

Securities and Exchange Commission Historical Society
Interview with Richard Phillips
July 22, 2008
Conducted by Dr. Kenneth Durr

- KD:** This is an interview with Richard M. Phillips on July 22, 2008 in Washington, D.C. Thanks for agreeing to talk with me. I've spoken with a lot of folks who were involved in the '70s and in the '80s, but I'm interested in getting back to that pivotal period in the early 1960s that you were involved in. Before I do that, I want to touch on some background.
- RP:** Sure.
- KD:** Where did you grow up?
- RP:** I grew up – after from about age eight until I graduated college, or really law school - in Plainfield, New Jersey.
- KD:** Did you do Yale Law? Is that right?
- RP:** I did Yale Law School and Columbia as an undergraduate.
- KD:** I understand you had a stint in the Navy?
- RP:** Yes, I left Yale and was susceptible to the draft at that time. I took a job with the Navy Department in government contracts for a few months until the draft board caught up with me. Instead of going into the draft, I enlisted as an officer in the Navy Officers Candidate School, and expected to be an engineering officer on a can in the North Atlantic, because I have no mechanical aptitude and I hate cold weather. In the last couple of weeks they asked all lawyers to go to the JAG School at Newport. They selected two of us to be the first Naval Reserve officers in JAG; we were commissioned as lieutenant JGs rather than ensigns, and became

a captain within four months – to the chagrin of the professional Naval officers who had to wait six years.

KD: Just your luck, I guess. What kind of work did you do?

RP: I basically prosecuted court-martials; and then, when I learned where the courtroom was, I did defense work – investigations, courts of inquiry – things like that. Basically trial work.

KD: Did you have a focus when you were at Yale in law school? Did you take securities law?

RP: I focused on interesting courses.

KD: So you knew you wanted to be a lawyer, but you didn't really have a sense at that point.

RP: That's right. In fact, when I left law school, I had taxation with Boris Bitker, who's one of the great tax professors of all time. I was so captivated by his method that I decided I wanted to be a tax lawyer. That would have been a disaster, because I have no head for figures.

KD: What took you to the Securities and Exchange Commission?

RP: Well, I came back from the Navy in April. The country was in a mild recession.

KD: Is this 1960?

RP: 1960. There really weren't many jobs in New York, where I had intended to go originally. But then when we saw what the cost of living was in New York anyhow, we decided maybe Washington was a better place. I applied to the

Internal Revenue Service, where I thought I would try tax court cases; combine my court-martial experience with what I thought I would like – tax. I knew I would get a job. They hired people like me sooner or later. They kept me waiting three months, and then they offered me a job. And the one thing I told them I didn't want to do was to be attached to the Intelligence Division that tried criminal cases, but basically held the hands of assistant U.S. attorneys, some of whom knew less about trial tactics than I probably did. That's not what I wanted to do. They then offered me that job. I said, "Absolutely not." Then we started negotiating. I said, "What about New York?" And they said, "Can't go there. You live there." I said, "I haven't lived there. My parents moved to a suburb of New York after I left the house, and we were living there temporarily." But no, regulations prohibited assigning someone to their home district. "It's not my home district." "Well, it is." Okay. "What about San Francisco?" They said, "What about L.A.?" I said, "What about San Francisco?" They said, "What about L.A.?" So I was accommodated to L.A., and then I said, "And of course, you're going to give me some credit for my three years of trial experience?" They said, "We start you at a GS-9." I said, "Most people I know get a GS-11." They said, "9." So I said, "Okay." I took the papers home. It was a Friday. As I went back to where I was staying, there was a phone call from my father, saying the General Counsel of the SEC had called, and they were looking for someone, and asked me to call him. So I did. They said, "Can you come in on Monday?" I said, "Yes." I stayed over that weekend. I walked in on Monday, interviewed for four hours in the General Counsel's Office, walked out, packed my bags and drove back to New York. By the time I got there at eight o'clock at night, there was an offer waiting for me, doing precisely what I wanted to do – appellate work in the General Counsel's Office, and at a GS-11. But most impressively, was the picture of an agency that could make up their minds in four hours, as opposed to three months, and not haggle over the pay grade. The only problem was that I never had a securities course in law school. It was given only on weekends at Yale by some migrant lawyers from New York who came to New Haven on Saturday. My fiancée was in New York, and I wasn't about to

stick around.

KD: Who did you interview with at the SEC?

RP: The person that sticks in my mind was Dave Ferber, who at that point in time was an Assistant General Counsel. And that's who I worked for.

KD: What was the interview process like?

RP: The interview process? It was a process like: We want to get an injunction, and the company stopped violating once we found out about them, and what kind of arguments could you devise? So I talked. I didn't know what I was talking about.
[Laughs]

KD: Some of it must have made sense.

RP: Injunctive relief was outside the scope of both my experience and my law school education. And somehow it worked out. The interesting thing was: There were three Assistant General Counsels. One was a fellow by the name of Joe Levin. He left the Commission a couple years after I joined and was in private practice for a number of years. Irv Pollack, who we all know, and Dave Ferber. They looked to me like they were old men; moreover, the GS-14 special counsels also looked to me like they were old men. I was twenty-eight. I said, "Gee, there's no place to go in this office. I may have to leave here after a few years." And by gosh, things opened up over time. The old men left, and then they had no alternative but to promote us. So I stayed for eight years.

KD: Let's talk a little bit about the work that you started in. You were in the General Counsel's Office?

RP: Yes, I was in the General Counsel's Office working directly for Dave Ferber. I

came to that office as the most celebrated defense counsel in the Thirteenth Naval District. There were two of us, and I was senior. So I was highly experienced. My office had no windows. You had to enter it, a little cubbyhole, by going into someone else's office. I had come from Seattle, where my office overlooked the snow-capped Cascades. So that was a bit of a downer. I used to get phone calls all the time from intense people talking about accounting concepts, until they realized they hadn't gotten the Chief Accountant of Corp Fin.

KD: You had a similar phone number, I guess.

RP: Yes. And then, I did my first set of papers. It was an action that we were trying get dismissed by a person who perpetually sued the SEC, a fellow by the name of Leighton. I wrote a twenty-page memorandum in support of a motion to dismiss, full of brilliant arguments, and I brought it in to Ferber. We sat down, and by the time we finished several hours later, it was four pages. His thesis was: You don't dignify a frivolous lawsuit by a twenty-page memorandum in support of a motion to dismiss. It was four pages. There was only one phrase, one four-letter phrase of anything I had brilliantly written that survived. And then it went on. Week after week, everything I gave him he would growl and insist I sit there for hours while he tore it apart, and very little survived.

KD: He'd go sentence-by-sentence with a pencil?

RP: Word-by-word, comma-by-comma. I had never had that kind of training. You didn't do that to the most celebrated defense counsel in the Thirteenth Naval District. And then one day I wrote maybe a twelve, sixteen-page memorandum on an unfrivolous case, and I got it back from him; and the first eight, ten pages were just riddled with changes, and then the last four pages had no comments on them. So I brought it back to him, and said, "Hey Dave, you didn't finish it." He said, "Let me see." He looked at it and he handed it back and said, "I read it. It's okay," with a little smile. And suddenly, I started coming of age. I was there a

year, and during the summer, Ferber was in Europe on vacation. The other person who would have otherwise supervised me was gone. We were sued by Arnold & Porter on a case involving the Canadian restricted list; Arnold & Porter arguing that it was unconstitutional for the SEC to deprive a Canadian company of its right to have its shares traded in the United States because it was a property right that was taken away without due process of law – no hearing; the SEC just put the company on the restricted list. Ferber’s axiom was: You never ask for an extension. It dignifies the case too much. So we had seven days or a week, ten days, I think, to answer. I gathered a group of people. I remember working for seven days straight. In those days you couldn’t finish a brief two minutes before filing time, because you had to type eight copies of onion skin. But I worked, over a hundred hour week – used to come and get four hours, five hours sleep – with a group of people.

KD: Who were the people you were working with?

RP: I don’t remember. There was a fellow by the name of Dave, who was at the Commission for a long time. They were all junior to me, by six months. We put together a motion to dismiss and a brief in support of it. It was about sixty, seventy, eighty pages of brief. Ferber came back from vacation, walked into my office – which he seldom did – he usually would yell for me – and said, “Not bad. Much too long, but not bad.” Having said that, the next week he called me into the office and said on a fifty-page brief, “Goddamn it, Dick, Footnote 43? I thought I told you to change that semi-colon to a comma.” [Laughs] He was a tough taskmaster. He was also a great craftsman. Not a naturally articulate person. Words did not come easy to him.

KD: Speaking.

RP: Yes. Speaking. Not writing. I mean it was word-by-word, but scrupulously precise and fair, and taking into account the Commission’s needs beyond that

case, the precedential value of anything said in a brief. He did, I think, a great job for the Commission. He was a model lawyer and a model civil servant. And over the years, we had become friends.

KD: At some point, you became a legal assistant to a Commissioner.

RP: Yes. To Manny Cohen. He was a Commissioner at that time.

KD: He was a Commissioner at that point?

RP: Yes. He was one of the first Commissioners, if I recall – I could be wrong – who came up from the staff. He was a very dynamic, a strange kind of person to be the product of a bureaucracy. But this was the only job he ever had. The only meaningful job he had in his career, other than selling shoes and things during the Depression.

KD: Why was it strange that he was a product.....

RP: Because he was a very entrepreneurial, imaginative, vigorous person – impatient. And creative. Very smart. Not very meticulous.

KD: Not Dave Ferber.

RP: No, no. Very, very different. Full of interest in the law. He was Chief Counsel of Corp Fin, but he knew the federal securities laws inside and out; he understood antitrust. He had a very expansive mind. He was a pain in the neck to work for. I have never worked so hard in my life. There was only one legal assistant at that time. And he had been in Corp Fin, so he loved to read registration statements, which meant I had to read them too. I used to stay up until three, four o'clock in the morning; going to work by nine o'clock, nine-thirty, start again. Except came home Friday night, never worked Friday night,

never worked Saturday night. Sunday, start again. It was a very, very hard job. But fun.

KD: How did you land that job?

RP: He asked me. I think that the Kukatash case, that was the Canadian restricted case, sort of got my name around.

KD: So it was mostly dealing with Corp Fin-type issues?

RP: No. It was dealing with them all. It was a wonderful educational experience. It was dealing with all the Commission's business. For example, one of the things that is etched in my mind was a meeting the Commission had in this august Commission meeting room with a new carpet. There were the Commissioners around the dais and there were four well-dressed, overweight, cigar-puffing representatives of the New York Stock Exchange. A man by the name of Sam Rosenzweig, a partner of Milbank, Tweed, actually, he was a very decent guy, but kind of pompous until you got to know him. The executive vice-president of the Exchange, Bob Gray, a couple of other top officials other than Keith Funston, who was president at the time. There was a firm called du Pont Homsey, a brokerage firm, NYSE member, that was about to go bankrupt, or had gone bankrupt. The question was – the Commission had asked the New York Stock Exchange, "What are you going to do for the customers?" The Stock Exchange said, "We're a stock exchange. We execute transactions. We're not responsible for customers of brokerage firms." And they laughed. It was the arrogance: "Out of the question. What a childish thought," as they flicked their ashes on the carpet. I thought the arrogance of these people was something to behold. They went back to New York, and in twenty-four hours, the Exchange announced the formation of a customer protection fund, which was the predecessor of SIPC. The reason is, despite their bravado, and their almost laughter at the Commission's suggestion, Keith Funston, and perhaps others, had a keen sense of public

relations. They knew that they could score a public relations coup, and make lemonade out of lemons, if they did this. That started the Customer Protection Fund. As the Exchange and the securities markets, and a number of brokerage firms – and the standards of membership became looser, the Exchange and the industry were successful in getting the government to take it over, which is probably a proper function for the government. That was the predecessor of SIPC. But I have that vivid memory of that meeting, and the ashes falling on the new carpet.

KD: You draw a good picture of the guys from the New York Stock Exchange. How about the Commission itself? What was that like at the time? How did these men work together?

RP: They worked together in the most collegial way. They'd get mad at each other, and they'd try and manipulate each other – particularly Manny. Manny was a very aggressive, creative regulator. His best friend for many years was Barney Woodside. I take it back – Barney was appointed a Commissioner before Manny. Barney was a truly conservative individual, insofar as everything was concerned, but particularly regulation. Manny was an aggressive regulator. They were very, very good friends – different as day and night, but good friends. Manny used to plot as to how he could manipulate Barney to support something. They'd negotiate. It was before the Sunshine Act, and the Commissioners used to get together and talk to each other in private – not necessarily secretly, but in private. I would be present, other legal assistants could be present – but it was a process of informal consultation. They all had great respect for each other. They'd swear and mutter under their breath at that crazy Jack Whitney. There were two Republicans: Jack Whitney and Barney Woodside, who tended to be conservative. There was Bill Cary, who was a superb gentleman and almost an unnatural leader; Manny; and then there always was what I would call a lightweight, meaning someone who really wasn't deeply engrossed in the intricacies of the securities law.

KD: Maybe a political appointee?

RP: Yes, maybe one of several political appointees over time. But they weren't dumb. But insofar as the substance of securities law, they were not interested, nor well-versed – at least at the time they came. There was Senator Frear – a wonderful man, who was the author of the Frear-Fulbright Act that expanded reporting requirements to over-the-counter companies. That was one of them. Hamer Budge was another one. Hamer Budge was the most stubborn man – nice man, but stubborn. They served a good purpose. They basically brought the Commissioners to reality when it came to dealing with the Hill. At that time, the SEC was a very unimportant agency as far as the Hill was concerned. In the Senate, the Banking Committee had jurisdiction. The Commissioners would go down there to talk about securities, and all the Senators would do was talk about banking. On the House side, it was the Interstate Commerce Committee. I think there was a Securities subcommittee, so there was a little more focus. But they were relatively unsophisticated. The committee staff on the House side consisted of some shrewd old, good old Southern boys, from the time when Southerners dominated the Congress, and had the seniority to become committee chairs. So the Commission wasn't very important. It was a backwater. When you looked at the newspapers, the biggest case the Commission had was lucky to get mentioned on the first page of the financial section – not the first page of the paper. When you look at the relative importance of securities and the Commission's function in the 1960s versus today, you realize something very fundamental has happened to the national economy and the financial community.

KD: It was a much smaller market.

RP: Much smaller market. Securities legislation was always justified with the images of widows and orphans. In fact, the people who invested in securities were fat cat, upper middle class and above. One can argue, if one wants to be a cynic, that

the reason the Securities Act was passed in 1933 is that the rich, the powerful, were suffering along with the poor and downtrodden; but their voices were heard first, even by the New Deal.

KD: Interesting. I've never heard that in particular pointed out. The AMEX case would have made the headlines, would have made the front page. Weren't you coming off that at this point?

RP: Maybe the AMEX case did make the front page. The Special Study may have made the front page. I don't think Texas Gulf made the front page.

KD: Nobody quite knew what that would turn into someday, I suppose.

RP: That's right. That's right.

KD: Other highpoints of working with Manny Cohen as his legal assistant?

RP: [Laughs] One of the high points was that Manny loved to be an author. He was a good writer, but he had no patience for craftsmanship. So I used to do the drafts, and spent hours or days; and he used to spend fifteen minutes, make brilliant edits without detail – without necessarily fitting it in. We'd go through eighteen drafts. One time he agreed to co-author a chapter in a book on foreign securities markets with Allan Throop, who was a partner, a very senior partner, of Shearman & Sterling, and also came to Washington in some post for a short period of time. He was the quintessence of a Wall Street conservative lawyer – very nice man. Very deliberate. Used to drafting trust indentures – not scribbling off stories. [Laughs] Or articles. It became clear after one or two sessions that Manny couldn't stand working with him. So I did it. I remember going up to New York – and probably came about six o'clock at night – and working with him. We'd go in a conference room, and there were eight young associates sitting around a table. We'd go word-by-word, line-by-line, and Allan would

say, “Shareholders. Should that be one word, two words, or hyphenated?” The associates would give their views. I forget how it was resolved. But it was resolved. He would change a word; he would read the sentence with the word in it. He would read the sentence before, and then that sentence, and he’d read the sentence afterwards. And that went on. A kid would make a comment. There was one particularly obsequious associate...

KD: These were his associates?

RP: His associates at Shearman. It was my first introduction to a large New York firm. And he was obsequious. He’d make a comment, “Oh, Mr. Throop, I think maybe there should be a comma after the word shareholders.” He’d look at it and say, “Good catch.” The kid’s chest would puff wide open. I’m writing articles, and he’s placing commas. I said to myself: I never want to go to New York and work in one of these firms. Now, looking back at it, you work as a partner in one of these firms, you’re in a different position than working as an associate. But I was determined I would stay at the Commission. Oh, the other thing I would never do is look for a job, after my first experience looking for a job. I stayed at the Commission until a law firm in Washington made me an offer I couldn’t refuse. What happened is, the Commission was a manic/depressive place. You’d get involved in a matter, and it was exciting, and you’d be in the forefront of what the Commission was doing, and then it’d be over. I don’t know: you’d feel a little let down. Depending on how you felt when that offer came in, you’d be more or less receptive. After eight years, when I was receptive, an offer came in for the Washington law firm.

KD: So if a firm is smart, it’s going to watch you and see when you’re back in the routine.

RP: They’re not that interested. [Laughs]

KD: Some would say you were working for a really great law firm when you went into the General Counsel's Office.

RP: I think so. I think the General Counsel's Office is probably the second best law firm in government, the first being the Solicitor General's Office, because the Solicitor General's Office has more breadth. But the standards in the General Counsel's Office were at least as good as any law firm in the country. I mean it's just a first-rate office. When Dave retired, Paul Gonson took his place, now Jake Stillman. You're talking about just great lawyers. Paul Gonson's a friend of mine. He was in my firm after he retired. He's a great person and a great lawyer. But yes, it is a wonderful training ground, a great spirit. It's gotten bigger now, and there's a Counseling as well as an Appellate end. There were only three groups when I first went in there. Each group was six lawyers. Then there was a Special Counsel, and then an Assistant General Counsel. The General Counsel was a political appointee. Then ultimately, there became an Associate General Counsel. Walter North held that job for a long while. But it was eighteen, twenty people – twenty-two people. They did all the appellate work of the Commission. They did the counseling, which was more or less important depending on whether the General Counsel had a rapport with the Chairman. If the General Counsel had a rapport with the Chairman, counseling became very important. It was clearly the most influential office in the Commission. If there was no rapport, then it became mainly an appellate and a tactical legal office.

KD: Tell me about some of the General Counsels you worked for, and sort of emphasizing that point, what their relationship was with the Commission.

RP: The first General Counsel who hired me was Tom Meeker. I liked Tom. He was more of a politician than a hardworking lawyer. But he had a great allegiance to the profession, and a great, I think, loyalty to the Commission. I think he had a good relationship with the Chairman, but he wasn't there too long. One of the sparkling General Counsels was a fellow by the name of Allan

Conwell, who was a fine – prided himself on being a fine lawyer. He came from a New York firm, Willkie Farr, and also was a sparkling personality. He and Bill Cary, I think, had a great relationship. He was a wonderful guy. The greatest General Counsel of all, in many respects, was Phil Loomis, who was one of the two or three people I had met in my life whose limits to intelligence and ability I was never able to find. He had an amazing, very self-effacing, intellect. He was kind of an extraordinarily shy person, and socially very awkward. I understand when he went on the Commission his personal life was isolated; I think his wife had died, and I think he was drinking, and he fell apart. But during the many years he was General Counsel, he was relied upon by every Chairman of every persuasion. He was the quintessence of a counselor and an advocate. I would spend half a day, a day, drafting something; he'd come in, take a look at it, and five minutes later, hand it make to me, saying, "It's excellent." And make some changes, sometimes significant – dictate it. He wouldn't edit fine; he would put in a paragraph in two minutes, two seconds, that would take me two hours to draft. He was extraordinary, and absent-minded. He once walked out to go to the Supreme Court without his pants and morning coat.

KD: Now did you work as an assistant to Loomis?

RP: No, I was Assistant General Counsel. I went to Manny as his legal assistant for two years. Then, exhausted, I crawled back to the General Counsel's Office and did appellate work and counseling for a while. I also worked for about six months as a legal assistant to Bill Cary, who was an extraordinary guy, a professor from Columbia, a patrician through and through, who had a rarefied intelligence and a stubborn determination to do whatever it takes. When we were lobbying – I think it was the Frear-Fulbright Bill through Congress – he would go over to the Hill, visit every one of the fifty-some-odd members of the House Interstate Foreign Commerce Committee, and make his pitch. I remember him coming back one day, and saying to me, "You know, it's just like selling toothpaste, you've got a line." [Laughs] I think he enjoyed it. He was very much an intellectual snob,

and he viewed Law Review as the quintessence of achievement. I hadn't made Law Review. But I wrote a Law Review article, a long one, early in my career, that was published in the Columbia Law Journal with a fellow by the name of Mike Eisenberg. Once I wrote that article, and it was published, I came up to his standards. [Laughs] It's very funny how he revered Law Review. He was just a great human being who, I felt, was not someone with sparkling genius intelligence, but with a discipline and a drive, and a clarity of where he wanted to go, that took him far beyond what other people with his abilities would do. His writing style was extraordinary: very sparse, sometimes three word sentences, and very readable.

KD: Did you go from there back into the General Counsel's Office then?

RP: Yes. Whenever I needed a job, I went to the General Counsel's Office. Then I was asked by Manny to be staff director of a group that would do a study of the Investment Company Act. We worked for about sixteen months in producing "Public Policy Implications of Investment Company Growth." That enabled me to become the whipping boy for the mutual fund industry. I mean, they thought that report was the biggest assault on free enterprise that any government agency had mounted since the days of FDR. I spent sixteen months really working day and night, producing that report.

KD: Let's back up a little bit. That is, you know, definitely one of the big subjects I want to get to. Can you talk a little bit about the context? What was in the air that led to something as specific as putting together a team to generate this thing?

RP: When Cary was Chairman, he brought in a couple of people, extremely bright young lawyers. One was Gordon Henderson and the other was Bob Mundheim. Bob Mundheim, in particular, had gone on to the dean of the Pennsylvania Law School, and has a distinguished career. They put together a group that went out and studied some mutual fund complexes. But they made a mistake that many –

by no means all – what I would call lateral entries into the SEC – make, and I suppose it's true of other government agencies. They had been stars in their own right, and they looked down on the staff as somewhat less capable people than they are – bureaucrats. They get sabotaged, not active, explosive sabotage, but they get indifferent cooperation from the staff. The result is, nothing happens. Somebody like Manny Cohen, who for some strange reason loved the Investment Company Act – it's a highly regulatory act; he was very much a regulator at heart; and really was irritated by those people, because of the way they treated the staff.

KD: Was this following up on the Wharton School Study?

RP: Yes, this is the first follow-up on the Wharton School Study. When Manny became Chairman, he was determined to get follow-up on the Wharton School Study, and he asked me to lead this group. The political environment was not good. There wasn't really an outcry for reform. The Wharton School Report had come and gone. We weren't in a period that followed a big period of scandal, so it wasn't a period conducive to reform legislation. But Manny had a thing with the Investment Company Act, the Wharton Study; and with his support, we came out with a fairly comprehensive and – for the time – radical set of proposals, abolish contractual plans - the front end load of contractual plans – put a hard limit on sales loads. I think – what did we say – a five percent limit, or something like that? Have a standard of reasonableness for management fees. And a lot of other stuff that was more technical. The report was badly received by the industry. On the other hand, some of the liberal newspaper people loved it. Eileen Shanahan was the New York Times reporter who covered the Commission at the time. Eileen was a terrific reporter. To this day, I swear on a stack of Bibles that I did not leak the report to Eileen. But she used to come around whenever she had a spare moment, to talk with me and other people. She understood what we were looking at. She'd sit down and she'd say, "Dick, what are the alternatives that the Commission has with respect to sales charges?" I would, as neutrally as possible, give her the range of five or six alternatives.

After spending a lot of time, she knew the Commission; she knew Manny Cohen, and she used to sit down with Cohen, too; and she knew where the Commission would be going. She wrote a story for the Times that was either a big three, four-page story, or maybe it was installments, that got the Missouri School of Journalism Prize. About several months before the report was out, she predicted ninety percent of the major proposals.

KD: And this would have been while the report was with the Commission?

RP: Oh yes. This was before it came out, yes. It's just a good example of smart reporting, and a willingness to spend the time: to know the issues, to know the institution.

KD: Tell me a little bit about the other people you were working with at this point. You had guys like Sheldon Rappaport, who...

RP: I had Shelly Rappaport who handled contractual plans.

KD: Okay. And he'd been in the Special Study, right?

RP: That's right.

KD: Did he bring any expertise from that?

RP: Shelly focused very intensely on the contractual plan. The contractual plan chapter was his contribution. I don't think it went beyond that. But it was considered an important chapter. The guy who was the roving genius of the group was a strange looking guy by the name of Bernie Wexler. Wexler had very bad feet, and he wore high-button shoes and a bow tie, a small bow tie. And he had glasses. Even with glasses, he had to lean over the table and look at something two inches from the paper. He was an exquisite writer, but with a

very journalistic style that you had to censor. You couldn't let it go out – picturesque – I loved reading his stuff. It was emotionally difficult for me to calm it down, but once you took a red pencil and took out some of the more picturesque stuff, what came out was beautiful. I give him a huge amount of credit. I had a fellow by the name of Bernie Garil – he passed away a year ago – [CORRECTION: Bernie Garil is living at the time of this interview.] – who was our statistician and a non-lawyer. He did a wonderful job. There's another fellow whose name I won't mention, who came in from the Henderson Group. He was awful at the beginning. He thought he was going to show us how to do it. It was a very interesting social study in the dynamics of a group. He went into a funk – it was for about a sixteen month period – he went into a funk for the first third of it. After the first third, when he realized he wasn't having that much influence, he went into a funk for another third. The third third, he came back and made a really nice contribution. I thought it was just a very interesting study in group dynamics.

KD: You talked about Rappaport, for example, having this one section. Is that the way it worked for the other guys too, everybody having their section?

RP: I did management fees, and edited the whole thing. I'm not sure who did sales charges, though. It may have been Lou Mendelsohn with Bernie Garil. I know the summary – the introduction was Bernie Wexler. Then there were some technical amendments that, I'm not sure who did it, but it was a small group. I think I've got all the members. We may have gotten one or two additional members for a short period of time. But they were the members who were in the group from the beginning.

KD: And did Loomis just take a big picture look at this from time to time?

RP: Loomis commented on it. But Loomis was not all that important. This was Manny's project.

KD: Well, one thing I want to get to is the issue of Section 22(d) of the 40 Act.

RP: Yes.

KD: And the contention that arose around that, and your point of view when you wrote the report, what your recommendations were, as opposed to how it turned out. Tell me a little about that.

RP: Well, we thought 22(d) was a cost raising effect. In a way – and over the long run - it perhaps did. As a practical matter, however, when you're talking about sales load or 12b-1 fees, there are very little competitive forces other than price raising forces that operate. You have a situation where a large portion of mutual fund shares are sold, not bought. The salesmen will sell what pays them the most money. That's too cynical, because what happens is, they all pay about the same. Because everybody who's in sales and marketing knows that they've got to pay what the other fellow's paying. So they all pay about the same, so that the disparity in compensation doesn't make a hell of a lot of difference to most salesmen. They're not greedy for the last cent, they're greedy for the last buck; and that's only a cent or two difference. So the natural competitive forces of the marketplace in this instant have a cost raising effect up to the ceiling, and the ceiling is the regulatory ceiling. Now I have argued recently in the roundtable on 12b-1, that 12b-1 prevents competition with sales loads even though it wasn't subject to 22(d) by spreading the payments. You can't get much competition if you say I'm going to charge you seventy base points rather than seventy-five. So, I don't think competition – price competition – is the real answer to controls over sales charges. I think you had to have regulatory ceilings. Not that there can't be some competition. You can have the discount brokers. But what you worry about are not the people who are sophisticated enough to get to the discount brokers, you worry about (a) the large group that doesn't use discount brokers, and (b) the even larger group that is so unsophisticated they wouldn't be deterred by very

high sales charges. So if you didn't have a regulatory ceiling, you'd have, at the margin, a portion of the market that would have exorbitant sales charges. Just like you have in the mortgage markets.

KD: So you're talking about 22(d) enforcing this ceiling.

RP: I'm saying that 22(d) is not that important. Even without 22(d), you wouldn't find much competition. What's more important is a regulatory limit.

KD: There was some sense, certainly later, that the recommendations...

RP: 22(d) got silly. The staff at one time was enforcing 22(d) with the same vigor that they were enforcing an investor protection provision of the 1940 Act. I mean you couldn't offer a free cup of coffee without violating 22(d). But in recent years, the staff has been very flexible on 22(d). They recognize it for what it is. So that to the extent you've got affiliations and things like that – some basis for offering a lower cost product – they'll find a rationale to let it go.

KD: Were there things that your group put into this report – I know on the Special Study, for example, there was some provision where they weren't going to go through the Commission, they were going to be independent to some extent. Your report on mutual funds definitely went to the Commission, and they looked at it and thought about what they were going to buy off on.

RP: That's right. Although I might tell you, I was at the Commission as assistant to Manny Cohen during the Special Study. And they were not independent. The Commissioners went over each and every part of it. But it was a relatively conservative Commission, or a Commission with different views. And the way they got agreement was to say: Well, this is a staff report, okay? So, let's see how it flies.

- KD:** People sort of took cover under that idea.
- RP:** Yes. But every word of that Special Study was reviewed ten times by the Commission.
- KD:** Tell me about your study, and what you saw. Did you really anticipate what the Commission was going to say, or were there things that you were surprised got left on the cutting room floor?
- RP:** Not at all. We knew exactly where we were going. Not with fine precision, but we knew when we started that we wanted to abolish contractual plans; we knew we needed some kind of vague provision dealing with management fees; and we knew we needed a statutory limit on sales charges. We knew that size was not a problem. There was a whole set of technical amendments that we didn't even consider at the beginning. But the Investment Management Division worked them out for the most part. No, this was a report that was goal driven. There had been enough work done through the Henderson/Mundheim group – Cary – that at least Chairman Cohen knew where he was going. He knew also that in the legislative process, there'd be a compromise.
- KD:** You talked about the lack of a political driver, that fact that there was no big scandal.
- RP:** There was Manny Cohen, and he was a political force to contend with.
- KD:** Were there things you would have thought about doing, had you felt that there was more pressure behind it – political pressure?
- RP:** No, I think we felt that the goals were pretty well set, and there was never any pressure to abandon them. See, the Special Study was different. The Special Study started out on a relatively blank slate. There was an awful lot that they

didn't know about the securities markets. The great contribution of the Special Study was the enormous share of knowledge that it accumulated. Now, we also learned a lot about the mutual fund industry through a series of interviews and meetings. But it was different.

KD: As things played out later, were there ideas raised in your study that you saw? So often we see a study done, or some initiative taken, and it plays out over years or even decades. Were there things that you saw in your study of the mutual fund industry that played out after the time you left the Commission?

RP: I think that each one of these major reforms have played out. The contractual plan, for example, wasn't abolished but it was limited. The contractual plan, for all intents and purposes, is dead as an alternative. I think that time has buried the contractual plan. The legislation helped, because it cut the compensation to the point where it wasn't as interesting to sell from a salesman's point of view, and the rest of it – the bad publicity – did contractual plans in. It's now an archaic way of buying mutual funds. The sales load accommodated the 12b-1 service fees, and the NASD had the sales load limitations. The NASD at the time, in the '70s and '80s, was a relatively nonaggressive and unimaginative group. I recall a client coming in and wanting to start a mutual fund that had a one percent sales charge that would continue indefinitely, on the theory that he felt salespeople should earn compensation over a period of time, and therefore have an incentive to service his customer. His brokerage firm had a very stable corps of registered reps, and this would tie them more to the firm. He came in with this proposal. I looked at the sales load definition, didn't quite fit. I called the NASD, and they said, "Oh, there's no regulation. Doesn't apply." So 12b-1 came in – something totally different from what we had looked at. For a while, it started having that cost raising competitive effect, as 12b-1 fees went from fifty basis points to seventy-five, to a hundred basis points, to a hundred twenty-five. I think there may have been one or two cases or more. At that time, I was representing the ICI. The Commission started pushing to apply sales load limitations. The ICI, at that

time in particular, was not one that bled to death fighting regulation. Their philosophy was that regulation was necessary to maintain confidence in the industry, and what they looked for was – quote – reasonable – unquote – regulation.

KD: Was this David Silver? Was he around?

RP: This was David Silver.

KD: Yes. Of course, he'd been a regulator himself.

RP: Yes. And Matt Fink, who had never been a regulator. But they had great support among the leadership. I mean, there were elements of the industry that thought they were a bunch of Washington bureaucrats, but the leadership of the industry supported them. And so we worked with NASD. In fact, I can recall coming up with this formula of the rolling 12b-1 limit that ultimately was bought by the NASD. I can hardly articulate it because I'm so bad at mathematical concepts, but I had a vision of what it would look like. And it's worked, except it's outmoded. It was based upon a study in 1980, that said that investors held mutual fund shares for twelve years. That may hold true today, particularly when you recognize the sales load free exchange privilege. It's a complex question. With the exchange privilege, the average holding may be even longer. But no one really knows. And now, the marketing effort is much more complex, with funds in different sectors and the different kinds of retirement plans.

KD: Right. The industry's transformed since that time.

RP: The industry's transformed. That's right.

KD: Anything that we haven't covered, as far as the mutual fund study?

RP: Well, what you haven't covered, I think, is the Congressional fight, which was an exercise in the perseverance of Manny Cohen. He was single-mindedly determined to get a bill, when there was very little push for it otherwise. He did some outrageous things. To get bank industry support, he gave them a very broad exemption for bank collective funds.

KD: So the ICI probably didn't like that a whole lot.

RP: They didn't like that. But in that fight, if the ICI didn't like it, Manny liked it.

KD: But the banks had the Hill's ear, obviously.

RP: Yes. If the ICI didn't like it, Manny liked it. I mean the ICI at that time was fighting the legislation.

KD: Who were his supporters? Who were the people he was able to work with on the Hill to get this going?

RP: There was Senator McIntyre from New Hampshire, who I remember. Sparkman was generally supportive. He was chairman of the committee. If I had the names, I would be able to tell you. Senator Williams was also supportive. Steve Paradise was director of the committee. He was a character with a very shrewd, native intelligence, who never showed it. He seemed liked an unscrupulous Hill operator, but he wasn't. He was better than that. He drafted a report on Section 36(b) that was pure genius. You read that report, and you looked at the SEC's submissions, and you looked at the ICI's submissions; and he took one line from each. Every sentence had one phrase from the SEC and one phrase from the ICI, and the report didn't say anything. [Laughs]

KD: But everybody saw just enough of what they wanted to see.

RP: That's right. It was a one man tour de force, to get that legislation passed.

KD: When was that?

RP: Well, our report came out December 1966, and the legislation was passed in 1970 – the Investment Company Act Amendments Act of 1970. So it took over three and a half years.

KD: Did you work at all on that effort on the Hill?

RP: Yes, I worked for a time on that. Let's see: I left the Commission in 1968. Before I left the Commission, I was spending full time as staff director for the Wheat Disclosure Study. And that was about a year, so I worked for a full year at least on the legislation.

KD: In '66, '67 or so.

RP: Right, '66 and '67.

KD: What was involved in working on that? Were you meeting with the Senate and Congressional staffers?

RP: Yes. That's exactly right. Drafting papers, writing rebuttals, answering questions. Yes. In a way, it was all regurgitating the same arguments in different forms. I was very skilled at it. I could turn out a lot of paper in a short period of time.

KD: Did you ever want to do something besides think about mutual funds?

RP: That's right.

KD: Let's talk about the Disclosure Study. And again, background to this: What led to the perceived need for the study?

RP: We had a Division of Corporation Finance that was very hidebound. They had developed a set of doctrines as to when restricted stock became unrestricted, when private offerings were integrated or not, and a whole set of concepts. As the markets became larger, these concepts became more and more unworkable. I will never forget when I first went into private practice, the difficulty I would have in deciding whether restricted stock ought to be declared unrestricted on the basis of a legal opinion saying there was a change in circumstances unanticipated at time of purchase. Clients would have these stories about cancer – but if the cancer was there when the stock was bought, it was not a change of circumstances. Transfer agents and issuers would not take the legend off stock unless there was a legal opinion. There were a lot of unscrupulous people around who would say, “Have opinion, will travel,” for a few thousand bucks per opinion, or maybe by the page. But most lawyers tried to have some standards. It was very, very hard. It was an unworkable test. The same thing: fungibility was very difficult. Integration of private offerings, very difficult. There was clearly a need for reform. That reform was not going to come from the Division, at least unless you had a new director. But it came from Frank Wheat. Frank Wheat was a Commissioner who had been in private practice, doing securities work. He understood the difficulty of accommodating these traditional concepts. Interestingly, he was a very energetic guy who was restless just sitting around the Commission table. Not only that, but he was a pain in Manny Cohen's rear. He knew a lot; he was very energetic. He would lock horns in a very convivial way – collegial way; this was not bitter. But Manny used to swear, again not in a bitter way. He figured that one way to get Frank out of his hair was to send him off to do this study. Manny was one of the old time Corp Fin people. He really thought the study was ridiculous, nothing would happen, etcetera, etcetera. Frank asked me to be staff director. I agreed. The problem was that Frank was his own staff director, and I was a little too big for those britches. It wasn't all that satisfying

an assignment. And when the right offer came, I was in a receptive mood. So I left in the middle of the study. But it was a very interesting experience and a very meaningful education for me, because I had never been in Corp Fin. What we did as part of the study, to understand the problem – as part of Frank’s scheme to get support from the Wall Street community, investment banking, issuers and law firms – was to hold a series of meetings to talk about the underwriting process, the post-IPO process, private placements. It was enormously educational. One of the things I remember most was a meeting with an old-time securities lawyer, a partner in a firm that did an enormous amount of work for Merrill Lynch. Well-known, well-respected. Name was Ivy. You sat through a session with him, and you got the feeling that what he wanted to do with a prospectus, after putting in all kinds of disqualifiers and adverse disclosures – all that, was to take every copy of that prospectus and put it in his office safe. It was basically a legal document that no one read. That lesson has stayed with me all these years. A prospectus, to a significant extent, is not read, unless it’s read by the pros – people who are analyzing deals. Everybody relies on the prospectus as a source of reliable information, not as a source of complete information, but of reliable information. It’s an important document. But where there is no intermediary, a professional intermediary, between the investor and the underwriter or the issuer, you don’t have a meaningful disclosure process. When you translate that to the mutual fund prospectus, that is true in spades. The prospectus is written by ’40 Act lawyers for ’40 Act lawyers. It is a terribly uncommunicative document, once you get past the performance table and the expense table. The summary prospectus is long, long overdue. I invest in mutual funds almost exclusively for my retirement plan. I look at the prospectus – to the extent I do, I look at the performance; and to the expenses, I kind of know if it’s a high expense fund or not.

KD: But that was nowhere to be found back at that point.

RP: No, no, no.

- KD:** One of the big things here is this whole idea of integrating the '33 and '34 Acts.
- RP:** Yes. That's right. That took place after I left the Commission. Al Sommer was a key player in that. That also was long overdue. Now, I shouldn't say that: I think that the Wheat Report was the kick-off for that. We used to make the statement: You can read a 10-K, and after you've finished, you don't know what business the company is in. Because, at that time, the 10-K was almost exclusively financial statements. The integration process became enormously important. The 10-K is now an important document – not that it's used by Mom and Pop investors, but it's used throughout the financial community as a source of information.
- KD:** At that time, you're working with Wheat as his nominal assistant or staff person?
- RP:** As chief of staff.
- KD:** Was this idea of bringing together, converging the disclosure of the '33 and '34 Acts – was that one of the things that was front and center?
- RP:** Yes, yes. What was very important to that concept was how to get the 10-K out of Commission files. There was no technology. You didn't have websites. You didn't have EDGAR. What we were toying with – which shows you how long ago it was – was microfiche, as a cheap way to get distribution of the 10-K. Until you got distribution of the 10-K, you would not have a meaningful integration. The one thing the prospectus did was obtain distribution. So we needed to get distribution of the 10-K and to find a technical means for distributing it.
- KD:** So this periodic reporting can be available widely.
- RP:** That's right.

KD: Who were some of the other people working on that study?

RP: Well, let's see. Dave Mishel, who happens to be a partner of mine now out in San Francisco, I first met on that study. He was a very bright young lawyer from Corp Fin. Dick Rowe was, I think, Wheat's assistant. He was very active in it. He's a very, very bright guy; one of these people who has never said a stupid thing in his life. He doesn't talk much, but when he talks, one listens to him. You might know him from the Historical Society.

KD: Yes, I've met him.

RP: I think Bernie Wexler was in it. I'm not sure who else. It wasn't as close a group as that group that we had at the '40 Act.

KD: Why not?

RP: Because I think it was dominated by Frank. Frank wrote every word.

KD: So it was a lot of people working for Frank Wheat, rather than a team working together.

RP: Yes. He was a very capable, very dynamic guy. He was into it. Maybe it did get him out of Manny's hair on other things.

KD: Yes, that was my question.

RP: But, as time went on, Manny began to realize that this was taking on a life of its own. He was denigrating it at the beginning, saying nothing's going to happen. But he's a very smart political guy. He began to see – and I think became convinced – that there was some merit to it. But he went down slowly.

KD: Is there anything about your career with the SEC that we haven't touched on?

RP: Let me mention this. You've got to realize that the Commission wasn't as important then as it is today. Yes, the *Texas Gulf Sulphur* case was a big deal. But you couldn't get much focus from the press on the Commission. It was a narrow agency. The sad thing is that as I look at the position of the Commission vis-à-vis the mortgage debt crisis, it's back – relatively speaking – to where it was. What it needs is an aggressive, regulatory-minded chair, with the support from the White House, so they will take the lead. The Federal Reserve will never fill that role. It may well be, in the next administration, that's what's going to happen. Chris Cox, who I think started off doing a very capable job, was never able to deal with Atkins. I think he's checked out, to a large extent. It's kind of sad to see this tertiary role, if you will, that the Commission is playing. That was its role back when I started. It was the banking agencies – Saxon was the reformer, the Comptroller of the Currency. The Federal Reserve as a staid, steady regulator.

KD: That's interesting.

RP: I think you see, in a much larger canvas, as the economy has grown, the financial community has grown, the world of finance and flow of money has grown. You see the wheel turning back.

KD: And this is a much greater upheaval today, too.

RP: Yes, it is.

KD: You went into private practice after you left the SEC?

RP: Yes.

- KD:** I think I saw somewhere that you were associated with the mutual fund industry. Is that right? Was that a specialty?
- RP:** Yes and no. When I left the Commission, I went to work for a firm called Surrey, Karasik, Greene & Hill. It was dominated by Walter Surrey, who was the brother of Stan Surrey, who was Assistant Secretary of the Treasury and noted tax expert. Walter was a very dynamic character, international lawyer, who loved law practice for the excitement and had no sense of economics. He would pull in these groups of very interesting people who had foreign service – some kind of foreign service connection – who didn't know beans about practicing law. I came in as a nominal partner, at the guaranteed salary of twenty-five thousand dollars a year, which, after a pay raise that took effect shortly after I left, was about three thousand dollars more than I would have made if I had stayed at the Commission. Private practice – and this is very important – at that time paid a little better, but not much better. And you had to buy suits and have regular haircuts. So the competition of private practice, in terms of dollars, was not all that significant and the ceiling was much higher. But what you made in the first year or two or three was not that much more.
- KD:** So it would have been a little easier for the SEC to keep people at that point – or a lot easier.
- RP:** Absolutely. I didn't leave to make more money. I left because I was in my depressive state, and an interesting offer came. But I was the first securities lawyer in this law firm that was a really bright ragtag collection of individuals who were doing different things. Walter Surrey, again, was a very dynamic guy. If there was anything public, he would give it to me. I was doing tax work, because it was a tax on public companies. Those days, there weren't many securities lawyers in Washington. I can tell you who they were. Milt Kroll – Kroll, Levy & Simon – had a boutique. Arnold & Porter did some enforcement work. Hogan & Hartson represented the gas company and Woodward &

Lothrop, and a couple of others who had corporate clients. Covington felt that securities practice was beneath them; it consisted of prospectus writing. That was Dean Acheson's point of view. Arent Fox did some real estate syndications. There wasn't much more. I remember I was doing 10-Ks for a company in Florida. Outside of Steel Hector, and a couple of firms in Miami, there were no securities lawyers in Florida. There was a defrocked broker/dealer who was a securities lawyer. It was a very small community. I used to say, if someone says they're a securities lawyer, and I didn't know him, he was a liar.

KD: When did that change?

RP: It changed, I think, rapidly in the '70s and really in the '80s. It was a function of the growth of the markets, the growth of public companies, the growth of the investing public, retirement plans that changed from defined benefit to fixed contribution plans, and a multitude of factors. But it was a different world then. I did everything. I did enforcement; I did 10-Ks; I did acquisitions, and then de-acquisitions when the bloom was off the rose, M&A work and things like that. And then, two things happened. There was a fellow who was general counsel of IDS, International Diversified Services, at Allegheny Holding Company. He was Bob Loeffler. Jefferies and Company – an institutional broker/dealer – was acquired by IDS. Jefferies became affiliated with a mutual fund complex. And the New York Stock Exchange had a rule – the so-called Parent Rule – that said any brokerage firm affiliated with an institution cannot be a member of the Exchange. It was an anti-competitive rule, designed to prevent easy evasion of the fixed commission rate. Bob Loeffler was very active in the ICI on the legislation opposing the Commission. I was butting heads with him. I had left Surrey Karasik; thirteen of us left to start our own law firm. We bought for fifteen thousand dollars, a whole suite of twelve offices – fully furnished – took over the lease, with a law library, from Saxon, the former Comptroller of the Currency. A lawyer named McGuire, who was a bag man for the Kennedys – he was in the White House as an assistant – and some other well-known member of

the Kennedy administration, they had gone into practice and furnished this place very nicely and fell on their face. So we took it over, thirteen of us. We had room for about fifteen, sixteen. I had one client. It was Flah's ladies shops that wanted to go public, with what I would call a low-end broker/dealer in Albany, New York. That was my only client. Hill, Christopher & Phillips was the name of the firm. Hill had a government contracts practice, including Bethlehem Steel, for shipyard contracts. George Christopher was in the savings and loan world. So I did this IPO, battling off a second cousin of the proprietor who just got out of law school – "Why can't it stay in the family?" I had no other business.

And then Labor Day, I got this call from Bob Loeffler of Investors Diversified Services, saying they were about to sue, or they had sued, the New York Stock Exchange on anti-trust grounds. Their regular law firm, Donovan, Leisure, was handling it in New York, but they wanted somebody in Washington, because they thought the Commission might assert primary jurisdiction over the issue. In any event, there was going to be activity on the Hill. I said, "Sure." That was one of the greatest friendships I've had over the years, long after he left IDS. But we worked steadily for a month, about six people in our thirteen-man firm. There was plenty of capacity. We developed a submission arguing that the Commission had primary jurisdiction. It was submitted in response to a Commission release, an invitation for comments. I remember we had a draft, and Loeffler came down. He couldn't stop saying what a terrific document it was. Then we spent the next week working – each word – he was a perfectionist like Ferber, but much politer. He never got into the office before twelve noon, and we never left the office until twelve midnight, when we would go over to the Madison Hotel, where he was known, and we'd start drinking. He loved to drink. Finally, someone would say, "How about some food?" And the kitchen would stay open for us – about eight, ten people. At about two o'clock in the morning, I'd straggle home, go to bed, get six hours sleep, come back, handle my other client in the morning, fix up the comments and start working again. At the end of the week, we submitted it and it was reprinted by the Harvard Business School, as one of their case studies. It

became sort of the knock-out document in that comment process. I spent about a year and a half, two years, on the issue. The New York Stock Exchange finally caved in. By the time it caved in, Jefferies decided he didn't want to be a member of the stock exchange. [Laughs] That was a great experience. Then there was a second great experience. A couple of years later, the ICI came to me and said that they wanted to oppose an attempt by the insurance industry to get a blanket exemption for variable life insurance. And they have insurance company members, so they didn't want to take the lead. They would oppose it, but they didn't want to be the heavies. There was a group of funds, headed by Jack Bogle, of Wellington.

KD: Vanguard.

RP: Wellington. This was before Vanguard. That's a third story. And so I had a glorious six months fighting the insurance industry. The insurance industry thinks in long timelines. It took twenty years before I ever had a life insurance client.

KD: They remembered?

RP: They remembered. Unlike the mutual fund industry, which thinks a long-term investment is six months, the life insurance industry had a twenty-year timeline. It was great publicity, however. There was a woman who worked for one of the trade rags, a reporter. She fell in love – not with me, but with our position. Every day, she used to print stories about Dick Phillips did this, and Dick Phillips did that. I mean it was the best publicity I ever had. It was like having my own press agent. In any event, we finished the hearing; we briefed it; went to the Commission – went to the staff. The staff wrote a hundred-page report supporting us and recommended that the Commission deny the insurance industry request for an exemption. The insurance industry wanted a complete 1940 Act exemption. Then the issue went to the Commission, and the Commission was headed by a guy who ultimately headed the CIA ...

KD: Casey.

RP: Casey. And Casey did not understand the limits of his power. The Commission wrote a twelve-page opinion reversing the staff and granting a blanket exemption from the 1940 Act for variable life insurance. We appealed to the Court of Appeals for the District of Columbia Circuit. At that time, we had many years of Democratic presidents, so the Court of Appeals was a liberal court. While the government could do no wrong, at that time the government seldom granted exemptions. And this was a blanket exemption. I've never forgiven Jake Stillman for this. I was going on vacation and he was supposed to get his brief in. I remember calling him and saying, "Hey Jake, I'm going on vacation. Are you going to get your brief in on time?" And he said, "Yeah, yeah." I worked around the clock that last week to get a rebuttal ready. And that last day, I got a call that the new Commission, headed by Ray Garrett, had reversed itself. They were going to withdraw the appeal. They were going to withdraw their opinion and grant the insurance industry a very limited exemption which we never opposed. And so I am proud to have set back the cause of variable life insurance for twenty years. [Laughs]

KD: So you said you had some involvement with Vanguard, is that right?

RP: Yes. After that I started doing work for Wellington. I became friends with the General Counsel, who was a Bostonian, but had moved to Philadelphia. And then there was a falling out between the Wellington group in Philadelphia, and the Thorndike, Paine & Lewis group in Boston, which had merged into Wellington at the behest of Walter Morgan, its founder, because Jack Bogle had about two heart attacks at the age of thirty-four, and he was worried about the future of the firm. Thorndike, Paine & Lewis were fundamental stock pickers of the highest caliber. Bogle was an indexer, even then – a closet indexer at that time, but an indexer. They got along like oil and water. Trouble started breaking

out. I remember Jim Walters, who was General Counsel, calling me, and he said, “Dick, I’m in the middle here. Someone’s got to keep the firm together. I want you to help me.” I said, “Sure.” Within two weeks, it was evident that in civil war, you cannot stay in the middle. Jim went back to Boston, and I was hired by the Thorndike group. That was also a memorable experience. The Thorndike Group had control of the Wellington Management Company, but Bogle had control of the Wellington Fund board. Bogle decided to internalize the administration – just the administration, although there was a plan to ultimately take over distribution. Wellington fought it. I would turn out these briefs to submit them to the Fund’s board of directors, working all night. Again, it was a great experience, working with a great group of people. In Bogle’s eye, to this day, I am Public Enemy Number One. It was interesting. I never believed that Bogle could pull off what he’s done, because Bogle, at that time, was a most arrogant, self-centered, brilliant guy. I never thought he could build an organization. And he did. He built an organization with a great esprit de corps. I mean something happened. Whatever talent was needed to build an organization, it came out of him. I didn’t see it, in dealing with him. He would go down to the phone bank once a month, insisted all the executives do it, and he did all the right things to build a great organization. Ultimately, however, he just didn’t know how to let go.

KD: He had this one really good idea, I guess, that organized the whole thing – the indexing.

RP: The indexing, yes. And at the same time, after a while Wellington – with me in the background – made peace. Vanguard stayed with Wellington and is still their largest client. They do a lot of the actively managed funds.

KD: When did you go to Kirkpatrick & Lockhart?

RP: In 1980, Hill Christopher Phillips merged into Kirkpatrick & Lockhart after ten

years as a separate firm. When we looked around, we knew that the national law firms were coming into being, and we had the misguided conception that if we were to hook up with an out-of-town large firm, we could get lots of business from them. But we didn't want to hook up with a law factory, and particularly a bunch of arrogant New Yorkers who thought that Washington lawyers – which was how they regarded them – were a bunch of door-openers. So we ended up merging with this Pittsburgh firm of ninety people, the second largest firm in Pittsburgh, under all kinds of assurances of autonomy. And it's been a great relationship, but initially the merger was based on mistaken premise. The fact of the matter is, this firm had two kinds of lawyers: business lawyers and litigators. They had the impression that anything a New York or Washington law firm could do, they could do at least as well and a lot cheaper. The Pittsburgh office would get a securities problem, they'd send someone to the library. So there was no referral work during those first ten years or more. But what it enabled us to do was to have prospective clients say: Oh, Kirkpatrick, yes. We did a deal with them a couple of years ago. Good firm. It was a quality law firm, and a collegial law firm. It enabled us to move from a thirty-two, thirty-three man firm, and to grow over the years. They were good people. Now, of course, the firm is fourteen hundred. I was instrumental in building the Washington practice. But I have no empire building ambitions. Eight years ago, I moved to San Francisco, because two of my kids were there, and I'm still practicing at reduced speed, about the same thing I did here, and having a good time.

KD: And mostly securities work at this point?

RP: Yes. It's mostly securities work. But it's not '33 Act work. It's a combination of investment management and enforcement. The enforcement may not be '40 Act related. And some litigation. But I don't litigate, I structure and I strategize. But it's the same type of practice I had in D.C. during the last twenty years, where I moved from being a jack-of-all-trades with the word "security" in it, to a largely investment and '40 Act as well as enforcement practice. But investment

management has gotten so specialized and complex. There's ETFs and hedge funds, and all kinds of other instruments. I just do more general things.

KD: Well, that study you were involved with for, it seemed liked such a long time, never quite went away then – the whole idea of investment management and mutual funds.

RP: Oh no.

KD: You lived with it.

RP: Oh no. That's right. I never dreamt I would hook onto...And you know, I had one of the largest securities practices in Washington, because I happened to be in the right place at the right time. Yes.

KD: Anything else that we should cover at this point?

RP: I think we covered it.