

**Securities Exchange Commission Historical Society**  
**Interview with Justin Feldman**  
**Conducted on June 22, 2004**  
**by Jonathan Katz and Daniel Hawke**

**JF:** I am of a counsel to the law firm Kronish, Lieb, Weiner and Hellman, where I've been for twenty-two years; and before that, for about twenty years, I was a partner in a firm called in Poletti, Freidin, Prashker, Feldman and Gartner. Earlier, for a period of about eight years, I was a partner in a firm called at one point Landis, Brenner, Feldman and Riley and at one point Landis, Feldman, Riley and Akers, the Landis being James M. Landis. James McCauley Landis, the first appointee, I guess, under the '33 Act to the Federal Trade Commission and probably the first appointee to the SEC, under the '34 Act, and the second Chairman, after Joseph Kennedy.

So I'm here with you guys at your invitation. That is Jack Katz, the Secretary of the Commission, and Dan Hawke, who tells me he's a Branch Chief in the Enforcement Division. Doesn't look like a predator. I'm here to see if I can give you some history, some perspective in terms of the past. I really never had a securities practice until I joined forces with Jim Landis. He had been practicing at a firm called Landis, Taylor and Scoll and that was Telford Taylor and David Scoll. He also had an affiliation with a firm in Washington that was known as Landis, Cohen, Schwartz and Rubin, but he never really was a partner in that firm. I had been a tenant I'd left the old Poletti Freidin firm, which later become Roosevelt, Freidin and Littauer and was a single practitioner renting space from a firm, Brenner, Hannan and Murphy, when they asked me to join the firm, but at that point I didn't think they had the scope I was interested in.

But Brenner was a former Surrogate, that is a Probate Judge, in Westchester County and he had a little Westchester firm with Jim Landis, who was then the Supervisor of the Town of Harrison, New York. It was called Landis, Brenner and Bauman. I was not interested in Landis, Brenner and Bauman. I didn't think too well of Bauman. He later went to jail. Not that I thought that well of Brenner, but the idea of practicing law with Landis was very attractive and I said that if they could bring Landis in and form a New York firm, I would join them. Landis left Telford Taylor. That wasn't really a partnership, either, but Telford never quite forgave me for it, and we formed the Landis, Brenner, Feldman and Riley firm.

That was the end of 1956, the beginning of 1957, and immediately, apart from Jim Landis's genius and I do mean that because he was a genius in terms of ability to assimilate facts and law like no one I had ever known before or since, it immediately brought me into a relationship with the Kennedys and the Kennedy family because and I don't know how much you are interested in knowing about Jim outside of the SEC, but Jim, while at the SEC, had formed a very close relationship with Ambassador Kennedy, and after the war, when Jim was Chairman of the Civil Aeronautics Board, CAB, he resigned in a fight with President Truman. Resigned, quote, fired, who knows?

What happened was that under the Civil Aeronautics Act, in licensing a foreign carrier, because the President of the United States had the responsibility for foreign affairs, the President had to sign off and Jim, as Chairman of the CAB, held these extensive hearings

as to who would be the flag carrier over the north Atlantic, TWA or PanAm or American Overseas. The Board awarded the franchise, subject to the President's approval, to American Overseas and PanAm was then run by Juan Trippe, who was very influential politically.

He had a lobbyist named Sam Prior in Washington and the order of the Commission went to the White House and the President signed it, and the evidence clearly showed that immediately thereafter, Matthew Connelly, who was then the President's secretary, persuaded the President he had made a mistake, after he had met with Juan Trippe, the President's signature was eradicated and the award was disapproved, instead of approved. That brought on the dispute.

Jim was stranded. He had been a government servant all his life, didn't know what he was going to do and Joe Kennedy said, "Don't resign over the issue." This is obviously hearsay on my part, getting it from the Chairman. "Don't resign over the issue of Truman having screwed you," so to speak. "You're not going to win that fight, a fight with the President. Resign because I had asked you to come to New York to represent the Kennedy interests," which were then lodged in New York, and that's what he did. So when I started practicing with him, I immediately became friendly with the Kennedy family. Jim was the trustee of a number of the Kennedy family trusts. Joe Kennedy and he were very, very close and shortly thereafter I mean, his relationship with the Kennedys was well known.

Matter of fact, it was the problem of some contention as well because in 1958, when then Senator Kennedy of Massachusetts, later to become President Kennedy, had to run for reelection, Jim just took off three months. Went up to Boston to write his speeches and was sort of in charge of all the policy issues. It was that campaign which later led to his tax problems, in a way, but I don't know if you're interested in any of that. Be that as it may, we, in '58, '59, started to develop an IPO practice. For some reason, in that period of time, the whole nature of the business changed. The people who had been selling vacuumCyou know, Fuller Brushes door-to-door, became vacuum cleaner salesmen door-to-door. They became aluminum siding salesmen door-to-door and lo and behold, they became broker dealers. And in the process, there were also a lot of IPOs, Initial Public Offers, and broker-dealer revocation proceedings.

We didn't call them IPOs then. They were called Hot Issues and we started, for the first time, there were a bunch of new underwriters in the business, a bunch of new issuers and for the first time, the white shoe firms, the fancy law firms that had always represented the issuers and the underwriters, were not taking on this business, and we got a lot of it, and with it we got a lot of enforcement cases. There was no enforcement division when I had my enforcement matter. Each of the divisions had their own enforcement counsel. So Sidney Mendelsohn, who later became the head or the director of the division, the investment company.

**JK:** The Investment Management.

**JF:** Investment Management Division. He was the enforcer, and Phil Loomis in Trading and Markets and a guy named Eisenstadt. I'm pretty sure his name was Eisenstadt. I can't remember for the likes of me his first name. In . . .

**DH:** Corporation Finance.

**JF:** In Corporation Finance. What was it called? Corporation?

**DH:** Finance.

**JF:** Yes, and he was an assistant director of the division and did the enforcement. The first case I had with him, I'll never forget. I later developed a good relationship with him. He was very abrupt and very pre-emptory. I'll never forget, he had asked to see a client of mine who he thought had been guilty of some violation of the act, named Al Dworman, I believe his name was. Dworman had inherited a lot of money and was very active in the market. D-W-O-R-M-A-N. I remember going down to Washington to visit with Eisenstadt and Dworman being abused by him verbally and Dworman saying, "You can't treat me that way. I'm just not some young kid on the street. I happen to be worth thirty-three million dollars," and I remember Eisenstadt looking him in the eye and saying, "I know, and when your father died three years ago, you were worth thirty-seven million dollars." [laughter]

**JK:** He was not impressed.

**JF:** But then we worked together on a matter. There was a matter involving somebody named Schindler, and I can't remember what the case was. My role in that was that I represented a Swiss bank through which Schindler had distributed unregistered securities. Anyway, I had been retained by a Swiss private bank. I'm trying to remember the name now. I remembered it earlier this morning. It will come to me, that had bought some of these securities and found that they couldn't sell them, couldn't sell them. There was a Stop Order, number one, and number two, it was an illegal distribution. The Commission was unable to get any information.

Eisenstadt was unable to get any information, and so with the help and cooperation of my client, I went over and spent some time in Switzerland, in Zurich developing information, photostatic records, so forth, and finally being threatened with arrest for violation of the Swiss Economic Espionage Act. I remember coming back and giving Eisenstadt the information and great, he was going to make a case, and then one Sunday morning I was up in the country. Dutchess County. We had a farm at the time, and I picked up the *New York Times* and there's a death notice. Schindler is alleged to have died, and I called Eisenstadt. I reached him at home and I read it to him, and I said, "I know your reaction." He said, "What's my reaction?" "Your first reaction is, 'The son of a bitch can't do it to me,'" and I said, "Yes, I know your second reaction, too," and he said,

"What's that?" I said, "You're sending up an investigator to make sure he's dead, view him in the coffin," which he actually did. But I'm roaming.

**JK:** No, this is very interesting. I'm curious. Unregistered offerings in Europe are a significant problem today. How did it happen? Do you know what the mechanics of it was? Was it the issuer that was selling overseas?

**JF:** The issuer was selling overseas. Let's see, he was selling to banks, who were taking on behalf of their clients, and in accounts in which the clients didn't know what they were taking or what they weren't taking, and some of those banks were taking payoffs on the side from these hide-behinders, who were telling them, "You know, the stock's five dollars. And now it's six dollars. And now it's seven dollars," and the famous story went around at the time that the guy who says, "Maybe now I ought to sell," and the broker-dealer says, "To whom?"

**JK:** Were these what we call penny stocks today or were these legitimate companies?

**JF:** No, they were Reg A offerings that later, you know, merged with some old, stale shell. They were all sorts of things that never went through the registration process. Some of them turned out to be successful, but very rarely, and they were operating in a form of boiler room operation, but selling them overseas to some of these banks. I mean, that's Bernie Cornfeld is getting rich on it and so why not?

Of course, you see a lot of the things that are still problems today. I'm not a practitioner in the field today. I haven't been for twenty years, but so many of the things that we thought were, or the industry thought, Stan Sporkin and Irving Pollack thought were the cause of all sorts of problems, offerings overseas, what we called left-fielding stock, which is now called lockup agreements. Left-fielding stock was a way of getting the stock to move because you would put it in the hands of relatives, who weren't supposed to sell for ninety days, until the market absorbed what they had. Now it's a lockup agreement and it's perfectly okay.

**DH:** As long as it's disclosed.

**JF:** As long as it's disclosed. I mean, so that some of Cbut does that mean that it's right because we saw what happened with the IPO's in the '90s. So what? They disclosed the lockup agreement but not the potential effect with the stock. You know, if you lock up 50 percent of the stock and you create a great demand, the stock's going to move up and then by the time the lockup agreement is up, they dump the stock. It's the same manipulation, but only it became legal, and that's true of some of the overseas offerings. The so-called, you know, the theory of offering stock overseas that's not going to come back. Nonsense, it's not going to come back. Anyway, be that as it may.

**DH:** How do you compare the Hot Issues market in the late '50s to the IPO Internet bubble of a couple of years ago?



**JF:** The Hot Issue market of the late '50s well, it was by no means as dramatic or as lucrative. You know, if a stock came out at five dollars and went to seven and a half, it was a big deal. It didn't come out at twenty-two and go to a hundred and six. The Hot Issue market was frequently you know, first, if you put the word Uranium on it, you'd sell it. Then it had to have the word onics, or the suffix onics on it, but it's the same stuff.

**DH:** No different than .com today.

**JF:** No different than .com. It was uranium. It was mining It was gold. It was onics. It was aeronautics.

**DH:** Space.

**JF:** Excuse me?

**DH:** Space.

**JF:** Space, but you know, there were fashions year to year, and it was the same stuff.

**JK:** When you were working on these new issues during the '50s, what was the extent of due diligence that was being done by underwriters then?

**JF:** Very little. Very little due diligence. I established my relationship with the staff of the Commission by what some people said was foolish on my part, but on none of these issues would I take options. There were lawyers taking options and I felt very strongly that there was a conflict because I immediately became a partner, if I took options. A lot of lawyers got very rich with those options, and the staff gave me credit for that, so that in a sense my reputation was my capital. I've not regretted it, by any means, but the abuses, the abuses of the marketplace are no different now from what they were. It's just a matter of scale.

What we didn't have then was, and that took a while to develop, was this business of short-term contracts for CEO's and CFO's based upon earnings, even phantom earnings, so that the incentive to goose that stock became enormous. There were still all of the devices. I see you've listed some of the cases I was involved in. Hazel Bishop was an interesting one. Do they still talk about Hazel Bishop undertakings? [chuckle]

**JK:** It comes up.

**JF:** What that was is that Hazel Bishop was a cosmetics company that had gone public with a very small offering, and then all of the insiders got stock and the stock was subject to registration rights. But no underwriter wanted to take it on, because there were I don't know how many selling stockholders.

**JK:** There were over a hundred.

**JF:** There were over a hundred, well over a hundred. So no underwriter wanted to take it on and they didn't particularly want to pay an underwriter, but they registered the stock and there was a Stop Order. Nobody would tell them why there was a Stop Order. It just said there's a Stop Order. We'll come up with charges sooner or later, and there will be a hearing. So I was retained to try to find out why there was a Stop Order and Counsel to the company at the time was a guy named Ben Javits, who was the brother of Senator Javits of New York, and Ben Javits couldn't get any answers. Senator Javits intervened. He couldn't get any answers at that time, but I went to see Manny Cohen, who was then CI guess was he still an assistant director or was he a director?

**JK:** I think he would have been either the director or deputy director.

**JF:** Either director or deputy.

**DH:** Because it was right around when Woodside became the Commissioner.

**JF:** Right, and I said, "Manny, what's the problem, 10b-4?" and he said, "Obviously," and that was the provision of regulation so that you can't have people selling at the same time they're buying, if they're underwriters. Of course, these were all statutory, 2(11) underwriters, statutory underwriters. So I said, "Well, we ought to be able to solve that,"

and he said, "How?" and I said, "Well, why don't we have an agreement among them, as you would have an agreement among underwriters, and put the restrictions on them. Treat them as they would be underwriters. If you tell me they are underwriters, we'll make them real underwriters." He says, "That's a hell of an idea." He says, "Why don't you give me a draft of a proposal?" and I did.

We lifted the Stop Order. I got everybody to sign. We lifted the Stop Order. They became known as the Hazel Bishop undertakings, and I always said to Manny, "They should have been known as the Feldman undertakings," but then they were widely used for a period of time. But it was another example of how a relationship with the staff, being honest with the staff, paid off in the practice for the client.

**JK:** Dan and I read Hazel Bishop, in fact, in the last couple of days, and there's something interesting about it. Maybe you can talk about it a bit, which was it was an offering without an underwriter. It was essentially offered at the market through the American Stock Exchange, and that's not something that happens today. Can you just explain how that would work?

**JF:** Well, they were all freeChow did that work? I'm not sure whether I canCit was an offering at the market, through the Exchange.

**JK:** So did they just list and begin trading?

**JF:** Yes.

**JK:** And the price was just whatever the specialist was quoting?

**JF:** Whatever the specialist, right, was quoting, that was the price, and nobody was allowed to buy while the selling was going on. That is, none of the selling stockholders.

**DH:** Was that unusual or was that something that was common?

**JF:** It was unusual. It was unusual. That's right, I'd forgotten that that was the mechanism. It was.

**JK:** I'm curious, during this period you did a number of Stop Order cases with the Commission, and at one point Stop Orders were one of the most frequently used tools the Commission had. We haven't done a Stop Order, I believe, in more than a year now. Maybe two years. What do you think has happened? Why were Stop Orders so commonly used by the Commission then, do you have any theories? And today they're really not.

**JF:** I don't know that I do. I mean, the Stop Order was used in the situation where they didn't well, later on they started asking for amendments so extend the time. So that you

would file pro forma, constantly file pro forma amendments to keep the registration, to keep the time period going.

**DH:** Right.

**JF:** I think that was a device that came into being later. Initially, they did jump in with Stop Orders. What other Stop Order cases was I in?

**JK:** There were a couple of the others that Dan found.

**DH:** It's in the matter of Isthmus Steamship and Salvage?

**JF:** I don't remember that one at all.

**JK:** Well, let me ask, you said that the Commission issued a Stop Order. There was no advance warning that it was coming out?

**JF:** Not that I can recall.

**JK:** So that was sort routine business?

**JF:** Yes, instead of getting a Letter of Comment, they'd call you and say, "We're issuing a Stop Order in this case," and you'd say, "Why? Let me come down and talk to you," and they'd say, "Well, you can come down and talk, but" "I see you've revived my memory on the Isthmus steamship; that was the Amos Treat case. The Amos Treat case is a great example of how the procedures were crazy at the time. Amos Treat was a broker dealer, who must have had about fourteen Hot Issues. He was not my client with respect to the registration of any of the issues, but one of when a couple of his issues went sour, one of his customers complained to the Commission, and the Commission issued a stop order and brought a broker dealer revocation proceeding. Counsel on that proceeding for the Commission was Coh, gosh.

**DH:** Stuart Gordon and Sherwin Shapiro.

**JF:** Stuart Gordon and who else?

**DH:** Sherwin Shapiro.

**JF:** Sherwin Shapiro, and they were not used to trying a case. They were not used to the rules of evidence. Who was the Hearing Examiner on that?

**JK:** The opinion does not . . .

**DH:** They usually don't identify it.

**JK:** Indicate who the . . .

**JF:** It was the Commission's opinion?

**DH:** It was by the Commission, Chairman Cary and Commissioners Woodside, Whitney and Owens. Commissioner Cohen not participating.

**JF:** Well, you know the story of Commissioner Cohen not participating? They had a procedure then where if you disagreed with the ruling of the Hearing Examiner, you could appeal to the Commission, and sometimes they'd suspend the hearing, depending on the nature of the ruling and how significant it was. They would suspend the hearing while you got a ruling from the Commission. That case went on for a while because Gordon didn't know exactly what he was doing, nor did Shapiro, nor did the Hearing Examiner.

We got to the pointCthe case startedCI think the hearing started perhaps in January, and we're now into March and my kids' Easter vacation is coming up and I've got reservations to go to the Bahamas and I want to recess the hearing for about ten days, and they object. They won't let me do it and the Hearing Examiner is now listening to the Commission staff, he won't give me the adjournment. So I'm furious and I took advantage of his next



evidentiary ruling to object and to appeal to the Commission because I didn't know how long it would take them to come down with a ruling. I knew that Cary wasn't there or who were the other Commissioners?

**JK:** Woodside, Whitney and Owens.

**JF:** Okay. How it worked out, I got the adverse ruling from the Commission. They sustained the Hearing Examiner, whereupon I asked for what the vote was and it turned out that only three votes were cast. Two of the Commissioners were not there, and one of them voting was Manny Cohen. I raised the question that he had been the head of the division at the time that some of these issues came into controversy and therefore, he should have recused himself and, if he was disqualified, there was no quorum of the Commission present and, if he voted, it was a violation of due process. Would you believe, that I managed to get CI went down to Washington and on that ground, got the very first injunction against the Commission in an enforcement proceeding?

The district judge was George Hart, and just a week before he had granted an injunction against an enforcement proceeding in a case involving a guy who was involved in a lot of tries for an injunction, around some Wall Street newspaper, which was a tout sheet, and he'd gotten reversed by the Court of Appeals. So he said he sympathized with my point of view, but he was not sticking his neck out again. I went right up to the Court of Appeals. I got a stay and the Court of Appeals reversed it. Landis handled the argument

and I got my vacation. People in the division were furious with me saying "You have ruined Manny's chances of becoming Chairman. How could you do this to Manny? You're his friend. He's your friend." I said, "How could he not let me go on vacation with my kids?" Because he knew the story. So the Treat case later was settled. I don't know what the order of the Commission was, finally.

**DH:** Well, the Commission foundCwell, they approved a settlement under Sections 15B.

**JF:** And there was a short suspension?

**DH:** 17A, Section 10B and 15C-1 of the Exchange Act and I don't know that it reflects what the sanction was, but they did find violations inCI guess there were three issuers: Avionics, South Bay and Magnabond.

**JF:** Right.

**DH:** One question that I had was how extensive were the investigative aspects of the proceeding? In other words, how much testimony was taken and how vigorous was the staff in seeking documents and in building the investigative record?

**JF:** My recollection is that they were relying on the testimony of investors, as to what they'd been told in connection with the sales, and one of their investors, who lost the most money in AvionicsCthat was part of the ONICS.

**DH:** ONICS.

**JF:** Was a dentist, and I asked him in cross-examination what other brokerage accounts he had, and he didn't want to disclose it. I got a ruling that he had to disclose it and I subpoenaed his brokerage accounts and for a little dentist in the Bronx he had accounts at Bear Stearns, he had accounts at Merrill Lynch, and he was just frantic. They were not prepared for that. They did not really know their witnesses. They really did not know. To put a dentist on the stand complaining of losing twenty-three thousand dollars, when he's got about four million dollars in securities in a whole variety of accounts, is not exactly a smart thing to do, when I'm sure they could have found the widows and orphans.

**DH:** I'm sorry, how long did the investigationCwould a typical investigation back then in the early 1960s take?

**JF:** Well, I don't know that I can talk about a typical investigation. There were those investigations that took two days. You walked in and you said, "What kind of an injunction do youCyou know, give me the words," and there were those like the Chesler case, I alluded to earlier. Lou Chesler was a target. He was a target because Bobby

Kennedy wanted to get Meyer Lansky and he was convinced that Lou Chesler had a relationship with Meyer Lansky, by virtue of the gambling interests that he has.

**DH:** Was this when Bobby was Attorney General?

**JF:** Bobby was Attorney General. When I got it, Bobby was no longer Attorney General, but that had started a whole direction, shall we say. Stanley Sporkin was assigned to this investigation and it was his first assignment, and you know, they came up with all kinds of stuff. For instance, Chesler was a big gambler. That was a known fact and he walked into the Colts dressing room at halftime in the Super Bowl game because he was close to the guy who owned the Colts.

**JK:** Carroll Rosenblum, who was a big gambler.

**JF:** Right, and he said to the team, "If you guys can win this game, I'll give every one of you a thousand shares of Universal Controls, guaranteed against loss. All you have to do is call my broker, he'll give you each a thousand shares. Sell them whenever you're ready to sell them, and if you lose money, call me, I'll make it up." Okay. The publicity over the fact that each of the Colts had now, quote, bought a thousand shares, it might have moved the stock an eighth. It might have. The stock went up, most of them made a lot of money on it. It was bought in the market. They were not his shares, although Stanley tried to show that they were his shares, not reported on the Form 4. He told his broker,

"Sell these guys the stock. I'll finance it, and when they go to sell it, give me back my money and give them the profit."

So Stanley was frustrated at every turn on this. He was working closely with the Justice Department. He was working closely with the Southern District, and Peter Fleming, who is just now trying the Rigas case, was in the Southern District then working on it. Pierre Laval, who is now on the Second Circuit, was in the Southern District working on it. Paul Grand. But it was, you know, the most they were able to do was to Max Orvitz, who had been given some stock and was a director and failed to report the acquisition on his Form 4, and they thought that they would turn him and they didn't. He served a year.

**JK:** Well, they must have thought there was something else. What were their suspicions? What was it that made them do this?

**JF:** Well, their suspicions that he was a market manipulator and that he was tied to the Mob.

**DH:** Did they have any evidence of that?

**JF:** Of what?

**DH:** Of his ties to Lansky?

**JF:** Did they have any evidence of his ties to Lansky? You don't run a gambling casino in the Western Hemisphere during that period of time. Do I know that he had ties to Lansky? No. Did I ever meet Lansky? No. Did I go to his hotel in the Bahamas when Mrs. Lansky was there? Yes. But, you know, as a matter of fact, when Stanley became, the day he became the director, either director or associate director of the Division of Enforcement, I happened to be in the building on another matter and I heard the announcement, so I went up and asked to see him, and he had the Enforcement Division in his office and they were celebrating.

I walked in and told his secretary I was there and I wanted to congratulate him, and he had me come in and he said, "There's the only guy who ever beat me on a case." He said, "Can you imagine what I would be today, if I had made that Chesler case?" I said, "Yes, you'd have gone from a GS-13 to a GS-14." I said, "How do you think you got all those promotions? I got you promoted off the case." He looked at me. I was kidding him, of course, but he looked at me and he said, "I've always wondered about that."

The fact is, I was very useful. I mean, during the Kennedy administration I was very useful in getting Manny appointed to the Commission. Landis was useful in that, and during the Johnson administration, I introduced Manny to Ed Weisl, who was Johnson's personal lawyer, and who interviewed Manny and recommended him to Johnson for the Chairmanship. I've never been ashamed of that. I think he was a great Chairman, just as

I think Stanley Sporkin I think I told you over the phone, Stanley Sporkin did more during that period for reforming corporate governance in America than he was ever given credit for.

[End Tape 1, Side A]

[Begin Tape 1, Side B]

**JF:** I know that Irving Pollack started the division and Irving was very good. He was a nuts and bolts guy. By the way, is he still around?

**DH:** He is.

**JF:** Well, tell him I said hello. I like Irving, but Stanley really understood what had to be done. Stanley understood the need for the Foreign Corrupt Practices Act. Irving might have understood the need for it and not exactly put it all together. Stanley was very creative. Stanley is also I had a lot of fun with him because Stanley at least had a sense of humor. I was able periodically to pull him up short and say, "You know, Stanley, you're doing a great job, but we still have a Constitution in this country. We've still got due process in this country, Stanley. Back off for a minute and think of what you're saying and what you're doing." Then he would look at me and say, "Really? Really? You think I'm going too far?" We would have a great dialogue. Did I get away with

anything? Not that I shouldn't have gotten away with, I should say, but it was just wonderful to deal with the guy, to deal with a number of his assistant directors and branch chiefs.

**DH:** Do you recall their names?

**JF:** Excuse me?

**DH:** Do you recall their names?

**JF:** Well, Ted Levine was one of them. Just wondering. I can't really recall their names. They were all afraid of him. You would try to make a deal on something with a branch chief or an assistant director, and they'd say, "Well, Stanley will never approve of it," and I would say, "Well, how do you know? Let's talk to him." "What do you mean talk to him? How do you get to see him?" I said, "Well, I'll call and we'll get an appointment." "Well, maybe you can get an appointment, I can't get an appointment." The staff was very frightened of him. That was the one drawback that he micromanaged on the one hand. On the other hand, he was not very collegial with his staff. But nobody in world did I respect more in the field of law enforcement, in securities law enforcement than Stanley Sporkin.

**DH:** Do you recall having a view as to the formation of the Division of Enforcement, taking the enforcement from within the various divisions and putting it into one division?



**JF:** Yes, I think that was Irving Pollack's idea, and it was a useful idea because under the prior arrangement, nobody was taking the enforcement very seriously. Nobody was developing a set of principles. Nobody was developing a coordinated point of view. Now, was that done under Cary?

**JK:** No, it was done under Casey.

**JF:** Hmm?

**JK:** Bill Casey.

**JF:** Bill Casey? No, you had an Enforcement Division before Bill Casey.

**JK:** No, it was Bill Casey.

**DH:** 1972.

**JF:** Okay, but it was still Irving's . . .

**JK:** Yes.

**JF:** Cary professed an interest in enforcement. Is Cary still alive?

**JK:** No, he passed away a number of years ago. Did you know Cary well?

**JF:** Yes, he was. God spare me professors. Cary was one of these people who, he had a theoretical view of corporations and how they function and knew what the functions and fiduciary obligations of the directors are, and what an auditor should and shouldn't do. He was interested in law enforcement and he was interested in making criminal cases, but there's nothing worse than in a position like that, in my view, than somebody who professes rectitude and will not tolerate ex parte communications or political interference and then does.

**JK:** Did he really?

**JF:** Yes! I mean, no, this is what I resented. The Hazel Bishop case—who was Chairman at that time?

**JK:** That was Cary.

**JF:** Okay. When I tried to resolve the Hazel Bishop case, and I wanted to talk to him about it, he wouldn't see me. I'd known him. He wouldn't see me. And then when I did resolve it with Manny, Ben Javits, whose firm was general counsel to Hazel Bishop, A) resented the fact that I was able to find a solution and, B) that they were going to have to enter

into all these agreements. So he got his brother to go see Cary and came back to advise the Board of Directors that it probably could be worked out with Cary without the strenuous imposition that I'd worked out with Manny, and I was furious. It was not uncharacteristic of Cary, looking you know, in his dealings with the Congress, and he was an amateur.

I mean, I found out when I was in government, and I worked in the executive branch for a short period of time, I worked on the Hill for a short period of time. If you understand that politicians have to make representations, and you learn you don't have to give into them because they have to make representations, that's fine. But the people who are most resentful of political interference were the people who didn't understand that and thought that every time a Congressman or a Senator called or wrote, that he meant it or that you had to do something, and that used to drive me crazy, both working on the Hill and when I wrote some of those letters for Congressmen and was working in executive branch and I'd get some of those letters.

Cary was one of these people who didn't understand that. He was naive. Guys like Casey would understand it. Guys like Kennedy would understand and guys like Kennedy and Casey would never resent, quote, political interference because they knew how to deal with it. I think it's true of people who developed a reputation in a different career, not that being a professor of law at Columbia is not a career, but you know, I don't think he ever understood that. I think Donaldson does, from what I can see.

**JK:** Well, I was always under the impression that Landis had sort of selected Cary as well. That Landis had originally tried to talk Louis Loss into becoming Chairman. Loss turned it down and then he chose Cary.

**JF:** Well, no. Landis tried to talk Loss into it, yes, and he tried to talk Edmund Levy into it and he turned it down. Then he tried to talk me into it, but not too vigorously, I should add. But does the name Sam Harris mean anything?

**DH:** Yes.

**JF:** Sam Harris was a partner in what was then known as Freid, FrankCwas it Freid, Frank, Harris, Shriver and . . .

**DH:** Kampelman or something.

**JF:** Yes, well, the Washington office had Kampelman, and Sam Harris wanted me to go move down to Washington and join with him. Kampelman was actually just coming out of Senator Humphrey's office and he wanted the two of us to join the Freid, Frank office in Washington, thinking that we could revitalize it. Up until then it had been run by Felix Cohen, whose claim to fame was that he handled Indian claims with Bureau of Indian Affairs. So that office was nothing much to speak of, and so he wanted me to come into it and wanted Max to come into it.

At that point I said to him I didn't think I wanted to do it because I was thinking about going to the Commission. I'll never forget, he said to me, "Really? And what are you going to do there?" I said, "What do you mean?" He said, "Unless you have an independent reputation, such as a Joe Kennedy or a Dean Landis, the best you are is a caretaker and you'll end up with an epitaph that says 'he was a Chairman of the SEC,' and somebody will say "and how many Chairmen were there?" and somebody will say, "fourteen, fifteen, sixteen." He said, "Don't do it." I didn't. Well, Cary was suggested actually by Lou Harris, the pollster, who was his next-door neighbor in Riverdale, and who was Kennedy's pollster. Landis went along with it, but Cary was not his original choice. Edmund Levy, who later became Attorney General, was his original choice.

What else do you want to cover?

**DH:** Oh, we have lots to cover.

**JK:** Why don't we talk a little bit more about a couple of your cases.

**JF:** Sure.

**JK:** And then lets talk to some more about Landis.

**JF:** Sure.

**JK:** I'm really interested in learning more about the Vesco case.

**JF:** Okay. You talk about the Vesco case.

**JK:** Or the Cornfeld case, if preferred.

**DH:** Or Crazy Eddy.

**JF:** Crazy Eddy? In September, October of 1972, the Commission brought the Vesco case, alleging that Vesco had stolen two hundred and twenty four million dollars, seeking a preliminary injunction. They named, as defendants, all of the management companies, all of the fund companies, I believe, Arthur Andersen and one of the associates at Willkie Farr. You probably have a caption there. A whole bunch of people. The case started I think in some measure because of the rumor started that his lawyer in New Jersey had delivered two hundred thousand dollars in cash in the suitcase to Maurice Stans. No, I guess there was an investigation of Vesco going on before that, when the two hundred thousand dollars went to the Nixon campaign fund in '72.

But in any event, the staff named, in my judgment, too many defendants because the net result was that Arthur Liman, who was representing Vesco personally in the course of the early stages of the investigation, put together what we came to call the Robert Vesco Bar Association. He brought me into it to represent the management companies. I brought

with me my partner and friend, Paul Grand, who's now in the Rigas case, representing Timothy Riga, who was a classmate of your father's at law school.

**DH:** At Columbia?

**JF:** Right. And who introduced me to your father originally. I don't have a list of the defendants.

**JK:** I think he wrote it down the bottom right hand corner, the counsel.

**DH:** But it does not identify who they're representing.

**JK:** It doesn't identify who they're representing, but on the next page it identifies the defendants, or some of the defendants.

**JF:** Right. Well, I had the management companies. Arthur had Vesco. Dornbush, Mensch had I think the financial officers. John Martin, who later became a District Judge, had some of the defendants. Alan Schwartz, who later became a District Judge, had some of the other defendants. You had a lineup of defense lawyers, which I think was the cream of the securities and white collar crime Bar, securities enforcement and white collar crime bar in the city, against Howard Kushner and he had one young guy with him. Who was it?

**JK:** Blank? Alan Blank?

**JF:** Alan Blank. And initially we had Joe Flom in it. I mean, we had everybody.

**JK:** You know, IOC is probably I'm not sure they were born then. Maybe you should explain what IOC was all about.

**JF:** Oh, okay. IOS.

**JK:** IOS, I'm sorry.

**JF:** What it was was that Cornfeld, after the war, set up something called the Fund of Funds, and what he did was he sold, in Europe, and in Latin America and that was the basic structure. He had several other arrangements, but he sold interests in the Fund of Funds, which invested only in other funds. So he had very little overhead. He had a bunch of salesmen and they were selling mostly to American servicemen overseas. The management companies are all foreign entities and there was virtually no contact with the United States, except that these funds they were selling that they would invest in, were American entities.

He did very, very well. Vesco ran a little company in New Jersey called International Controls, I believe, and somehow or other he hooked up with a guy named Alan Butler,



from the Bahamas, who was on the Board of IOSCmy memory's a little vague on all this now, although I just noticed I have my briefs. Vesco took over or bought from Cornfeld these management companies and the fund operations. He found that in sending out proxy statementsCthis is really what happenedChe found that in sending out proxy statements that he was getting a lot of them back and what was happening was that his salesmen all over the place were selling to foreign entities who were using money that they wanted to hide in Switzerland and in numbered accounts, and nobody knew who the hell the real owners were.

So he had what he thought was a great idea, and it was. He had it devised by Willkie Farr and Arthur Andersen and a couple of other law firms and what they were going to do wasCI mean, because all of these funds, you know, they were open end funds, that he was going to liquidate and offer everybody immediate mandatory buyouts at net asset value. To the extent that anybody did not respond, he would then put these funds into a closed end fund, and give them shares, or register shares in their name in the closed end fund, and he would run the closed end fund.

The plan was called A, B, C. One, you redeem the shares. I mean, you offer redemption. You redeem the shares. You set up a closed end fund, and he had it all figured out that there were owners of roughly about two hundred and twenty-five million dollars of these funds that weren't going to show up. Year after year they weren't voting their proxy statements, they weren't taking their dividends, their mail was being returned. They were

probably black market operators in Latin America and all over the world, and that was great. The problem was, he got impatient, as he put it. The lawyers and the accountants were screwing him by taking too long, so instead of A, B, C and ending up with the two hundred and twenty-five million dollars, he did C, B, A. He started with the two hundred and twenty-five million dollars by investing it in related transactions, transactions to which he was related.

So the proceedings started and by the luck of the draw, it went first to Judge Lasker, who immediately passed it onto a newly appointed judge, Judge Stewart, and Stewart was just overwhelmed. I mean, we had an evidentiary hearing on a preliminary injunction that as I recall lasted eight months.

**JK:** Had Vesco left the country yet?

**JF:** Through the course of which he left the country. It started out I'll never forget the first time we went to Nassau to confer with him. We had fourteen lawyers, among whom were those I've named, who went onto Vesco's privately owned 707 at Newark Airport. It was set up with a discotheque in back, and it had six seats up front for Vesco and his family and then a lounge for the rest of us with a stewardess in hot pants who was married to the pilot, who was named Eisenhower, but I don't think was related.

When we took off, Donald Nixon, the President's nephew<sup>C</sup>this is 1972<sup>C</sup>passed through the cabin to offer us cigars, Cuban cigars and I remember saying to him, "Where do you get these?" "Oh, we buy them in the Bahamas." We had all decided we were going to have a meeting in the Bahamas. Arthur Liman decided we were going to have a meeting in the Bahamas. We weren't going to talk about the case. We were meeting in the Bahamas. I said, "You're handing these out in Newark Airport." "Oh," he said, "the Customs people all know who I am." He was the President's nephew. "They don't search my baggage. Whatever you want to buy, just give it to me. I'll bring it and give it to you later."

Anyway, we must have had eight or ten meetings in the Bahamas. We met in London. We met in Paris. We were all over the world on this case, and for a while it looked as though that injunction was going to be denied, and it wasn't until the judge was mandamus'd and the Second Circuit excoriated him and directed that Vesco be deposed, that Vesco absconded. During the course of the case, more darn things happened. There was the Sunday or there was the weekend when Vesco thought he wanted to settle, when Liman and I called Stanley and Stanley and Irving came to New York. About a half a dozen of us had lunch and we thought we'd worked out a deal that would involve a criminal plea, but a cooperation agreement, and Vesco reneged on it. He had indicated that he wanted to make a deal, but changed his mind because it might involve some jail time.

**JK:** Was he just stalling for time until he could get the money out of the country?

**JF:** Oh, the money was out of the country. The money was out of the country.

**JK:** At that time did you know about the campaign contributions, too?

**JF:** By that time we knew about the campaign contributions because that was one of the elements of the case, and by that time Maurice Stans and John Mitchell had been indicted and Peter Fleming was trying that case. At the same time we were trying the injunction case, same courthouse. The money had gone out of the country in a number of ways. For instance, we tried to show the transactions were legitimate. He had bought a bank in the Bahamas called the Bahamas Commonwealth Bank, and we tried to show that the bank had not been looted and we brought some auditors down to go through it.

We were going through transactions, and I found a half a million-dollar mortgage to a bakery, a little bakery up in the native quarter. "Bob, what's this about?" "Oh, you don't want to know that." It was a mortgage on a little bakery that was owned by the Prime Minister's mother. He had invested in a farm in Costa Rica that belonged to the President of Costa Rica. The money was out of the country, there's no question about that. The question was whether he would bring it back and what would be done with it, that was to form the basis or the framework of a settlement. But there came a time when he said he wasn't coming back and that's when we all walked away from it. But in the meanwhile,

you knowCin the meanwhile we had that famousCwell, one of my clients got arrested in Luxemburg.

**JK:** Switzerland.

**JF:** Luxemburg.

**JK:** Because Cornfeld ultimately went to jail in Switzerland, didn't he?

**JF:** Cornfeld went to jail in Switzerland for a period of time. Switzerland, you go to jail first. They try you later. He eventually got out of it.

**JK:** Cornfeld always claimed that he knew nothing about what Vesco was doing.

**JF:** I think that's probably true. I think that's probablyCI would say I never saw any indication otherwise, but you know, crazy things happened in that case. For instance, some of the money was in Luxemburg. One of the management companies was a Luxemburg company. The Banking Superintendent of Luxemburg wanted to examine Bud Meisner on some of these issues. He was president of the Luxemburg company. We all met in London and decided that we couldn't bring him into Luxemburg without some understanding that he wasn't going to be arrested, and my partner, George Solomon, a wonderful, wonderful lawyer and a great human beingCdied a year or so ago, who had

been Landis's associate when Landis and I joined forcesCwent to Luxemburg, hired counsel. They met with Gondolinger, the Superintendent of the Banking Commission, who guaranteed us all safe passage while we would negotiate a settlement in Luxemburg.

We left from London. We went to Luxemburg. Spent the night, and in the morning while having breakfast, Meisner was arrested. We went to the meeting in Gondolinger's office to protest it, who was there? Irving Pollack. [laughter] Irving Pollack, Bernie CederbaumCthis wife is now a District JudgeCwho was counsel to the receiver because there was a temporary receiver appointedCthe receiver, a couple of other people from the Commission staff, and it all fell apart. Bud Meisner did some time in the Luxemburg jail before we got him out.

**JK:** That must have been really unusual. In those days the SEC didn't do much with foreign regulators, did it?

**JF:** No, but this case stuck in everybody's craw, as it might well have. Vesco was flaunting it. We tried to get him to realize that he couldn't live his life out of the country. He wouldn't believe it.

**JK:** Did you ever hear from him?

**JF:** Excuse me?

**JK:** He's still allegedly in Cuba, isn't he?

**JF:** He's allegedly in Cuba. No, I have not heard from him. No. The last time we did all kinds of things, you know. For instance, we insisted that before we made an offer on behalf of one of the companies to settle, that we had to have a corporate resolution. So we had a meeting of the Board of Directors in Nassau and three cab drivers from Mexico City came in. They were directors. [laughter] And George Solomon and I and Calvin Cobb of Steptoe and Johnson explained the transaction to the interpreter, a very complicated proposal for settlement, and the translator said five words and Vesco said, "Are you ready to vote?" and they said, "Si." [laughter] Did we have a Board of Director's meeting or did we not have a Board of Director's meeting?

**JK:** Sounds like a corporate governance.

**JF:** But that's you know, there are a lot of amusing stories about the Vesco case, but it was an experience. Switzerland, France. Of course, the German shareholders retained Morgan Lewis and Bockius, and they came into it. Somebody got smart and got the Canadian government to appoint a receiver, because these were mostly Canadian companies. Anyway, the Vesco case was a most unusual experience.

**JK:** Do you want to Dan was just saying, do you want to take a few minutes' break?

**JF:** I'm fine. You want to take a break? You want to have something more to eat? Want a cup of coffee, whatever?

**JK:** All right. Do you want to talk a few minutes about Crazy Eddy, too?

**JF:** Sure.

**JK:** As long as we're talking about scoundrels.

**JF:** He's a delightful scoundrel. Most of these scoundrels are delightful, I'll tell you that. As it turned out, I think Eddy retained me, as I have since come to learn and told him, mostly because of the Vesco case. I think he thought that Vesco, having managed to get away with it and not having to come back, that he could, too. But Eddy wasCwhat do we want to say about the Crazy Eddy case? The Crazy Eddy case, as you know . . .

**JK:** When did you get involved, during the investigation?

**JF:** Yes.

**JK:** Or were you involved at all in the offerings?



**JF:** No, no. Paul Weiss handled the offering. No, no, we got involved during the investigation. His cousin, Solomon Antar, came to see me and said that Eddy was considering retaining us, and he interviewed me and called Eddy, and Eddy showed up in the office. These guys always have, for the most part, they always have stories that sound right, and for a while everybody was hanging tight in that case.

**JK:** What was their story? Because the facts of the case were that this was a huge phony inventory scheme, and phony receivables that they were inventing every night.

**JF:** It turned out that the real issue was the so-called same store sales. It turned out that when they wanted to go public at least this was then proven in the case. When they wanted to go public, one of the issues that the Commission wanted disclosed in the registration statement and they aborted one statement. One registration statement, withdrew it and then came in in the following year, was whether or not the opening of all of these new stores was in any way affecting the sales in the existing stores. So that this expansion, whether this enormous expansion was cannibalizing the other property.

Well, as it turned out, what had happened is that they were draining off the cash over the years and had deposited the cash in Israel, some seventy-five million dollars worth, it turned out, and when they needed same store sales, they were bringing back the cash and running the cash through the registers in the old stores, without necessarily having sales to show great receipts. That was the fraud. The tax fraud was something else. I mean,

they were draining cash all along and the inventories, well, that was another story. They would shipCthey would get the suppliers, just before the annual inventory, to ship stuff. The inventory story is very simple. They would order goods, merchandise, knowing that there was an inventory to be taken. They wouldn't pay for it. They would take it on consignment. The inventory would be there for the purposes of the audit, and they sent it back. Would not pay for it.

**DH:** So when you got involved in the case, how much of this were you aware of? How did it play out?

**JF:** Hmm?

**DH:** How did it play out because it was a massiveCit was one of the largest frauds of the time.

**JF:** It played out with gradually the family breaking up in disputes. The big issue became Eddy'sCEddy had a wife and five children and Eddy took up with a young woman who was working there. On New Year's Eve, at a particular time, he failed to show up at his family's home. It was a very close Sephardic Jewish family and his father and his wife and two of his brothers raided the mistress's apartment and found him there. That started a fight and he then supposedly got a divorce from his wife. He had a cousin of his represent himCrepresent her in the divorce, theoretically, and he had another lawyer representing him and it was a consent proceeding, and she didn't know she was divorced.

The cousin had a so-called retainer agreement, when she brought an action for support and there was a judgment of divorce that had terms of support.

It turned out that the cousin who was the lawyer had a retainer agreement. She was later represented by Raoul Felder's wife, the famous divorce lawyer, and it turned out that the retainer agreement CI did not represent Eddy in that proceeding, however. It turned out that his wife's retainer agreement was on her lawyer's stationery, the lawyer cousin's stationery, which had a 718 area code. That area code did not exist as of the date on the retainer agreement. That started things unraveling.

**DH:** That's a very famous story within the Division of Enforcement.

**JF:** Really?

**DH:** Yes, it is. That story is told many times.

**JF:** Simpson still there?

**DH:** Yes, Rick Simpson. It was viewed as one of the great pieces of detective work to determine that the area code had not come into existence.

**JF:** And it started unraveling everything, and then one cousin started taking this position.

One cousin started taking that position, and the deals were being made.

**JK:** Did you still represent him when he was finally picked up? The famous story about, you know, the duct tape and cash around his body? When he was finally picked up in Israel?

**JF:** When he was finally picked up in Israel, we went down there. My partner, Bill Schwartz and I went down there, along with Jack Arsenault. Well, first Bill went down with Arsenault. I didn't go down until the second time around on the extradition proceeding. Bill Schwartz went down on the bail proceeding. He got picked up because what happened was that he went to Switzerland to try to get money out of a bank, which he claimed through a different name. He said he had sold some diamonds to somebody and the guy assigned a bank account, and the bank figured out who he was and tracked him down. But on the bail hearing in Israel, they produced a Panamanian passport, the Argentinean passport, the Brazilian passport. Seven passports.

**JK:** When he was arrested, he had duct taped the cash around his body.

**JF:** Really?

**JK:** Yes.

**JF:** He had lived with a taxi driver in an apartment somewhere. I dumped him essentially when he disappeared because I'd counseled him to meet that day in the courthouse and he disappeared. He didn't show up, so I was through with him. But then when he got picked up and I didn't hear from him when he was away. Then he got picked up and he called us.

[End Tape 1, Side B]

[Begin Tape 2, Side A]

**JF:** There was a hearing on extradition and I did go on his behalf to speak to the Minister of Justice, insisting that it was not an extraditable offense under the treaty, and went to see him in the jail and it was pathetic. He was shackled. I mean, believe me, you don't want to go to one of those Israeli jails. In the interview he says to me, "I don't understand any of this." He said, "That stock came out at eight dollars. It went to sixty, seventy, eighty, whatever the number was. Nobody lost money." I said, "Eddy, and then it went to zero." "Well, people were foolish in holding it." [laughter] I said, "Eddy, my wife," who he liked, "Linda, and her mother and her brother lost money." "I'm sorry to hear that."

I left him in the jail, go out to the courtyard. I'm about to leave the premises, a guard comes running and says, "He wants to talk to you again." I go back to the door of the jail and he says, "Justin, I promise you, if you get me out of this, I'll give Linda back her money." [laughter] These guys are so unrealistic. I was also in the Franklin National

Bank case and then I was in the CI had a witness in C what case was that? The Southern District. I represented a witness, Arthur Keller. I don't know. He had been the president of the Lincoln National Bank in Chicago and C do you guys have a timetable here?

**JK:** No, no.

**JF:** He was president of Lincoln National Bank in Chicago and I don't know, it was some securities transaction. Hubert Humphrey had sent him to me because Hubert Humphrey knew that I was close to Bob Morgenthau and he thought I'd be a good guy to represent him. Did you know a guy in Enforcement named Blumberg? Well, you wouldn't have known him. He was in the New York office. Nice little guy, very bright, and Blumberg knew he was coming to see me, that Arthur Keller was coming to see me. He called me. He said, "Justin, you can help him. I understand Keller is coming to see you. You can help him," and I said, "How can I help him?" He said, "Get him to tell you what he told the Grand Jury." I said, "He's been in the Grand Jury already?" He said, "Yes." "Okay."

**JK:** And how did Blumberg know what he told the Grand Jury?

**JF:** Blumberg was on the staff of the Commission and I guess working with the . . .

**JK:** We're not supposed to get Grand Jury testimony.

**JF:** Really? Well, he knew. [laughter] So the guy came to see me and he told me this story, you know, fully innocent. I said, "Who else have you told that story to?" He said, "Well, I told the Grand Jury." I said, "Well, why are you here?" "Well," he said, "I'm not sure the United States Attorney, the Assistant United States Attorney buys the story, but it's true." I said, "Really?" I said, "In my experience it wouldn't have happened that way." He said, "How would it have happened?" and I said, "I figure more likely it would have happened this way." And I forget exactly what I said, but I laid it out. I remember he looked at me, he said, "So obvious?" I called Paul Grand, who was the assistant, and he became a government witness.

**DH:** How would you, when you're counseling clients like Vesco, how would you describe the Commission staff or the Enforcement staff to them, in terms of how tenacious they are or were, what to watch out for and that kind of thing?

**JF:** It's such an individual thing, Dan. I've got partners in this firm who are better than others. Not that all of them aren't very good, but some are better than others and the same is true in your organization. You want to talk about tenacity? I've never met anybody like Alan Simpson, never. On the Crazy Eddy case, he was . . .

**DH:** Rick Simpson?

**JF:** I mean Rick Simpson.

**DH:** Rick Simpson. Alan Simpson was the Senator from Wyoming. Rick Simpson. Tenacity, I'm telling you! When he wanted every dollar back, we had to fight with him to get ten cents on the dollar on our fees. There are lazy guys. There are hardworking guys. There are smart guys. There are not so smart guys. In the Vesco case, Kushner was a smart guy and a good lawyer, but not in the courtroom. He didn't belong in that courtroom. He was outclassed in the courtroom. I like him. Good guy, I trust him, but to give you an example. He wanted the testimony of the son of the President of Costa Rica to document that transaction, while we're saying, "He's in Costa Rica," you know, "we don't control him. He's not our client." It turned out that weCLiman gets a phone call from his office saying the guy's in his office.

So we adjourn the hearing for the day. We go back and talk to the guy. We're not going to tell the court now that we can't produce him. We're going to have to tell the court he's in New York, and we tell him he's going to have to testify, and did we want him to testify? By no means! We went down to court the next day. We had him in tow. We had him in the courtroom. We disclosed to the court and the Commission's attorneys that the guy was there. That we had not expected him in town and we had found out yesterday that he was in town. We've spoken to him. He's prepared to testify, but he's not prepared to talk to anybody before he takes the stand. Kushner said, "We have to talk to him." We said, "He's not going to talk to you. He doesn't have to talk to you before he takes the stand."



Kushner called Washington. He called Stanley. Stanley comes back and he says, "Stanley wants to talk to you," and Stanley says, "Why won't you let him talk to him?" I said, "I'm not going to let him talk to him if he doesn't want to." "Let me talk to Arthur." Arthur says, "I'm not going to let him talk to him. If he wants to put him on the stand, put him on the stand." They didn't have the nerve to do it. It was just they were out-lawyered.

**JK:** Between you and the other lawyers you mentioned, there were probably another twenty associates working with you.

**JF:** Yes.

**JK:** Kushner might have had one, maybe two other people with him.

**JF:** No question. He was not staffed the way we were staffed. He did not know the case the way we knew the case.

**JK:** How big a problem is that? How does a government lawyer deal with that?

**JF:** I don't know the answer to that. I think the answer has to be that when you see this happening, and the case is important enough to you, the case has the magnitude of the Vesco case, or the magnitude of some of these other cases you have going on now, you

just have to staff it. You just have to staff it. You may even in some instances have to retain outside counsel. That's been done.

**JK:** Has it? I'm not aware. When was that done?

**JF:** I don't know that it's been done by the SEC.

**DH:** We bring on consultants in cases where we need expertise.

**JK:** Right, but it would be an expert witness.

**JK:** Correct.

**DH:** Or we'll bring foreign counsel in another country.

**JK:** Sure, right.

**JF:** Well, didn't the Justice Department do it with Bois in the Microsoft case?

**JK:** Uh-hmm.

**JF:** There's an example of it.

**JK:** Yes, I think other agencies. I know the banking regulators, during the S&L scandal, brought in private counsel.

**JF:** It may be the thing to do on occasion. I'm not saying that the government counsel is never able to do it. That's not true. They are able to do it. Are they shorthanded? Yes. Are they inexperienced? Yes. Are they younger? Yes. Do they make it up for it in enthusiasm and energy? Yes. Commitment? Sure.

**DH:** I had a question about your perceptions of the staff as being fair. One of the things that we're taught in the Division of Enforcement about our history and our legacy is that it's very important to the integrity of our process that the defense Bar and the people who are witnesses in our proceedings perceive us as being fair. Do you have a view of that? And what has your experience been, particularly in the 1960s and '70s?

**JF:** Particularly what?

**DH:** Particularly in the 1960s and '70s?

**JF:** As I think I said earlier, again it depends on the people, and it's all people. When I said to Stanley Sporkin, "Stanley, you're not being fair. You've become a cop. Step back for a minute, think about it," he had sufficient respect for me, based upon where we'd been in other cases, so that he would say, "Do you really think so?" and we'd talk about it. I was

either right or I was wrong, but he might modify his position somewhat, or I might modify mine. It is important of course that the Bar see the staff as being fair, but that's a two-way street. Not everybody in the Bar will recognize that there's a tomorrow. I mean my own view was definitely shaped in some measure by my association with Landis, who was very oriented toward the Commission and its staff and its view.

I wasn't trying to take advantage of anybody and I prided myself on the fact that people knew or I thought they knew, hoped they knew, that if Justin Feldman said it was green, it was green and if he didn't say it was green, he didn't say anything, or he might tell you that you're color blind, you ought to take another look at it, but he would not tell you it's green when it's red. That's important, as well. Now, I mean there were shockers, understand. There was an Enforcement guy in the '60sCwhat the hell was his name? Worked for Pollack. He was an investigator. He was the chief investigator?

**DH:** Callahan?

**JF:** What?

**DH:** Callahan?

**JF:** No, the other name.

**DH:** Jagerman?

**JF:** Jagerman. Well, Jagerman, at a Bar meeting, one of these SEC Speaks things or its equivalent, says to a group of us in the room, maybe fifty, sixty lawyers, he takes out a copy of the US Code and he says, "This is a big book. It's got a lot of provisions, and if I'm out to get one of your guys and you're going to play around with me, if I don't get them on this, I'll get them on something else. It's a big book, remember it." We were so angry, everybody, at CEd Jagerman.

**DH:** Yes.

**JF:** I mean, Jagerman couldn't get the time of day from us after that. At least not from me. I wouldn't deal with him. He'd call me and say, "I've got a case I want to talk to you about." I'd say, "Get somebody else, Ed. I'm not talking to you." I'll never forget that meeting at which he said that. Have you heard about it?

**DH:** I have not. That's very interesting.

**JF:** He actually had a copy of not the USC, you know, the government printing office version of it. He lifted it up and says, "It's a big book."

**JK:** One of the things I've been curious about is, today at the Commission you can get money penalties, you can get officer and director bars. You've got a lot of remedies. You didn't have them in the '60s.

**JF:** Correct.

**JK:** How do you think that's changed the way Enforcement cases are?

**JF:** I don't think it's changed it at all.

**JK:** Really?

**JF:** Not from my perception. I mean I'm not involved, as you know, now, but people are going to do what they're going to do. They think they'll get away with it, they think they're smart enough to get away with it, whether it's a Kozlowski or somebody else, a Riga, I don't know what. But they'll take the shot. Plus the fact that your forfeitures or your disgorgement never touches it, really. What percentage on the dollar do you collect on your disgorgements, fines? I don't know.

**DH:** Actually, it's probably 30, 40 percent.

**JF:** It is that high?

**DH:** It's actually a pretty good number. Remember a lot of that, though, is settlements.

**JF:** Do they get credit for this in the class actions?

**DH:** Quite often there is some offset.

**JK:** In the Arthur Andersen case the penalty was against the SEC penalty was seven million, but there had been a seventy-five or eighty million dollar settlement in the class action that was taken into account.

**JF:** And what do you think their fees were over the period of time?

**JK:** At least commensurate with that, if not more.

**JF:** You see, you've got two things going, bugging me in the whole area now. One is corporate officers get paid on the basis of the bottom line or the stock price. That's an incentive to steal. It really is. I'm not saying they all do it. They don't, but it just how you deal with it, I don't know. The other is the whole structure in the legal and accounting profession. Years ago a partner in a law firm, his first year as a partner he got X percent for the first five years, and the second five years he got Y percent, and the third, he got Z percent. Now he eats what he kills. If he loses a client, he's losing money out of his pocket.

I've sat on corporate boards and audit committees where I've seen auditors much too pliable. Not saying I've seen them commit fraud, but for instance with respect to disclosure of risk for derivatives, expensing of stock options. Derivatives have driven me nuts. Nobody talks about disclosure on derivatives. Nobody understands the derivatives, in the first place. They're a creature of the computer. Nobody could have conceived of these derivatives, or a swap, short-term interest against long term or whatever any more than in the third race in Belmont. I think the compensation question, whether it's corporate executives or lawyers or accountants is a serious question. Now, Sarbanes-Oxley puts lawyers in a bind, I think too tight a bind in many ways. Their livelihood depends too often on you got to go along to get along.

**DH:** Maybe now would be a good time to talk about Chairman Landis, but I have one question just to, maybe, the place to start out. What do you think that Chairman Landis's views of the Enron scandal and the scandals that have resulted in Sarbanes-Oxley? How he would have regarded these matters? And the Commission's ability to deal with them?

**JF:** That's so speculative. I think he would have considered it a challenge, whichever side of the matter he was on. I think he would think the Commission is at a disadvantage in trying to deal with these matters, and I would guess that he would think Sarbanes-Oxley went too far.



**JK:** Why? In which regard?

**JF:** Putting the lawyers into the mix. Making them policemen.

**JK:** In terms of the reporting provisions that they have to observe?

**JF:** I think he would have worried about that. I think so.

**DH:** Had the Gatekeeper or Access Theory been something that had been articulated prior to the sort of Stanley Sporkin, Irv Pollack era in any way that you recall?

**JF:** No, I don't think prior to the Stanley Sporkin, Irving Pollack era, you had only the outrageous cases. Landis used to like to talk about the Jones case, you know, as being the first.

**DH:** The Edward Jones case?

**JF:** I think it was Wallace Jones. He talked about how he wrote the 10b-5 Regulation and fit the case when they said they didn't have wasn't that the first criminal prosecution, the Edward Jones?

**DH:** That was the case that went up to the Supreme Court.

**JF:** Right.

**DH:** But I don't recall it being in criminal. There's the oil royalties case.

**DH:** And a few years afterwards.

**DH:** 1942.

**JF:** Yes, but I recall him saying that during the course of the proceeding he went and scratched out the regulation, because there was no regulation under 10(b) of the act.

**JK:** I've heard that . . .

**JF:** The act itself is too big.

**JK:** Many people, I mean, Milton Freeman also claimed that he wrote the first draft of it.

**JF:** Well, he may have been in on it. May have been in on it. Milton Freeman was also in the Vesco case.

**JK:** Was he really?

**JF:** Yes, it was funny how that came about. We were in the Grosvenor Hotel in London, a whole bunch of us, meeting with Vesco and some of the other principals, and we had concluded that somebody there needed independent counsel. We were going to think about who it should be, and we went down to the lobby and Milton Freeman was sitting in the lobby, claiming to be there on another matter and of course, he was retained immediately, and none of us were ever sure whether somebody had asked him to be there, or whether it was purely serendipitous. He's a character. Great character. Did you know him, either of you?

**DH:** Well, he was at Arnold & Porter.

**JF:** Oh, sure.

**DH:** And apparently he gave a very nice oral history at Arnold and Porter about his experiences in working on 10b-5. So I think if I met him, I was probably a very young child.

**JF:** Is he still alive?

**DH:** I don't really know.

**JK:** No, he passed away. He passed away about five or ten years ago.

**JF:** I must be one of the last survivors. I was younger than most of those guys.

**JK:** How did you first meet Landis?

**JF:** I met him because, as I said earlier, when I was renting space from George Brenner. I was a single practitioner and Brenner had space and I had one of these arrangements where I got services and space for, I don't know, a couple hundred dollars a month at that time. Brenner had latched onto Landis in the Westchester political arena, when Landis was supervisor of the Town of Harrison.

**JK:** Was that just a part time job or something?

**JF:** Yes, it was part time, and he attacked it with great enthusiasm. Anyway, Brenner had been a Democratic candidate for Congress and then he had been appointed by Harriman as a Surrogate when the Probate Judge died, and they had formed a firm in Westchester. When Brenner asked me to join his New York firm, I said I would only do it if Landis was in the New York firm and he brought him in. Brenner later lasted about two years with us, when he tried to commit suicide and then he was indicted for fraud. He had over extended himself financially when he ran for office. He'd bought an interest in a hotel, but he had a lot of stock in the First National Bank of Yonkers and he hocked the stock in three different places, the same certificate numbers and that was the end of Brenner. So

he was out of the firm by December 31 of '58 and then Landis and I continued until he died.

**JK:** What were Landis's work habits like during the time that you and he were partners?

**JF:** Very erratic. Very frustrating. If he had something challenging to doCwell, that's too general. He would drive you crazy. You'd give him a draft of a brief to look at and it was due in two days, and he wouldn't look at it. He'd go to lunch and he'd come back sloshed and he wouldn't look at it. He'd go home about four o'clock and you'd call him at seven o'clock and ask him if he'd looked at it, and he said, "I'll get to it." He would walk in at ten o'clock the next morning with a total revision that sang. [laughter] That's the way he did the report, too.

**JK:** When we looked at it, Dan noticed that the report was basically done in, what, about six or eight weeks.

**JF:** Yes.

**JK:** How was that possible?

**JF:** The President announced on the morning after election day, his first two appointments, President Kennedy, in November of 1960. The first was to reappoint J. Edgar Hoover,

and the second was to name Jim Landis to do a survey of the regulatory agencies and a proposal for reorganization. The Kennedy family had in mind getting Jim on the Supreme Court, without having said so. On Wednesday when it was announced, we talked about how to staff it. We called the people in Washington who he was loosely affiliated with. We asked them to get us some space. They got us a house on 17th Street that was available. I don't know why, but it was available, a whole house, and he and I went down to Washington.

[Tape off/on]

**DH:** All right.

**JF:** Okay?

**DH:** Yes.

**JF:** Well, anyway, we went down to Washington. Someone introduced us, I don't know where he came from, to a then young lawyer named Mitchell Cutler.

**JK:** Okay.

**JF:** And essentially what we did was call on or visit with the heads of the CI guess there were eight agencies at the time or at least people from the agencies who we thought would be

constructive. We called in hearing examiners. We called in Enforcement people, economists, a variety of staff people. Let's see, there were the ICC, CAB, SECC there were seven agencies. I don't know why I thought there were eight. Oh, I guess, what did we have in other Regulatory Agencies? Page 65. I don't know. Be that as it may, we would speak to the various people in various phases of the work of the agencies. The policy people, the administrative people, the adjudicatory people, the rule making people, and try to get a sense of what was going on.

In fact, Jim, in his inimitable way, had a pretty good sense of what was going on, in all of those agencies. He asked questions. I took notes. We had Cutler go get copies of annual reports, recent cases, newspapers clippings that were relevant, whatever the material might be. That went on for several weeks, and I was staying, I think at the Hay Adams. I forget where Jim was staying. He may have been there, too. In any event, we'd have lunch, most of our meals at the little French restaurant at the corner of what was then the corner of Rhode Island and Connecticut, or M and Connecticut, where they intersect, which is now a big office building where Steptoe and Johnson has its office. We'd go back after dinner and break up around ten or eleven o'clock at night, and gather again nine o'clock in the morning.

I don't know where it came from, but he would go home and scribble longhand. He would take my notes and he would take the material that Cutler had assembled. He would come back the next morning. He would have somebody type up what he had

scribbled. He'd show it to me and ask me what I thought, and in most instances I was just aghast. I was amazed. I mean, I wouldn't have changed a comma. I couldn't have synthesized what we'd heard, what we'd seen, what we'd learned in the way he had done it, but he really did it over the period of the last week. During the course of the time we were there, the President-Elect announced that Bobby was going to be his Attorney General and while we were there one day, the Attorney General designate, or designee, whichever it is, came over to M Street. I had known him. I had known him from the prior dealings with the family and from the campaign, and he asked me to excuse him. Excuse myself, and I did.

He was in the room with Landis for about a half hour and he left. I said, "Can you tell me what that was about?" and he laughed and he said, "It was about nothing." I said, "Really?" He said, "Yea." He said, "He's on his way over to the Supreme Court to see Bill Douglas and to offer him the Ambassadorship to India, in the hope that he would take it, and that I could go on the Court." I said, "Well, what do you mean it's nothing?" and he said, "Well, number one, he's not going to take it, particularly if he thought I was going to go on the Court." They did not get along well at the Commission, and "I'm never, ever going to put myself in front of a Senate Committee for confirmation."

**JK:** Why? Why? He had done it before.



**JF:** I said, "Why?" Wouldn't tell me. I learned it later, but wouldn't tell me. Just said, "I'll never do it. Never do it." I thought it was because of his drinking habits that he would never do it. Because of his amorous habits that he would never do it, all of which were well known. But that was that conversation.

Later on while we were there, Felix Frankfurter, with whom he had not gotten along in some time because Felix was very friendly with his first wife and was angry at Jim for having divorced his first wife and run off with his secretary, and quote, dishonored the Harvard Law School while he was Dean. Felix had been ill and there was a lot of speculation as to whether he would get off or wouldn't get off, or when he would get off. Felix somehow or other knew the Bill Douglas story. Whether Douglas had told him or how he knew, we didn't know.

**DH:** Just for context, the story meaning that Landis had delayed his departure to Harvard . . .

**JF:** No, no.

**DH:** The story about the appointment?

**JF:** Which one are you talking about?

**DH:** I'm talking in the '30s when Douglas was going to ascend to the Chairmanship and Landis has been Chairman and delayed his departure.

**JF:** Yes, because he did not want Douglas to be Chairman.

**DH:** Right, and Douglas didn't forgive him because it . . .

**JF:** Douglas didn't forgive him and he never thought Douglas was up to the job. But anyway, Frankfurter said that he had heard the story and that if Jim wouldCif there was a commitment from the Kennedys to give it to Jim, he would get off the Court now and Jim again said he's not going to subject himself to this, to the confirmation process. And that was the end of it for that period of time.

In any event, he finished the report. We finished the report, I like to say. We then got involved in the staffing issues of the agencies. We then found there was no money with which to print the report, so the law firm laid out the money to print it. It was printed by Ad Press, which did our brief printing for us. It was later printed, I think, by one of the Congressional committees, and the reason I said something about the Federal Power Commission was that one of the Senate Committees chaired by Senator Everett Dirkson at the time held a hearing on the report. Whether it was before the inauguration or after the inauguration, I'm not certain.

But he started to take Jim through the various recommendations, kind of skeptically. They were friendly and he finally said "Dean Landis, the one I don't understand is the Power Commission, the Federal Power Commission. Why do they have to have these long, drawn out, dull adjudicatory hearings that take forever? The staff reviews these applications for rate changes. The staff then takes a position. They hold these hearings before a Hearing Examiner. They go on interminably, and particularly in this day and age," and I'm now talking the end of '60, beginning of '61, not where we are now with computers. "Why can't they put all of that economic data into a computer and have a rate structure come out?"

Jim broke up the Senate Committee by saying, I'll never forget it, he said, "Well, Senator, let me just tell you that I recently heard from my friends at the CAB that American Airlines had developed a new fully automated aircraft, and that some people were on it just the other day, and the pilot's voice came over the public address system and said, 'Ladies and gentlemen, you are on a historic flight. This flight is totally automated. There is no pilot aboard, and it will be flown entirely on automatic pilot. As a consequence, there is no chance for human error, human error, human error, human error.'" [laughter] And he says, "Senator, we're not there." I'll never forget. He did it spontaneously.

**JK:** In terms of writing something like this in that short period of time, how much of this do you think that Dean Landis and/or you sort of knew going in what these issues were and it was really a question of just confirming that?

**JF:** I certainly did not know. I knew some of the issues at the SEC. Not at the other agencies. He did. A lot of it. I mean, he knew what to ask. He was prepared. He was persuaded that the ICC, which was the first of the regulatory agencies, having been created, what, in 1890 something, was a total anachronism and useless. He knew that the Hearing Commissioner. I mean the Hearing Examiner problem was a serious problem where you did not have expertise in the particular jurisdiction of the commission for which they sat, and that you needed to increase their prestige and you needed to create their expertise. He knew that in the case of the SEC that you had to delegate. That you just could not go on with this ridiculous notion of going to the Commission with evidentiary rulings in the course of a hearing. I knew that. And some of these things. What he did not know was how strongly the communication lobby would be because that was the one reorganization plan that failed, the FCC.

But, no, he was quite knowledgeable. I had been Chair of the Administrative Law Committee of the Association of the Bar of the City of New York from '57 to '60 and in that capacity learned an awful lot about the various agencies. Believe it or not, the Association of the Bar of the City of New York, at that point did not have a committee on securities regulation. The issues of securities regulation were covered by the Committee

on Administrative Law and of course one of the recommendations that I had made at the end of my term there was to create a committee on securities regulation. But of all the Bar Associations in the worldCso we've come a long way since then. We talked before about the Sidney Tager case, which I had forgotten about.

[End Tape 2, Side A]

[Begin Tape 2, Side B]

**JF:** I represented an individual who was responsible for Englander's violation, but who had been literally an aluminum siding salesman on Long Island before that. Milton GouldCdid you know Milton?

**JK:** I know of him.

**JF:** You know him by reputation?

**JK:** Yes.

**JF:** Milton Gould represented Tager. Milton Gould and I later became fast friends, but that was virtually our first encounter. It was an argument in a broker/dealer case before the full five-member Commission, believe it or not. Broker/dealer revocation. I think there

had been separate proceedings before the Hearing Examiner. Then they were consolidated. I don't remember exactly. My guy was a poor schnook, essentially. Didn't know anything about the business. He'd been in it six months. He didn't know what he was doing. He didn't know what was permitted and what was not permitted, and yes, he shouldn't have been in the business, but an admonition would have been appropriate and a suspension for some period of time maybe, and you make him take a few NASD courses, but that Tager was a bad boy.

Milton said to me, as we got into the Commission Hearing Room, he says, "Kid" CI was probably ten or fifteen years younger. "Hey, kid, do you mind if I go first?" "No." So Milton goes first and Milton talks about how they didn't know what they were doing. They had nothing to do with it. They were not trained. There was no this, there was no that and he goes on and on and on and on. But he's not talking about Tager. Tager knew what he was doing and Tager had been in the business for a long time. Tager had run a boiler room for some time before that. My guy was the ignorant one and he goes on.

So finally, he finishes and I got up and I said, "May it please the Commission, I will not take up your time, because you see, to follow the eloquence of Mr. Gould would ordinarily be difficult, but in this case it's very easy, because he wasn't talking about his client. He was talking about my client," and I sat down. He turned to me and he said, "You're all right, kid," and from then on . . . We had one case I had with him much later on, he was just a riot, you know.

Well, the Vesco case, he came in on the C there was an application to appoint a receiver for IOC and he gets before the judge and he says, "Judge, you don't need a receiver. I'm here now. I'm representing the company. You know me, nothing could go wrong. I'll make certain that nothing goes wrong," and the judge bought it. We're at another case with Milton Gould where we finish. It was another case similar to Tager, where I tried to distinguish between the two clients, and he gets up after me and he says, "Kid, you've left me nothing to do but to attack you." [laughter]

**JK:** Why? [laughter]

**JF:** But he was C you know, Milton Gould is another guy. He could have told Stanley anything he wanted and Stanley would believe him and rightfully so. He was part of the group that understood what the function of the Commission was, what the function of the staff was. On the other hand, Stanley, because of the fact that everybody knew I knew Stanley pretty well, there was a guy named C a lawyer, Harvey C trying to think of it C who said to me, "You've got to help me out. I've got this case, etcetera, etcetera. The assistant director won't listen to me because he says Stanley will never approve the proposed settlement, and I can't get Sporkin to see me. Can you get me an appointment with Sporkin?"

That didn't seem like an outrageous request. I called Stanley, I said, "Stanley, see this guy for me." "Oh, he's a bum. He's no good." "Stanley, favor to me, please, see the guy. Listen to him. You know, another one of these you're starting to get too cop-like. Listen to the guy. He's got a story to tell. He's entitled to be heard." The guy went down to Washington. He finished. He called me up. He said, "Thanks for the appointment," and I said, "How did it go?" He said, "I walked in, Sporkin was sitting on the corner of his desk. I walked in there" "I forget the guy's name, and he said, "I didn't even get a chance to say hello and Sporkin says, 'I've had enough of your shit in this case.'" [laughter]

**DH:** What do you think Landis would have said about the way Stanley operated the Division of Enforcement. They had very different personalities.

**JF:** Oh, yes. Oh, yes. They would not have understood each other at all. At all. No. I shouldn't say that. On an intellectual level they certainly would have. I mean, in terms of a philosophical level where they were talking about the philosophy of enforcement or the concepts of due process or things like that, absolutely. But in terms of the day-to-day what do you do with the broker/dealer aluminum siding salesman and however you sanction, that they would never have been able to talk to each other about. But Landis was a great person.

**JK:** I'm just curious. In writing a report like that, I always figure that the most interesting things are the things that get edited out at the very end. Do you remember, were there



ideas or subjects or things that you considered recommending and then for one reason or another decided not to?

**JF:** Not that I can recall. I don't think that does the report talk about an independent core of Hearing Examiners? That was . . .

**JK:** I don't remember it.

**JF:** I don't think so.

**JK:** No, it talks about independent adjudicators. It considers a proposal where the Commissioners would be entirely responsible for adjudication and that the rule making and policy functions would be delegated to a department. Landis was very much. It sounds like from the report. Very much against that idea.

**JF:** Right. No, he had come from the other point of view, that the Commission was there to make policy and to adjudicate broker/dealer cases or Stop Order proceedings.

**JK:** One of the things I found interesting in that report and it's hinted at. There are several places where he talks about the political influence that Commissioners in the various regulatory agencies had been subjected to.

**JF:** He's talking about Matt Connelly and the White House and his experience at CAB.

**JK:** And what was that?

**DH:** Oh, okay, back to . . .

**JF:** I talked about that. When they changedCwhen they eradicated the signature.

**DH:** Is that what he's referring to?

**JF:** I think so.

**DH:** I was curious whether there incidents that he knew of during the '50s, during the Eisenhower administration that . . .

**JF:** Well, he came around to representing Juan Trippe. He came around to representing, but you know, he did some crazy things. You know, he ran for president of the Airline Pilot's Association. It was ridiculous.

**DH:** And he almost won.

**JF:** And he almost won, until he got up and made a speech. Where do you get all this from?

**DH:** I read the biography.

**JF:** Oh, until he got up and made a speech. He had been proposed by the Eastern Airlines pilots. He had represented them in a merger with the Colonial Airlines or something, and so he was very close to Eastern Airline pilots. They came to him. There was a highly contested union election. They wanted him to run for president of the union, and he did, and he almost won until he went to a meeting, just before the vote. He was asked "Well, what specifically would be your program?" Is that in the book? And he said, "I shall be guided by the stars I cannot see." This is a quote from something. Now, for a pilot to be told he's going to be guided by the stars, where did they get this mad man?

**JK:** That brings up the question that, you know, how does Jim Landis get out of paying income taxes for four years? Did he ever talk to you about this?

**JF:** Oh, yes. Yes, I mean the book says he was represented by Bill Warren, but I was instrumental on that. Did you ever read the Novasky book on Kennedy justice?

**DH:** My father has it on his shelf.

**JF:** Read it. That has the full story of the tax thing, and what happened. To tell it to you a little more briefly; during the time we were practicing law, we were doing pretty well. I was reasonably close to his secretary and she kept saying to me from time to time, "Mr. Feldman, you ought to talk to Mr. Landis. He's got an awful lot of money in his checking

account. It shouldn't be just sitting in the checking account." I'd say, "Jim, I understand you've got a lot of money in your checking account. It should be doing something."

"No, no, I'm doing something. I have to do something."

Then one day, while he's working in the White House, I get this call from Joe Kennedy, Ambassador Kennedy, and he says, "Justin, who does your tax returns?" I said, "Well, the firm's tax return are done by an accountant, who as a matter of fact, was recommended to us by your accountant. But individually we do our own returns." He said, "Is it possible that Jim hasn't filed a return in four or five years?" I said, "I don't know. I know I see him go home with stuff around April every year and I assumed. I mean, he doesn't look at my return; I don't look at his." He said, "Is he there?" I said, "No, he's making a speech in Pittsburgh today, I understand."

Well, it turned out that in the course of the investigation with respect to this position at the White House, the New York Director of the IRS couldn't find his tax returns. Went to Kennedy's accountant and told him that, but said that he could hold up reporting it to the FBI, but he would like to be the Commissioner of Internal Revenue. Well, he did not become the Commissioner of Internal Revenue and it turned out that in 1958 Jim got an extension, as we all do from time-to-time, and he got an extension until October 15<sup>th</sup>, on his '57 return.

He was up in Boston writing speeches for Jack and he had not filed the return, despite the extension, because in his meticulous Calvinistic way, he had inherited some money from his mother, about three thousand five hundred dollars in stock, that he had sold because his daughter and his son-in-law had contracted polio and they needed money, and he didn't know the basis. Rather than show a zero basis, which would have meant, what, an eleven hundred dollar tax at that time, he put it aside and pursued the lawyer for his mother's estate and found out that he didn't know the basis, either, because his mother had inherited it from his father.

At that time, he started to do the tax return for the following year and there was a question, "Have you filed prior year returns on time?" Couldn't say yes and he didn't want to say no, so he put aside until he could find the basis for that stock. He procrastinated four or five years worth, and that's what he meant when he said to me he could never sit down for a confirmation hearing. That's what he meant when he said he had that money in the checking account, because he had to do something with it. He never would even put it in a savings account to earn interest on it because it wasn't his money.

Then heCJoe Kennedy told him to go see Bobby, to get the accountant in, prepare the returns and get them filed in a hurry. We worked around the clock for days to create four or five years of returns, and he didn't have enough cash. Joe gave him the money he needed to file those returns, and he went to see Bobby and Bobby told him to go see Mort

Caplan. Mort Caplan was Commissioner of Internal Revenue and the rule then was if you file voluntarily, that they would forgive the failure to file, but if you were filing under compulsion, they'd have to evaluate it.

In the meanwhile, right after he had filed, unbeknownst to me, he's called down to Internal Revenue to be asked about why he filed late. He explains all that, and then why did he file when he filed? He says, "My friend, Ambassador Kennedy, found out about it and called it to my attention and I filed." Mort Caplan, when he reviews it, says "I don't knowCI mean, it's rather unusual. I don't know whether he filed under compulsion or he filed voluntarily, when he filed in response to the urging of the father of the President of the United States." So he referred it. He called Bobby and said, "I'll have to send it to the Justice Department for a determination." Bobby was fit to be tied. I mean that was an unnecessary call. It was not that he had filed because he was being investigated or audited. So Caplan refers it to the Justice Department and it goes to Oberdorfer, Lou Oberdorfer, now a Federal Judge, then Assistant Attorney General for the Tax Director.

**DH:** He's still practicingChe's still sitting on the bench?

**JF:** I think so. Is he?

**JK:** He is.

**JF:** And Lou Oberdorfer was the Assistant Attorney General in charge of the Tax Division. When Lou Oberdorfer was nominated to that position, he had a problem of a conflict of interest that he did not know how to handle before the Senate Committee, and Bobby asked Landis to consult with him and to represent him. To consult with him in connection with his testimony on confirmation, and Landis did and Oberdorfer asked him if he owed him a fee and Landis said, "No, forget about it." So Oberdorfer disqualified himself on that grounds that he had a potential conflict of interest. I'm very surprised Oberdorfer ever got to be a Federal Judge. It was probably under Johnson, rather than Clinton, mean, it was probably after Bobby was out of the Attorney General's office.

So it went to Katzenbach, the Deputy Attorney General. Meanwhile I had retained Bill Warren, the Dean of the Columbia Law School, to represent Jim because I didn't want to do it myself. I was calling the shots and we got him to a psychiatrist and we had a psychiatrist's work-up on self-destruction and all kinds of things. Katzenbach came to see me and said that they were going to have to refer it to Morganthau, United States Attorney, and they were going to try to do it under circumstances where it could be handled sympathetically with the minimum publicity.

I said, "No way, you can't do that," and he said, "What are we going to do? How are we going to get rid of it? The President's going to be running for reelection." I said, "Put him before a Grand Jury. Put the psychiatrist's testimony before the Grand Jury. I'll go before the Grand Jury. Other people who know what stress he was under at the time, put

them before a Grand Jury." Nick Katzenbach says to me, "Justin, you're going to take the man who recommended to the President of the United States that he reorganize seven regulatory agencies, on the basis of whose recommendation the President has reorganized six regulatory agencies, and you're going to tell a Grand Jury he was crazy? Jim will never do it. I know Jim better than you do."

I said, "Well, I'm going to tell Jim to do it, because of the President of the United States," and I remember saying this to Jim, in tears, "If the President of the United States and the Attorney General of the United States, after all he has meant and done for the Kennedy family, under circumstances where it's because of what he did for the Kennedy family he didn't file his return on time initially, want to refer this for a criminal prosecution, I'm prepared to put him into the Grand Jury and say that he was under psychiatric disability."

He said to me, "Don't play God. Where's Jim? I want Jim to make that call in front of my face." I said, "Okay," walked him into Jim's office across the hall. I told him the story. Jim looked at me and he said, "Justin, as well as you know me, Nick is right, and nobody's going to say that any of those agencies were reorganized by a man who had psychiatric difficulty and didn't know what he was doing." "So what do we do, Nick? You say it could be handled."

Well, he says, "We'll pick a judge who's our judge and we'll do it on a weekend. We'll do it on a Labor Day weekend when there's not a lot of publicity and we'll get Morganthau to file an information and we'll dispose of it." So they do that, and they bring it on before



the Honorable Wilfred Feinberg, a young District Judge, a young, ambitious then District Judge, later to go on and became the Chief Judge of the Second Circuit, who, without saying anything to anybody, goes to see the Chief Judge, Sylvester Ryan, and tells him what's happening and says, "I don't know what to do. I owe my appointment to Kennedy. He's Justin Feldman's partner, and Justin Feldman was my college classmate and fraternity brother and my law school classmate, and my poker buddy. We used to play in the same poker game."

And Ryan says, "You're a young judge. You don't need this. I'll take your calendar the morning of the arraignment." I had a call from Morganthau saying "The thing's gotten screwed up. Feinberg's recused himself. Sylvester Ryan's got the calendar, he's giving Jim a lecture about how he knows about drinking. He comes from an old Irish family. They drink too much."

**JF:** Judge Ryan sentenced Jim to thirty days in jail to "dry out" and I went bananas. I said to Morganthau, "Well, what can we do?" He said, "The Attorney General can have him sent to a hospital, so he doesn't have to go to a jail." Meanwhile, they take him to the jail on Staten Island. I called the Attorney General on Labor Day weekend, he's off fishing off the coast of Labrador. So I called the White House. Evelyn Lincoln answered my call. "I've got to talk to the President." She says, "Well, what's up?" I tell her. She says, "Stay where you are." She gets back on the line and she said, "The Attorney General will call you from the vessel he's on in the next five minutes," and he called and said, "What

can I do?" I said, "You can direct that he go to a hospital." He said, "Tell Morgenthau I so direct."

They took him to the Public Health Service Hospital on Staten Island where that night they took his belt away, they took his shoelaces away. His wife called me the next day to say we had to get him out. Finally, on Tuesday, the day after Labor Day, I went down to Washington and I went to see Nick and I said, "I want a transfer to a private hospital, New York Presbyterian where his psychiatrist was. You can put guards on the door. We'll pay for the guards." "No, we can't do that," he said. "What do you mean you can't?" "Well, we can't show favoritism now." I said, "Well, I'm going to see the AG." He said, "You can go see anybody you want."

I went upstairs and saw Bobby and told him the story and he said, "Do I have the power to direct what hospital he goes to?" I said, "I think you do." He gets Nick on the speakerphone. He says, "Nick, Justin's in my office. He says I have the power to direct what hospital Jim goes to, is that right?" He says, "You do, but he is in the Public Health Service Hospital, isn't that enough?" He says, "No, it's not enough. I want him to go to whatever hospital Justin wants him to go to." Nick said, "Well, can you imagine the publicity?" He said, "Nick, this is the best friend the Kennedy family ever had. Don't talk to me about publicity." So that's my Landis story.

**JK:** Wow, extraordinary. If you don't mind me asking, when he came out the last couple of years . . .

**JF:** He came out, it wasn't the last couple of years. The first thing that happened is that the Bar Association tried to disbar him. We had a disbarment proceeding, and he was suspended from the Bar for a year, and the week after that happened is when he was found dead in his swimming pool. It was just as you can tell, I loved the man dearly. He was. He had a most unusual mind. I mean, yes, was he self-destructive? Did he drink too much? Did he? Yes. You know, he'd grown up as the son of missionaries in Japan. He came to the States at fourteen or fifteen years of age without parents to go to college in Princeton. Remarkable mind, and a good human being. Just destroyed himself.

**DH:** Question I had is I think very few Commission staff today know and appreciate how significant James Landis was to the development of the securities laws and to the formation and implementation of the Commission.

**JF:** You said they do or they don't?

**DH:** They don't have a good appreciation for it, and it also seemed to me that Landis, any one of his careers, whether it was the Chairman of the SEC, or the Dean of the Harvard Law School or the Chair of the Civil Aeronautics Board or all the other positions that he held, any one of those careers would be enough.

**JF:** Ambassador to the Middle East.

**DH:** Would have been enough for any one person in a career. Do you have a view of Landis's significance as a man and as a person in the Commission's history, where he fits today relative to all the different Commissions and Chairman and Commissioners that we've had? I mean, is he still ranked up there at the very top or can you give us some color on

...

**JF:** I have not known all of the Commissioners that well. I mean, I knew Cary. I knew Casey. I knew Wheat. I knew Manny. None of them I knew Kennedy. None of them had the intellectual or conceptual scope. I know Arthur Levitt. I mean, they're good people and they are good administrators, or they're not so good, but this was someone who, think of it, sat down with Tom Corcoran and Jim Rowe in an area of the law where there'd been no precedent, knowing only that something had to be done. You had the Morgan hearings. You had the midget in the lap. You had the Pecora hearings and they wrote the '33 Act. In what period of time? Roosevelt was sworn in on March 4<sup>th</sup> of 1933. When was it enacted? September?

**JK:** Yes, something like that. The question when you were working with him on . . .

**JF:** Can you imagine it being said to you? Go regulate the securities industry.

**JK:** And he was thirty-three years or thirty-four years old?

**DH:** Thirty-four. He was born in 1899.

**JK:** Thirty-four years old when he did.

**JF:** He was born in 1903, wasn't he?

**DH:** I thought it was 1899.

**JF:** No, I think he was born in 1903.

**DH:** So he was in his early thirties.

**JF:** I mean, you sit down sure, he talked to Ben Cohen and he talked to Tommy Corcoran and he talked to Jim Rowe. He also had to deal with John Foster Dulles and Arthur Dean, who were representing the industry. I don't know if you've read any of the hearings and the testimony at the hearings, but he was dealing with giants and then a year later, the '34 Act and a year later the Public Utility Holding Company Act, and a couple of years later the Trust and Indenture Act, and then the '40 Act. I mean, it's an unfair question. There is no basis for comparison.

**DH:** Did he ever? I'm sorry. Did he ever? He never really practiced before the Commission after he left, did he?

**JF:** Not that I'm aware of. Oh, I mean, not really. He had a couple of, except in the Skiatron case. He had this notion of pay TV and he latched onto that client or the client latched onto him. Skiatron was pay as you go TV in the '60s. Ridiculous. Interactive TV? How were you going to pay for TV? How were you going to pay for movies? You're going to have paid movies on TV? He was devoted to that, and nobody would take it seriously. That was his baby for a while.

Another baby? I mean, oh, yes, he had another baby that he practiced before the Commission. He represented the Association of Mutual Fund Plan Sponsors, the sponsors of the contractual plans. They had gotten into trouble at one point in time on the question of whether they had to update their registration every year. They were selling mutual funds on the installment plan and the question was, again, disclosure of changes and so forth. So he represented the Wellington Funds on that, and later the Putnam Funds.

He represented Armand Hammer at one point, in a problem he had with the Commission involving the oil company. I don't really. He was interested in the big things. Harry Bridges, the deportation of Harry Bridges.

**JK:** Did he ever talk CI mean, given that you could argue that he invented securities regulation. 1960, here he is thirty years later coming back to take a look after twenty-six years at his invention. Did he ever talk about how it had evolved in ways that he hadn't anticipated or had foreseen?

**JF:** He did an article one time. He did either a Law Review piece or a piece for the Cit was one of the anniversaries. The twenty-fifth anniversary?

**JK:** Which would have been '59.

**JF:** Yes, I think he did something for the twenty-fifth anniversary on that.

**JK:** Did he ever talk Cthe report, whether his idea of the report was to try and bring these agencies back to his notion of how they were functioning in the '30s, or whether it was time to sort of change things?

**JF:** Oh, no, no. It was time to change things. No, he was not living in the past. No, he was well aware of what was going on in all these agencies and what changes were required. I mean, just look at the proposals for the SEC and the fact that you needed to delegate. You needed to separate the functions. You know, he knew.

**JK:** One of the themes of the reports is that when the agencies were created was that they would be staffed by very able people, and what seems to come through from the report is the idea that, as the agencies aged, less and less able people came on and it just became more politicized so the appointments were from outside the areas of expertise. Do you recall discussions about that topic?

**JF:** Yes, and this wasChe would be even more aggravated now. When he got out of law school, even when I got out of law school fifteen years after that, seventeen years after him, the top members of the class in the top schools went into government service. That's, first of all, what was available to do. That's where you had some security, you had some stature and the so-called big law firms weren't that big. The disparities in salary were not that great, so if you started at the Commission at eighteen hundred dollars, you might have gotten twenty-one hundred or twenty-two hundred at a law firm.

As time went on, and even in his time, in the '60s, certainly now, I worry about where the good public servants are going to come from. Let's face it, we're not going to totally deregulate. I don't care what, you know, the impetus is, and when the differentiation is such that what do you start a lawyer out of school at? A GS-11?

**DH:** That's right.

**JK:** I think they're 13 now.



**JF:** How much?

**DH:** A GS-13.

**JF:** A GS-13, which is how much? Forty?

**DH:** Mid seventies.

**JF:** It's that much?

**JK:** The SEC now can pay higher than standard government salaries.

**JF:** Oh, even at this little law firm, we start at a hundred and forty. I mean, that's a lot of difference and that's an issue, I think now, and it was then, too. I don't think he felt that when you had the Manny Cohens and the Woodsides and the Norths and those guys there, that they weren't up to it. No. I think there were people there that weren't up to it, but he had a lot of respect for Loomis. He had a lot of respect for Manny. You know, you have the whole Mercantile Exchange that he worked with Loomis on and with Eisenstadt and Levenson. You had great guys there in the '70s. Really, I'm not saying you don't now. I don't know the staff now, except for you two. Yes, you had your fools, but, overall, I have great respect for that institution.

**JK:** Another question. In the report there's discussion about the Commissioners actually writing their own opinions and that seemed to be something of great importance to you all when you were writing the report. Why was that and what was the thinking?

**JF:** He was thinking of the Supreme Court and the philosophy that would be reflected in those opinions. He felt that not only were the Commissioners not writing their own opinions, they were not reading their own opinions. There were some very strong people there later, like Art Fleischer, who was Manny Cohen's assistant. With all due respect to Manny, Art was a very strong guy and . . .

**JK:** We've taken up a tremendous amount of your time.

**JF:** No, I'm . . .

**JK:** There's one thing I want to ask you on the tape recorder, but you had mentioned it before and I just want to ask you again. You had talked about Landis's memos to John Kennedy in the '50s, when he was in the hospital.

**JF:** Right, which became *Profiles in Courage* although he never claimed credit for them. That's by inference talking to his secretary and others that he furnished a lot of the material which became *Profiles in Courage*, and I think the book acknowledged that in the acknowledgements

and the foreword. You never saw Bobby Kennedy cry too often, but he cried at Jim's funeral. He played a very important part in their lives. I'll show you a piece of correspondence I dug up.

**DH:** We just want to thank you for taking so much time. We've enjoyed this tremendously.

**JF:** Thank you. I hope you did. You know, everybody says to me I ought to write a memoir. It's an egotistical thing to do, but if two bright young guys want to sit around and listen to me, I'm delighted. Where are we? Have we covered whatever your . . .

**DH:** That's it.

**JK:** You've covered far more than we ever would have hoped for.

**DH:** This is terrific, and the Historical Society I think will be thrilled with this contribution.

**JF:** Excuse me? I'm sorry.

**DH:** The Historical Society will be thrilled with this contribution. It will be very much appreciated.

**JF:** Well, I may edit out half of it, think better of it, but I doubt it.

**JK:** Thank you very much.

[End of Interview]