yes, I was curious because some of the folks that I've talked to see it as a serious shareholder democracy issue and some people said well, that didn't matter to us at all.

**KB:** No, I don't think it was much of an issue. I haven't thought about that for a long time. There was the SEC Rule 19c-4, which was ultimately invalidated by the D.C. Court of Appeals, right?

**RC:** Right, but it was because the stock exchange had tried to change its listing requirements away from one share, one vote, and some people thought they needed to do this to be competitive.

**KB:** Yes. Well, there were some companies that had historical different classes of voting and whatnot, and then there were a few that adopted them as anti-takeover devices. I think from the perspective of a Monsanto at that time that was kind of a fringe issue. It just wasn't significant.

**RC:** I wanted to jump back. When did you start getting involved with the corporate secretary? You became corporate secretary in the eighties?

**KB:** No, actually I wasn't corporate secretary until the nineties.

**RC:** Okay, but you were involved in it.

**KB:** But I was involved in it. At some point, within the law department, I became the head of the group that was responsible for corporate stuff, reporting to the general counsel. There were two of us. There was one guy who was in charge of litigation and environmental, and there was me who was in charge of corporate, transactional and all the other stuff like real estate and labor and that sort of thing. When did I become head of that group, '84 maybe, something like that?

**RC:** And so when you come into that position, what are some of the things that you're dealing with? Is it the same sort of things? Obviously the reporting goes on.

**KB:** Yes, the annual cycle stuff goes on. The financings become more frequent and more sophisticated. There's a big acquisition in '85 that triggers a lot of financing activity, not to mention the acquisition itself; there's a lot of divestitures. This was fairly typical of Monsanto, but also others in the industry at the time. There's a lot of divestitures going on all through this time period.

**RC:** The acquisitions and divestitures, how does the governance work on that in terms of, when you acquire a company how does merging their governance with that of Monsanto work, or does Monsanto just take over?

**KB:** Well, on most of the acquisitions we just took it over and everybody just became subject to the Monsanto law. There was a slight modification to that when we acquired Searle in 1985 because there was a desire on the part of the management to run those businesses—

because it was thought they were very different and it was really two different businesses: it was Searle, the old pharmaceutical business, and it was NutraSweet which at the time, while it was on patent, was a big revenue and big profit generator. There was a desire to keep them, from a management standpoint, separate. In terms of compliance, did they sign the Monsanto stuff or did they have their own stuff, I don't remember, but there couldn't have been much difference because we weren't going to stand for having a totally different compliance system—in the chemical industry most of the companies had pretty high levels of control and pretty strong attention to making sure that everybody was on track. And I'm not just talking about Monsanto, but I don't remember seeing a lot of rogue operations pop up in the chemical industry from about 1980 on. Earlier on there may have been some, but not from then on.

**RC:** And it's the same sort of procedures for both domestic and international?

**KB:** Yes. The international is the tough one on that compliance stuff because, from a practical standpoint, you've got all these crooked politicians in these countries who have their hands out—not that we don't have crooked politicians here, but...

**RC:** (Laughter.)

**KB:** Some of your employees don't really believe that you really mean it, so it's tougher to make this work correctly outside the U.S., although it's not impossible. It requires a lot of work, but you can do it. Plus, I think some of the people in other parts of the world

have gotten used to the fact that trying to jerk money out of U.S. public companies probably gets a negative answer most of the time.

**RC:** So you had acquisitions, divestitures, what were some of the other things you were dealing with as head of this side of the law department?

**KB:** Interestingly, in '80-'81, and this is I think fairly early on as these things go, the board commissioned a governance study. There was an older lawyer who was near retirement and who was well respected and inside the company, his name was Rod Harris. They said okay, we want Rod to go out, privately interview all the directors, and not to report back any names or anything like that but to consolidate the thinking of all the directors on a one-on-one basis, and then go talk to various other luminaries in the field in those days and come back with some recommendations on governance.

And I got picked to be the number two on that effort, and we did quite a comprehensive study on governance, came back with various recommendations for changes, to some extent making the selection of directors less informal, some changes in committees, and I think that '80-'81 was pretty early to be doing that.

**RC:** Was there something that prompted it?

**KB:** No. I don't know who was the instigator of it, amongst the directors. If I ever knew I don't remember, but there was a general agreement. And the guy who was the CEO at that time, he never resisted this sort of stuff. He was supportive of it.

**RC:** One of the other major factors in the eighties is sort of the rise of the institutional investor.

**KB:** Yes.

**RC:** What influence did that have at Monsanto?

**KB:** (Laughter.) It depends on what time period you're talking. I'll give you a story from probably the middle eighties, maybe early eighties. I told you that in the early days, starting in the seventies and all through the early eighties, the shareholder proposals, we always got them but they were always social, political in nature, they weren't substantive on governance or anything that the company was doing.

A fairly large holder at that time of Monsanto stock, big enough to get the attention of the investor relations people, it was either CalPERS or CalSTRS. I can't remember which one. It doesn't matter. I think those funds now are pretty much just index funds. They have some investments on the side in certain things, but they're so big that they're basically index funds I guess, plus they must have holdings outside the U.S. as well. This is the early eighties, and they've been sending in South Africa shareholder proposals, and

then I don't know if it was the fund or the legislature that passed a South Africa divestment requirement. So right after this was adopted, our investor relations man thought that they would be dumping Monsanto stock and they didn't. Their holdings increased.

So he goes out to Sacramento to talk to the CalPERS or CalSTRS guy and try to figure out what's going on, and asks is there anything we can do to help avoid this divestment requirement. And the guy at CalPERS or CalSTRS says no, don't worry about it, no, there's nothing you can do to avoid it. But what I'm doing is, I'm loading up on your stock so that when the divestment requirement kicks in I'll just be slowly pushed back to where I wanted to be anyhow. (Laughter.)

True story, it actually happened so that's the kind of institutional investors there were in those days. There were various of the major fund managers who took fairly substantial positions, but it was extremely rare that we ever had anybody that got to the 5 percent level to where you had to disclose them in the proxy statement. Rarely one of the big fund managers would just creep over the top of the 5 percent thing, but there wasn't anybody at that point who was over consistently. And I think that's a true statement about Monsanto right up until the late nineties when the company is totally thrown up for grabs. There's an active investor relations program, but there's never anybody who acquires the kind of large position where everybody gets really nervous. So, that just wasn't our issue.

**RC:** Now, you said that the way that institutional investors changed depended on when you're talking about in the eighties, so you didn't see that much of a shift in terms of what they were looking to do?

**KB:** No. The interface that the investor relations people had with them would be on issues like: well we think your strategy to do x is good, or we think it's terrible or whatever. We're not getting strictly governance-oriented proposals at that point.

**RC:** A little bit later you start seeing the rise of the professional governance sources, the ISS. I guess the USA is a little bit different, but they start to exercise what they see as reforming efforts in governance. Did you ever deal with them?

**KB:** Yes. Yes, quite a bit, because as the years went by, I guess starting in the early nineties, the percent of the vote that their recommendation effectively would swing kept going up and up and up continuously.

**RC:** Is that because the institutional investors listened to them?

**KB:** Look, everybody that I ever talked to among institutional investors ultimately would say, in most of the annual meetings most of the voting decisions have no real economic impact. And we don't get paid for good voting. We get paid for good stock performance. And so, yes, except for a few of the really largest ones that tried to do this in-house most



of the fund managers, their attitude was nobody's paying us for a voting process and so we're going to get it done as cheaply as we possibly can. And the cheapest way to get it done is we'll just do whatever ISS says.

And so as the years went by the institutional investors basically did less and less independent analysis of it, and more and more of them were swung by ISS or to a lesser extent—who's the outfit in California, Glass Lewis; I think they're in California. Maybe I've got that wrong.

But anyhow, ISS becomes progressively more and more significant and you can track it in the votes and a way that we could track it was, periodically ISS would make a huge mistake in their recommendations. Because they use a lot of seasonal help during the season, many of them are inexperienced, they don't really understand what's going on; they don't know the difference between asking for approval of an incentive plan for 162(m) purposes versus asking for it because you need it on fundamental issues.

I'll give you an example. This is about the early nineties. Monsanto had three incentive plans up for shareholder approval. The plans were identical but they covered different parts of the company, and there were reasons for wanting to do them separately, have a separate plan for each of these three parts of the company, and I think they were only for 162(m) approval purposes that they were being floated up. Now, you could logically be against all three of them or for all three of them, but you could not logically be in favor of one and against the other two or vice versa. That's what ISS's recommendation was.

They were in favor of two and against one. There was no rational way you could come to that position.

So that's how we knew how much of the vote they swung, because you had all these people out there that just did whatever they said, so that you saw what the delta was between the two. That's how you knew. And those kinds of mistakes would show up periodically and you could track that pretty accurately, and over time you could see that the percentage that they were swinging was going up all the time. I don't know what people say now. When I kind of stopped following this closely, it was certainly up around 25 percent, maybe 30.

Eventually we'll come back to talking about the role of the Society. The Society worked on the SEC for years to try to get them to focus in on this, because the ISS makes these mistakes, unless you're a really big company there's no way to get them corrected. It's just impossible. We kept saying, this is a big part of the scheme, you got to do something, and they never did anything. I mean, I understand their reasons why it's difficult for them to do something, but this is kind of a big logical gap in the whole system, in my opinion.

**RC:** That was what I was going to ask next, is about when did you start getting involved in the Society of Corporate Secretaries?

**KB:** That's about '83, '84.

**RC:** And what led you to start working with them?

**KB:** Well, the Monsanto law department had a long history of involvement with the Society of Corporate Secretaries, also with the ABA. When I became chairman I was the fourth person who had a Monsanto background to have been chairman of the Society, and so we'd had people who had been active. And this gentleman that I mentioned to you earlier, Rod Harris, he had been a chairman, a general counsel and secretary, back in the seventies had been a chairman. The guy who was the general counsel all during the eighties and early nineties was chairman at one point.

It was a long connection with the organization for a couple of different reasons. One, it gave you an entrée at the SEC that was beneficial in terms of your work for Monsanto, in terms of knowing the people there and knowing who to call if you had a problem and that sort of thing and people at the SEC being willing to talk to you. And also, you felt like you were giving better advice inside if you knew what the thinking was directionally at the SEC. The company never questioned supporting it. It's part of some of the things we just did.

**RC:** So, were you primarily involved in the Securities Law Committee?

**KB:** Yes, and ultimately chairman of that committee.

**RC:** Right. And so with that committee you have a pretty significant amount of involvement with the SEC.

**KB:** Yes.

**RC:** Can you tell me a little bit about that?

**KB:** Yes. At the beginning, and I can't remember exactly when it changed, we were one of very few groups that had two meetings with the SEC every year, one in the late fall in anticipation of the proxy season, and then one in the spring after it was over which was sort of a postmortem on the proxy season. And the one in the spring was actually a meeting with the commissioners. The one in the fall was with Corp Fin and any other one of the divisions that were relevant to whatever we were talking about that year—Market Reg or whomever—and then in the spring it would be a Commission meeting. It would actually be a meeting of the commissioners.

At some point someone concluded that, I don't know if there was a change in the sunshine law or they just rethought it, but they decided it couldn't be the Commission. And so we would have a meeting and the commissioners would come seriatim. One would come in and listen for a while and then he or she would go out and the next one would come in, so it couldn't be a meeting. I can't remember what the rule is. Maybe two of them could be in the room at the same time and it wasn't a meeting, but if three were it was a meeting.

But basically we had pretty productive meetings with them on this twice a year basis. It was going on before I was involved and it continued after I was involved. And our focus in those meetings was always to try to focus our comments, to the greatest extent possible, on practical issues, mechanical issues, communication issues, if you will, to focus on the nuts and bolts of how you execute all these rules.

I was also involved to a much lesser extent with the ABA committees that were involved in this kind of process. The ABA letters tended to be more like law review pieces. They were superb analyses of the law and they were at a higher level, if you will, in the sense of overview. In our letters and the comments that we had at these meetings we tried to say look, there's a practical problem with your proposed rule for whatever, here's why, here's something you could do differently that would solve the practical problem.

You could go back. Again, talking about this eighties into the early nineties period, I think that comment process was influential in terms of changing the way the SEC approached benefit plans and the S-8. That was a huge waste of time the way it was done before, on everybody's part. I think we've had quite a bit of impact on the changes to Section 16 rules in '91 or '92, whenever that was. And in each one of these cycles of the compensation disclosure, I think we had considerable influence on it, and also because this is a group that tended to be people from law departments of large issuers there was always a lot of discussion about shareholder proposals, because these were the companies that were the targets of the shareholder proposals both in the old days when they were

mostly social, political proposals and then later on when they became kind of more governance-oriented.

I haven't seen statistics recently, but for a long time, once you got certainly below *Fortune* 100, maybe even not much below *Fortune* 50, shareholder proposals pretty much disappeared. If you went and had a discussion with a lot of midcap people they'd say don't bore us with this, it's not an issue, because they didn't get shareholder proposals. I don't know what the numbers are now because I haven't followed it as closely lately. There's probably more, but it's still mostly a big company phenomenon.

**RC:** Is that because the gadflies focus on the big companies?

**KB:** Yes, I think so. I think so. On the part of the proponents, there's a sense that if they can get a household name to either have the shareholders vote for their proposals or maybe they negotiate something; that has a lot more impact than getting some \$500 million company somewhere that nobody's ever heard of. They agree, so what? So the focus of those was always on the bigger companies. Even within the Society it was weighted towards the larger companies, not because there was a policy to do it that way; those are the people who tended to want to get involved in this.

**RC:** Were there particular individuals at the SEC with whom you had particularly good working relationships?

**KB:** Oh, yes. I thought about that, and I'm going to forget people, but people over the years that we had really good relationships were with Bill Morley, Linda Quinn, Brian Lane, Mauri Osheroff, bless her heart, Elisse Walter, when she was in the staff—not that I don't like her as a commissioner—I think Elisse is really superb. Among the commissioners, Ed Fleischman and Steve Wallman were always very receptive to hearing what we had to say, what the Society had to say. I'm going to forget some people that I should have named, but among the staff, Bill Morley, Linda Quinn, Brian Lane, Mauri Osheroff, Elisse Walter, they were terrific, but there's a bunch more and I should remember them.

Wallman, as commissioner, he's one of these guys who's got a mind that's so fast. It's just amazing to watch him work because he was really quick. People we had trouble with: Breeden, never could get much mileage with him. The other guy who was a chairman that I thought was always very receptive to listening to us—and it doesn't mean they have to do what you say, just do they listen, do they understand—was Dave Ruder, who was chairman. Levitt, we had a little less dealing with him but I never thought he was hostile.

I will make a general comment that up until the time of Sarbanes-Oxley and all this other stuff that starts in the kind of early 2000s, I never thought it made any significant difference whether the Democrats or the Republicans were in the White House or in control of Congress. It was a very apolitical operation. I always thought that everybody that I ever dealt with there during that period was focused on, how can we organize this for the best result? And recognizing we've got different constituencies, you know, we got

various people that we have to listen to and we can't satisfy all of them. But at least I thought up until that time it was a very apolitical process focused on getting a good result.

Since Sarbanes-Oxley, it's obviously been very much politicized. You never had split votes in the Commission before that time where the Republicans lined up on one side and the Democrats on the other side—in the Bill Donaldson years, actually Donaldson was supposedly the Republican but he was voting with the Democrats. It just became much more like many of the rest of the Washington agencies in that they were always looking over their shoulder at what Congress was going to do. It's not that Congress had no influence on them before, but the agency really kind of stood off by itself. I never saw any evidence that they were subject to a lot of political pressure. That's not true for the last ten, twelve years. They're under a lot of political pressure.

I'll tell you what I think was the turning point, or at least it was the turning point in my mind, not necessarily the turning point in reality. Some time in his first term George W. Bush gives a speech—and I don't remember to what audience but it wasn't particularly a business or a market audience—in which he talks about the need to change the accounting for stock options. I thought, I know there's this issue about accounting for stock options; I never in my wildest dreams would have imagined that it would have risen to the level where the president of the United States felt compelled to say something about it. (Laughter.)



**RC:** Right.

**KB:** Pretty technical issue. Obviously, somebody's written this into the president's speech and thinks he needs to talk about it. That to me was a sign that the political landscape for the SEC and for the whole governance area had shifted in a very fundamental way.

**RC:** And that's after Sarbanes-Oxley.

**KB:** I don't remember when he says it. It's contemporaneous with Sarbanes-Oxley or right after or something, I don't know. But I mean it's inconceivable that you would have had, name any prior president who would have—presidents never addressed these issues. I mean they talk about the economy, or Presidents periodically go on a vendetta against Wall Street or that sort of thing, but to focus in on a narrow technical issue like this.

**RC:** Yes, to get into the nuts and bolts.

**KB:** That's different, and of course everything since then. Congress has passed obviously two sets of major legislation and gotten very involved in setting very specific rules in areas that the Commission used to handle by regulation. From the standpoint of issuer and issuer's counsel, the old way was a lot better. (Laughter.) Because you could have some influence. It's very different now.

I think the Society was a constructive force and source of information when we were dealing with the Commission and that the Commission was responsive to what we said. Not that they did everything we asked for, but you don't expect that. Once Congress is involved you've lost control, it's very difficult to have much impact on that process. Every so often the Chamber of Commerce threatened litigation or something like that but it was just I think a more productive process, but it is what it is.

**RC:** Because it's easier to have give and take with an agency than it is with 535 members of Congress.

**KB:** Yes, that's right. It's too bad. I think that separation from the day-to-day political process that the Commission enjoyed was a reason why they were always on the list of most admired government agencies. Everybody thought, well, they're just trying to do their job.

**RC:** So the issues that you were dealing then were benefits plans, Section 16, and like you said, in the early nineties there's a revival of executive compensation.

**KB:** Yes, there's another cycle on executive comp.

**RC:** Is there something driving these things, or is this just what the Commission's interested in do you think?

**KB:** No, I mean it's a combination of pressure from certain groups that think that they're being somehow unfairly dealt with.

**RC:** And then, so you were chairman of the Society in '99?

**KB:** Yes, '98 to '99.

**RC:** What were the major issues that you were contending with at that point?

**KB:** It was pretty much a continuation. In many respects you can say that that was the good old days, before we had to deal with Sarbanes-Oxley. To some extent it's the stone age of corporate governance at this point, because we hadn't had the Enron, WorldCom scandals and all the rest of that stuff that generated Sarbanes-Oxley. The issues we had at that time were the ones that we had had right along, which is the whole proxy process. We had been involved for some time in discussions with both the stock exchange and the SEC about the voting process. There were some gaps in the voting process that, depending on what it was, maybe the SEC could solve it or maybe the stock exchange could solve it but they would have to have the SEC with them. And ISS was an issue then. There were still takeover issues. So in '99, it was pretty much the same agenda.

One thing that I tried to do my year as chairman, which I didn't know at the time but in retrospect was kind of prophetic. We didn't have much of a Washington presence. We had had an active member who was in Washington, and if somebody needed to go

represent the Society at some meeting of whomever, whatever group, he would do it for us. Well, he retired so we didn't have anybody. And so I said we needed to pay somebody to be our representative, and in retrospect we should have done it a couple years before that and maybe we would have had some greater presence for purposes of the Sarbanes-Oxley process, maybe not. Anyhow, we did in fact hire somebody to be our man in Washington. But it never had the kind of impact that I hoped it would have. Maybe that's just the nature of the process.

**RC:** In that time is when Arthur Levitt starts first discussing the auditor independence issue. Did you deal with that at all in your time as chairman?

**KB:** No. I mean we knew about it, but that really wasn't a big issue. Yeah, that's right.

**RC:** It doesn't really emerge until 2000, but he started talking about it in the fall of '98.

**KB:** Fall of when?

**RC:** I think his Numbers Games speech is September '98, maybe November, but things don't really get moving until 2000.

**KB:** I don't know what other people are telling you. My perception on auditor independence is that Sarbanes-Oxley is the greatest gift to the auditors that's come along in a long time, because up until that point my sense is that the audit firms were using the audit process as

a loss leader to get the consulting business. This isn't an idea that's original with me. A lot of people have said this. I mean, am I privy to their numbers and I know this? No, of course not, but it sure looked like it. And out of this, I guess you can say one beneficial part of the whole Enron and Sarbanes-Oxley thing was that that all shifted. I don't think the audit is a loss leader. The audits are expensive, and nobody gives you a break on them. (Laughter.)

And clearly that whole process has tightened up somewhat. You can argue about whether you should have auditor rotation or not, but I think whether you did that or not it's not going to have the kind of fundamental shift that we saw in that time period simply because it became important to everybody that the auditors put more horsepower into the audit process. And obviously, you add to that the requirement for the audit to include this review of internal controls and the whole thing gets much bigger and so on. But I don't recall that being something that we were—perhaps wrongly, we should have been focusing on, but I don't think we were during my time.

**RC:** A little bit before that you went with Solutia when it was spun off Monsanto.

**KB:** Yes. The old Monsanto was kind of blown up in pieces and what happened over a period of about three years, the old Monsanto had four businesses, the chemical business which had been the original core; the ag business, which at that time was more herbicides than seeds but it was shifting more towards seeds; the Searle pharmaceutical business, and

then NutraSweet which, by then we're getting to the end of the patent and it's starting to decline in terms of size; and then there were a few stray businesses, odds and ends.

There was a management decision that the chemical business, being historically cyclical, was so different from the pharmaceutical business and the ag business that they should separate. And so, I don't know if the first or the second transaction was the spin off of the chemical business as Solutia. NutraSweet and some of these stray businesses are divested about that time, and what remains merges with a company called Pharmacia & Upjohn which is a pharmaceutical company. And I may not have the sequence on this exactly right; Pharmacia & Upjohn people are effectively in control, and they have no interest in the ag business and so they start the process to spin off the ag business.

Somewhere—and I'm not sure I'm getting the sequence exactly right but it's all within a fairly short period of time—within the pharmaceutical business of Monsanto, which is now part of Pharmacia & Upjohn, the company is just called Pharmacia at that point, there's a new drug called Celebrex which, as people had thought, turns out to be a blockbuster drug. And Pfizer becomes interested in owning Celebrex and so Pfizer buys Pharmacia, and it's after the Pfizer acquisition that the spin off of ag is completed, but I may have the sequence wrong. I thought I'd never forget that stuff, but after a while, you do.

And so the company that's called Monsanto now today is the old ag division of the old Monsanto and it has been very successful. They really have the best technology in that

genetically modified seed business. The pharmaceutical business is part of Pfizer. Solutia was spun off and was recently acquired by Eastman Chemical. And the other strays I've lost track of, I don't know what happened to them, but they're not very big. So, I ended up going off with the chemical businesses as general counsel and secretary.

**RC:** And that gave you a chance to put in, not a whole new form, but to build new governance.

**KB:** Yes.

**RC:** Can you tell me what happened?

**KB:** That was one of the happiest things that ever happened to me. Because all of a sudden, you can ditch all the stuff that all these years you thought was pointless and start from scratch and just do the stuff that you think is really worth doing. There were a couple of things; the CEO of Solutia was—not was, he's still alive—a guy named Bob Potter who was just terrific, and again, I couldn't ask for anybody more supportive of what I was trying to do, and we both said we can have good governance but we can simplify this.

And so the way the board was constituted was, there were three directors that came over from the Monsanto board, because the Monsanto board got split in the process and I think we got three or four. I guess it was four. We weren't going to have anybody except the CEO as a board member, so that Bob was going to be a director and then we had to go

out and we had to find people. With one exception, someone who had been the CEO of a company here in St. Louis and that Bob Potter knew and wanted—the rest of them we kind of got by talking to the other outside directors or through a headhunter. And so it was a fairly systematic process. We kind of said we need another finance person because the finance expert that we got from Monsanto is getting to retirement age, we're going to lose him so we need another finance expert, and we need a couple of CEOs, and we had the existing directors just talk to them.

And so, we set up a board of ten, including the one insider—major change from Monsanto in terms of the smaller size and better quality of the discussion that went on in the board meeting. Now, I have heard business school professors talk about this phenomenon and I think there's a fair amount of academic research on it, but when groups get over around twelve, people clam up. When you get more than twelve or so directors, people clam up. Monsanto had a big board. While there weren't a lot of inside directors, there were a lot of insiders who were allowed to sit through most of the meeting, vice presidents in charge of major divisions, and it was a big room. There were probably twenty-five people in the room.

With Solutia, we got down to twelve people in the room. The quality of the discussion and the questions that were asked went way up. And as I say, I have read, heard academics who have researched this and documented that that's what happens above some number, and I'm going to say it's twelve but maybe it's thirteen. I don't know,



somewhere around there. People, even if they're big names with big resumes, clam up. They don't talk and they don't ask questions.

And so the major step forward that I felt we made in terms of governance was shrinking the number of people in the board room. The quality of the discussion was so much better than it was in the old Monsanto board room. It was just day and night. I mean we did all the other things that you were supposed to do from a governance standpoint, but that was by far the most dramatic thing we did.

**RC:** And almost all independent folks.

**KB:** Yes, all. As I said there were a couple who came to us, in the breakup of Monsanto there were a couple. I think it was three, or maybe there was a fourth one, but anyhow less than half and we found the rest of them. Like I said, being able to go through that spinoff process, junk all the stuff that at least I thought was a waste of time, improved our governance.

The other thing that we did at the same time, which is a different governance issue and not one that interests anybody particularly outside the company, was we shrunk the number of subsidiaries. Old Monsanto had something like 200 subsidiaries. We got it down to twenty-three, something like that, most of them outside the United States where for local legal reasons you had to have something. The finance guy that I was working with on that project, that part of it, he ran the numbers, he said each subsidiary on average

is costing us \$100,000 a year to do nothing except be there. So a major shift like that opens the door to all kinds of improvements that you can make. All big institutions end up doing a lot of things just because they've always done them that way. A major corporate event such as a spinoff provides the opportunity to stop doing some of those things.

**RC:** Did the directors who had come over from Monsanto ever comment on the difference?

**KB:** Did they ever comment on it?

**RC:** I mean like wow, this guy.

**KB:** I don't know that I ever heard one say that.

**RC:** Okay. (Laughter.) They just opened up more.

**KB:** They just opened up, yes. There was one fellow who rarely said anything in the Monsanto board meetings. When we got him, all the sudden he started talking. For me that was really fortunate, to be able to start from scratch again.

**RC:** Were there any other experiences that you had at Monsanto that you thought gee, I'm going to do something different at Solutia, smaller board, fewer subsidiaries?

**KB:** Fewer committees.

**RC:** Fewer committees?

**KB:** Yes, ratchet down the number of committees. The reason is staffing committees takes a lot of time and is ultimately fairly expensive, so if you can, ratchet down the number of committees. The only place I got to where the chairman and I were at opposite ends, I said I want an executive committee. I'm not going to ask them to do anything important, but there's routine items that come along that you don't really want to bother the whole board with. Well, he'd been an outside director on another board and he'd been on the executive committee and he'd had a terrible experience. (Laughter.) So he said no, we are not having an executive committee. Okay, chief, whatever you say, we'll do it. But we expanded the scope of the three committees we had, and by gosh, one of the three dealt with everything.

**RC:** The committees were?

**KB:** Audit and finance, actually I think we just called it the audit committee, comp, governance.

**RC:** That's '97, '98?

**KB:** It's really '96, '97.

**RC:** Okay. So you have that structure set up, and then a few years down the road comes Sarbanes-Oxley, did it change the way that you all did business?

**KB:** My observation is that what I saw was that the directors became much more defensive. I'll give you a practical example. Prior to Sarbanes-Oxley I would have a review of the D&O insurance with the governance committee once a year and less frequently with the full board.

**RC:** D&O, directors and officers?

**KB:** Directors and officers' insurance. After that, the governance committee wanted to talk about D&O insurance at every meeting we ever had and the board wanted to hear about it a lot too, and it was just because they naturally got nervous and they wanted to be sure that we had done whatever we could reasonably do to make sure that the insurance was as good as it could be. That's one example, but otherwise I think in general, and I've heard this from other people in other companies, the directors became less focused on the business and more focused on looking over their shoulders to make sure somebody wasn't chasing them.

The practical result is, if people are worried about D&O insurance, you're spending the limited time you have in the board meeting talking about D&O insurance and you're not talking about the business; there's only so many hours you've got. As I say, other people

have told me they saw that too. People understandably, directors understandably, outside directors I'm talking about, became more focused on what they had to do to protect themselves and spent less time on the business, not that they did nothing about the business but the ratio of time spent on these topics changed.

**RC:** Did Sarbanes-Oxley have a major impact on how you viewed your responsibilities as corporate secretary?

**KB:** No, it just expanded the number of things you had to do. You got all the things you've been doing and here's a bunch more that you're going to do now.

**RC:** So expanded your responsibilities?

**KB:** Yes. We just had to do more, that's all. I never felt it changed my relationship with the directors or anything like that.

**RC:** David Smith talked a little bit about the impetus within the Society, really popularizing the idea of the governance professional. Do you have any thoughts?

**KB:** David really, what shall I say, in many ways he's the author of that concept that governance has become a field unto itself or whatever, and there are people who spend most of their time on these issues and have become governance professionals. And it

includes the corporate secretary, but there are other people out there, obviously outside counsel.

For better or worse, in the wake of Sarbanes-Oxley you had all these requirements which, with I think one exception, applied only to public companies. But it got so much attention that it kind of crept over into the private company and even more so into the non-profit area, and you had these concepts being applied there. I know a number of people who are consultants to non-profits and Sarbanes-Oxley was a godsend for them because they could go out and advise these non-profits that now, well, you ought to do all this Sarbanes-Oxley stuff, and here's what you should do and so on and so forth.

It created a lot more governance professionals, most of whom knew what they were doing, some didn't, and it was just a marketing tool in the non-profit world I thought, but some companies have adopted a title of chief governance officer or something like that. The whole thing has become more institutionalized. In many companies there's also an institutional connection to the whole compliance process.

What's changed, I suppose, is that you have a lot more people who are focused on governance and you have governance perceived as a whole area unto itself, whereas I think if you go back to the early days there were governance changes, such as, it's time to get rid of all these inside directors. But it was kind of a single episodic sort of thing, whereas now I think you've got governance viewed as a whole area of knowledge or learning, whatever you want to call it.

**RC:** Well, Sarbanes-Oxley moves governance, I don't know if I want to say forward, but it moves it on a number of different fronts.

**KB:** Yes.

**RC:** And so it's not just one episodic change. It's movement on a whole number of issues.

**KB:** Yes, and my point is it has an impact well beyond the domestic public companies that it was specifically aimed at. Twenty years ago nobody talked about governance. Now everybody talks about governance.

**RC:** Governance is an umbrella term for a number of things that you talked about individually before?

**KB:** Yes. That's right.

**RC:** I guess in the past you dealt with proxy access or independent directors or, just as they came up.

**KB:** Yes. I'm not sure I can remember exactly when it all becomes lumped under the governance umbrella, but at some point it does.

**RC:** So there's Sarbanes-Oxley. While you're at Solutia, are there are other governance issues that stand out in your memory or other governance things that you dealt with?

**KB:** There was a kind of a continuous stream of stuff. I had the compliance responsibility as well, and so, some of the stuff we dealt with were compliance issues. We did all the things that Sarbanes-Oxley required and all that, but in terms of the reality of governance the biggest change we made was shrinking the size of the board and how many people got to sit in the room, big difference. Big difference.

**RC:** It probably keeps groupthink from setting in.

**KB:** Yes, but as I say, there's a phenomenon which is apparently documented in the academic work that groups behave differently depending on the size. In the not-for-profit world, you can point to any number of examples of these not-for-profits that have gotten into trouble and they got into trouble because they had ineffective boards. Why was the board ineffective, because it had fifty-five people on it or something like that.

**RC:** (Laughter.)

**KB:** That was the case at the American Red Cross. I heard a presentation at a Society meeting by a woman who was a governance professional, I can't remember what her title was, and she was at the American Red Cross. And they went through this scandal. They had a board of fiftyish and it was totally ineffective. Nobody spoke up. How do you have a



meeting that big and have any kind of intelligent discussion? And she said why did we do it? Well, the same reason other charities have big boards. They think that if they add people they get more donations. Fifty people will donate more than ten. She said they had shrunk the Red Cross board from fiftyish to fifteen, something like that; but total contributions from the board went up because these whatever it was, twelve, fifteen people, really felt committed to the organization.

**RC:** Interesting.

**KB:** Yes. In addition, they had a board that was really engaged and involved. There's a local St. Louis example, just been in the newspaper recently. Saint Louis University, which is a Jesuit school which—the president has been a man named Father Larry Biondi for years, who's done great things with the school, he really has, but he's been there a long time and he has a board of fifty or something like that and there was a lot of discontent on the part of the faculty. I don't know who's right or wrong, or if nobody's right or wrong. That's not the point. The point was you could just tell even from the press reports that the board wasn't really engaged in any of this, which they should have been.

**KB:** One person that I think in terms of the history of the SEC who should really have a statue in the lobby was John Shad. This is really before, I guess when I became active in the Society and went to meet the people at the SEC; he might have been at the tail end of his term. But Shad, to my mind, made some major important changes that were

fundamental. Number one, he changed the focus of the enforcement. Prior to that time there was a man that you may have interviewed for this, Judge Sporkin.

**RC:** He's been interviewed. I haven't interviewed him.

**KB:** You haven't interviewed him. He was the director of enforcement and he was, at least my perception was he was fond of coming up with new legal theories and going off into brand new areas. He got a lot of media attention and whatnot in the *Wall Street Journal* and so on, but I don't think there was much enforcement in insider trading. I had discussions with pretty sophisticated businesspeople, and they all knew that if they engaged in price fixing they had a high risk of going to jail, but if you presented them with an insider trading issue many of them wouldn't even know that there was a legal issue. Insider trading was not anywhere near top of mind.

Shad changed that. He turned the focus on insider trading, and then we get all the prosecutions that come in the eighties and continue in the nineties of the people who were engaged in insider trading. I think that was an absolutely dramatic change back to basics on enforcement that had a real impact on the business community.

The second thing he did was start the computerization, which was called EDGAR, and I think if he wasn't the first government agency to try to computerize things he was the second maybe. It was a long, slow, difficult process because Monsanto volunteered to be part of the pilot program and it was not beneficial to the company to have been in the

pilot program. It was very inflexible and it was excruciating, but eventually it got done. Especially given the nature of the industry you're regulating, everything is moving so much faster than it was thirty years ago, not to have gotten out in front of the electronic age would have been just a terrible disservice. So he deserves credit for that.

It's during his regime, I don't know how much he had to do with this or whether others were involved, but we finally get an effort to integrate the '33 and the '34 Act, fundamental change. I mean, many people have said that if the '34 Act had been passed before the '33 Act we never would have had the '33 Act. It was done backwards, and to the best of my knowledge I don't think any other country has a structure like ours. They all basically start with something akin to the '34 Act. And so it's in this period, early eighties, when we start to get integration in the '33 and '34 Act. Again, a huge step forward in terms of eliminating pointless paper pushing.

And the fourth thing that starts then—although maybe it's later in the eighties when it really takes hold—is the SEC stops trying to review everything that's filed. It starts to prioritize what it's going to review, and this is in parallel with the simplification of the S-8 as a separate filing, so we make another huge step forward in terms of efficiency without any detriment to investors, and particularly with the S-8, because they aren't really investors. The money is being given to the employees as compensation, or more correctly, the securities are being given to them.

That all starts and some of it gets pretty far along during Shad's regime; I think it was terribly important, and it has had a huge lasting impact. He's been dead for years now but I think the guy, like I said, his statue should be in the SEC. Yes, all this other stuff has come subsequently on governance, but as I said at the beginning, the Society, in our dealings with the SEC tried to focus on issues of practicality and efficiency and that period is one in which we make major gains in terms of just practical administration of the statutes.

Another issue that I'm not really competent to talk about but kind of fascinates me, and I don't know if this is within the scope of your governance project or not, but there's this big flurry of activity in '76, '77 with the questionable payments and the Congress passes the Foreign Corrupt Practices Act. And after that initial flurry, you go for about twenty-five years and I don't think there's five cases that are brought under the Act, maybe there were five, then all of the sudden there's a gush. I coauthored an article on this. I did an article with another guy in '05 or '06 on this. There's a huge gush of cases brought and the historical question here is, what was going on for twenty-five years and what changed so that all of the sudden people started bringing these cases?

I was just an observer and that's what we were doing writing this article, just saying look, there's a whole bunch of cases here, prosecutions brought under circumstances that you might never have thought had anything to do with the Foreign Corrupt Practices Act partly because everybody involved is an American; there's no foreigners here at all. As I

say, I don't know if that's within the scope of your study but there's an interesting kind of question there, is what happened between '77 and kind of 2000-ish?

**RC:** That's a good question.

**KB:** Those are probably the kind of things that occurred to me as I went through your list. The only other historical story I know, and I don't know if this is true but I think it's a great story, and maybe you've heard this from somebody else. Supposedly, in the twenties, Joe Kennedy would be walking down Wall Street or Boston, State Street or somewhere and he would climb up on a shoe shine stand and he would know that the shoe shine man would say, "Mr. Kennedy, what are you buying?" And Kennedy would feed the shoe shine man three or four company's names, knowing that the shoe shine man would tell the next customer, oh, let me tell you, Joe Kennedy is buying x, y and z. Kennedy would go back to his office, watch these other guys go bid the price of the stock up and he would sell it short. (Laughter.)

**RC:** That's a great story.

**KB:** I think that's a great story. I don't know if it's true or not, but it could be true.

**RC:** It wouldn't surprise me.

**KB:** The other Joe Kennedy story is a Chicago story. There's a guy who by 1960 is second tier in the mafia in Chicago, right under the big boss of the mafia, who's name was Sam Giancana. This second-tier mobster is always referred to in the media in Chicago as Murray "The Camel" Humphreys. I don't know why he was "The Camel," but they always called him "The Camel."

So it's the spring of 1960, April, May, and this story is being told by Mrs. The Camel, who is by this time a widow, it's many years later, and she says Murray comes home from a meeting of all of the mafia hierarchy at Giancana's house and he's spitting tacks. He's just mad as can be. And she says what's wrong? And Murray says, I've been told I have to produce so many thousands of dollars for Jack Kennedy's campaign. And Mrs. The Camel says, so, this is Chicago. This happens every four years, what's new? Why are you so upset? He says, well, do you know who this guy is? He's the son of Joe Kennedy and Joe Kennedy is a crook. I'm not going to give him any money. Well, she says, well why is he a crook? And then Murray proceeds to tell a story about how during Prohibition he had a deal for some liquor with Joe and Joe didn't deliver the goods, but Murray gave him the money. (Laughter.)

**RC:** Those are great stories.

**KB:** That one might be true, because Mrs. The Camel had no reason to lie about it.

**RC:** So, you left Solutia in 2009.

**KB:** Two thousand-three.

**RC:** I'm sorry. Yes, 2003. And what made you decide to go back into private practice?

**KB:** I had set a target for retiring for myself. I'm a believer in term limits and I decided I'm going to term limit myself and I just set a time and said okay, that's it. I really think that's beneficial for a lot of reasons, to do that. And then after I retired I was approached by a couple of law firms in town, well would you like to come and work for us, work with us, and my answer was yes, but I'm not going to take on a full-time load. No, that's okay, they said. So, I ended up with kind of a part-time arrangement with these guys.

**RC:** What sort of work were you doing?

**KB:** It was all in the same kind of what we've broadly called governance but it's board-related issues, compensation related issues, some transactional stuff too. Plus, they sent me out to speak to groups and that sort of thing.

**RC:** This is where I got confused. You got retired from there in 2009.

**KB:** Yes.

**RC:** This is just before all the Dodd-Frank stuff really kicks in.

**KB:** Yes, that's right.

**RC:** It's either great timing or terrible timing, depending how you think about it.

**KB:** Everybody's different in terms of retirement. I know guys who kept going to the office into their mid-nineties. I'm not quite sure what they did, but they went to the office every day. The only thing I did that was conscious, really conscious about it was saying, okay, set a deadline to exit. I mean the job as general counsel and secretary at Solutia was a terrific job, I really loved it, but I thought I'm going to give myself a date that it's time to go.

**RC:** That's all I'd like to cover. Do you have anything else?

**KB:** No, those are the things that have occurred to me.

**RC:** Great. Thank you for doing the interview. It's been a pleasure talking to you.

**KB:** I hope I remembered it correctly, (laughter), at this point.

[End of Interview]