UNITED STATES SECURITIES AND EXCHANGE COMMISSION

THE ROUNDTABLE OF THE 1963 SEC SPECIAL STUDY

William O. Douglas Open Meeting Room
U.S. Securities and Exchange Commission
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P R O C E E D I N G S

MR. LEVENSON: My name is Alan Levenson, and I'm very pleased to introduce the first Roundtable, which is co-sponsored by the SEC Historical Society and the Securities and Exchange Commission.

We're particularly pleased for several reasons. One, we believe that we have selected one of the unique, most important studies ever conducted by the Commission, and that was the 1963 -- I should say '61 to '63 -- Special Study of the Securities Markets. We're also pleased to have the key people who made such a significant contribution to the Federal Securities Laws, not only at that time, but through their foresight through the current date, and that's your current panelists, who are going to be introduced by the co-moderators shortly.

A special thank you for organizational purposes to Jack Katz of the SEC, who literally was a yeoman-type person in making the necessary arrangements here. But it really couldn't have been done without one member of our Oral Histories Committee, and that was David Silver. So a special thanks to David.

(Applause.)

MR. LEVENSON: We're going to have two other speakers. The next speaker is Dave Ruder, who's Chairman of the SEC Historical Society, as well as former Chairman of the SEC. And then the SEC Chairman, Harvey Pitt.

I might say that talking about oral histories, great commendation is deserved by the current Commission, commissioners, chairmen, and staff for the exceptional performance resulting from the September 11th situation. And I'm sure years from today, somebody else is going to be standing here, and what the oral history will be is a

Roundtable on the SEC and September 11th.

At this point, I'm very pleased to turn our program over for a special welcome to Dave Ruder. Dave?

(Applause.)

MR. RUDER: Chairman Pitt, commissioners, members of the Securities and Exchange Commission staff, members of the Securities and Exchange Commission Historical Society, Roundtable participants and friends. As Chairman of the Society, it is my pleasure to welcome all of you to the Historical Society's first Oral Histories Program, the Roundtable on the 1963 Special Study.

The Historical Society was created in 1999 for the purpose of preserving the history of the Commission, to sponsor research and educational programs about the SEC, and to enhance understanding of the U.S. and the world's capital markets. This Roundtable is the Society's first public program. It's second will be an SEC Major Issues Conference, Securities Regulation in the Global International Economy, to be held in Washington, D.C., on November 14 and

15 this year. Our Society is still growing, and we thank all of you for interest and support, and we hope that you will attend our program in November.

I could not make these remarks without offering my personal thanks to Harvey Pitt and Paul Gonson for their hard work and perseverance in creating the Society. Harvey served as President of the Society before becoming Chairman of the Commission. Paul was the initial SEC sparkplug, served as Secretary-Treasurer of the Society, and is now President of the Society.

And on an intensely personal note, I want to acknowledge my enormous debt to Milton Cohen, who's here today.

(Applause.)

MR. RUDER: I worked closely with Milton in Chicago for many years, and for five years I was of counsel to his law firm. One of my great endeavors and pleasures in the 1960s was to be one of the editors on his famous "Truth in Securities" article. For those of you who are historically minded, you will find a footnote in that article acknowledging that work.

Milton, you educated me about the markets. You showed me the power of an unmatched, incisive, and creative intellect, and you inspired me to believe in the importance of the SEC's mission. I thank you.

It's my great pleasure to introduce to you the current Chairman of the Securities and Exchange Commission, Harvey Pitt. I don't believe he needs any introduction in this group, but I can say that it has been my pleasure over many endeavors over past years to work with Harvey. I could not have been more pleased that he was Chairman of the Commission at the time of the awful events in September. My own tenure as chairman started with the historic event of October 19th, 1987, and I sympathized with what Harvey was doing as the head of the Commission at a time in which he was dealing with unprecedented events.

And Harvey, as Alan indicated, those of us watching from the outside have been enormously pleased and thankful for the work that you and the rest of the Commission have done in these trying times. Harvey Pitt.

(Applause.)

MR. PITT: Thank you, Dave and Alan, and welcome to everyone. This is an important first for both the SEC and the SEC Historical Society. And I think the fact that we have such leadership in the organization, with David Ruder and Alan Levenson and all of the participants that you're about to hear from, shows why this is such an important area, and why the work of the SEC Historical Society is so very important.

I would like to say that I appreciate all the kind remarks about the Commission's performance. I think when you have the opportunity to serve with wonderful people, like icon Laura Unger, and fabulous staff too numerous to name, but all of whom rise to great heights following in the traditions of the Commission that we'll hear a little bit about, it's easy for things to appear to go reasonably well in a time of turmoil.

On the other hand, I think we all believe that on-the-job training is not what it's cracked up to be.

Oral histories are important, I suppose, because the old saw is if we don't learn from history, we're doomed to repeat it. I'm not sure if that would be so terrible, given the Special Study and what it did. I think this is in particular a unique opportunity for our staff and for the Commission.

I have to say I feel smarter just being in the same room with what Byron Woodside called one of the finest collections of talent he'd ever seen. It sort of calls to mind former President Kennedy's great line when he was hosting a state dinner for U.S. Nobel laureates. I think he said, "This is the greatest collection of American brainpower to convene for dinner since Thomas Jefferson ate alone." There's sort of a similar kind of feeling about the Special Study. The agency that we are all somehow connected with has always been a special place. It has succeeded in attracting very talented and very well-intended and hard-working people.

The Special Study was unique, and still is. It's the only study the Commission ever produced that was called "special," and it deserved to be. It is and was very special, and it catapulted the SEC to a level of significance in our country's financial and economic history that the Commission has tried to maintain every since.

The study became front-page news of the New York Times based on the efforts that you're going to hear a lot about. It was a comprehensive look at market structure. And in some senses, as I'm sure Annette will testify, the development of markets and market structure is somewhat like watching a soap opera. Almost 40 years later, you can still pick up the Special Study, and it's still relevant. There are still wonderful things in there.

So I'm delighted that we have so many former colleagues from the Commission and so many people who worked on the study of whom I think we should all be very proud.

Not by way of criticism, Milton, but it is said that success has many parents, but failure is an orphan. And as hard as it may have seemed back then when you all were working on the study with a very small group of people, since then, the number of people who have claimed credit for working on the Special Study is so large that I would have thought you could have done it in a much shorter period of time.

But putting that to one side, I think there are two people who deserve special recognition in terms of the efforts that produced the Special Study. The first was Bill Cary, who set a wonderful standard for SEC chairmen, and who saw the need and the importance of the study. And the second was Milton Cohen. I've known Milton for quite some time, and everything you've heard about his intellectual prowess, his dedication, his energy, is all true, but possibly understated. So I think everyone owes Milton a great deal of thanks for producing an incredible work of lasting significance.

(Applause.)

MR. PITT: With that, I'd like to turn to two people who are no strangers to the markets, and who have spent careers dealing with the issues -- my very dear friend Irv Pollack, who has been a mentor and a friend and a wonderful example, and a good friend, Brandon Becker, who are going to lead this Roundtable in discussion.

(Applause.)

MR. POLLACK: Thank you, Harvey. Unfortunately, a few of the people who have served on the Special Study are no longer with us, including Fred Moss, who was to have participated, but who passed away a couple of weeks ago. So I would just ask everyone present to just observe a moment of silence in tribute to those who are no longer with us.

(Pause.)

MR. POLLACK: Thank you. Some things have been said about the Director of the Special Study. And those of you who are in the back, he's the fourth man from my left sitting at the angle in the table there. I don't think anything you could say about Milton Cohen would give due credit for his practice not only in the Special Study, but in his early years here in the Commission, which he joined in 1935, where he served in the Corporation Finance Division initially, and then in the very important Public Utilities Division.

He then left to go into private practice. And as Chairman Pitt has said, Bill Cary was smart enough to select him to do the Special Study, which started in about September of 1961.

The legendary study which followed is a tribute to his leadership and to the leadership of Ralph Saul, who also was the associate director of that division, and to the people who sit on the panel today. They represent an unusual group of talented and able people who were able in a very short time to produce a really fabulous study.

And as Chairman Pitt has said, it is still relevant. I found it so when I was here at the Commission in the Trading and Markets Division for many years. I just

picked it up the other day to read it. And I suggest that if you people would pick a part of the study and just read it, you will see many of your present problems which were analyzed very, very critically and very ably in those days, and which indicated the solutions that had to be achieved in order to solve the problems.

So to Milton Cohen, we owe a tremendous credit. After the Special Study, he was responsible for coming up with the ingenious solution of how options could be traded in an exchange market. He was responsible for suggesting the integration of the '33 and '34 acts, which the Commission has proceeded to implement since then. So of any gentleman who sits in this room today to whom we owe great credit, it is Milton Cohen.

(Applause.)

MR. POLLACK: Also, sitting beside him is Ralph Saul, who also served on the Commission starting at around 1957. And then he went on to become Associate Director of the Special Study, and is largely responsible for the administration and collection of the people who worked on the study, and in administering the various tasks that they had in a manner that permitted the study to be finished by 1963.

Ralph then came back and served as Director of the Trading and Markets Division, and then left the Commission and served as President of the American Stock Exchange, and

Chairman and CEO of the CIGNA Corporation, and before that, as Chairman of the Executive Committee of First Boston. He also has served on very many boards. He was responsible for the rescue operation of the Drexel Burnham catastrophe. So he has had a distinguished record in the field, both as a corporate governments person and in the legal side of the business.

Gene Rotberg, who sits the second from me on the right, also was at the Commission in the late 1950s, where he served in the Corporation Finance Division. He then was picked to do the Special Study job, where he was in charge of over-the-counter market study and the underwriting study report that was prepared by the Special Study. After that, he came back into the Division of Trading Markets, where he was associate director in charge of the regulatory side. He also served as General Counsel of the Special Counsel's Office at that time.

In 1968, he left to become Vice President and Treasurer of the World Bank, where he also had one of the most successful careers. And since we're discussing securities, he ran an $8 billion trading fund at the World

Bank, which included, as I understand, the pension moneys for the World Bank employees, and it was probably the most successful trading operation of any government or quasi-government institution. After leaving the World Bank, he

went on to be Executive Vice President of Merrill Lynch, and he now serves on boards around the world. So he hasn't retired either.

Lastly but not least is Judge Stanley Sporkin. Stanley Sporkin went to work at the Special Study as an initial employee of the Commission and was in charge of the financial responsibility part of the report that ensued thereafter. He then came to the Division of Trading and Markets, where he was in charge of enforcement for many years. And the last seven years, he was the Director of the Enforcement Division. So after a 20-year stint at the Commission, he went on to become General Counsel of the CIA, and thereafter was appointed Judge of the United States District Court here in the District of Columbia, where he served until 1999.

He had a fabulous record as a judge, established a degree of court ingenuity that is rarely seen by a jury, and established an outstanding reputation for his judicial services. He is now with the private law firm Weil, Gotshal, and Manges.

The rest of the panel will be introduced by my brilliant co-moderator here, Brandon Becker.

MR. BECKER: Yeah. From your lips. To my far right is Bob Birnbaum, who served at the Commission from 1961 to 1967. His area of expertise, prophetically, was the study

of regional exchange markets and stock markets while at the study. After leaving the Commission, he served at the American Stock Exchange from 1967 to 1985, serving as President of the Exchange from 1977 to 1985. And then in one of the remarkable feats, he crossed the graveyard and served as President of the New York Stock Exchange from 1985 to 1988, and then served as counsel, Special Counsel to Dechert, from '88 to '93, assisting the Exchange in dealing with a wide range of enforcement and disciplinary-related matters.

Bob has been a wise counsel throughout Exchange regulation, and has helped many of us in understanding how markets work and keeping the Commission focused over the years.

To Bob's left and my right is Norm Poser, who served in the area of financial public relations for the Special Study and publication of financial information. He began at the SEC in 1961 in the Division of Trading and

Exchanges, where he was assistant director of that division after his work on the Special Study. He left the Commission in '68 to join the American Stock Exchange until 1980, when he became a professor at the Brooklyn Law School, where he continues to teach today.

All you need do is punch up in Lexis any of his groundbreaking articles, and you can look at the last decade of market reform at the Commission. And you've read any of

Professor Poser's articles, you can anticipate where those reform efforts went next. His treatises on broker dealer regulation and international securities regulation continue to help those of us who try and figure out what the rules might be.

To my right, to Irv's right, is Fred Siesel, whose area of expertise in the Special Study was in economic analysis. After the conclusion of the Special Study, he served in the Division of Trading and Markets at the SEC until 1969. He worked at Weeden and Company from 1970 through 1978, and then, performing a feat almost as amazing as going from the American Stock Exchange to the New York Stock Exchange, he went from Weeden and Co. to the New York Stock Exchange in 1979, where he recently retired this summer, and led a distinguished career there in helping them assess market operations.

To my left and to Stanley's left is David Silver, who focused on the New York Stock Exchange, its specialists, its floor traders, its odd-lot dealers, and commission rates during the Special Study. He began his work at the Commission in 1960 in the Trading and Markets Division, and worked in the Division of Market Regulation after the conclusion of the study.

Many of you will know David as President of the Investment Company Institute from 1977 to 1991, and President

of the ICI Mutual Insurance Company from '87 to 2000. Certainly the enthusiasm and leadership he brought to the mutual fund industry as it grew over the last two decades is part of the reason why the oversight mechanisms for that industry has caused it to be the source where America's retirement funds are located.

And to my far left is Mike Eisenberg, who was liaison from the then-Division of Corporation Finance continuing to the Special Study, and continues as a member of the staff of the Commission, and we think -- we think -- is the only member of the current Commission who worked on the Special Study who currently serves on the Commission.

And this distinguished panel, we hope, will give you some perspective and some encouragement that it was hard in the past, and it's hard now, and it will be hard in the future, but it's worth doing.

MR. POLLACK: We're going to start first with the subject of why was there a Special Study. And there's no one better to answer that than our dear friend Milton Cohen. Milton, could you tell us what the factors were which led to the Special Study?

MR. COHEN: There had been a scandal at the American Stock Exchange involving the firm of Re and Re, and those were the principal things, I think, that Congress had in mind when they decided that there should be a look at the

total industry. And they gave that job to the Commission to carry out, and they gave the Commission a very broad mandate.

And the Commission proceeded in 1961 through a staff, of which I had the privilege of being the director. And the Commission felt that it could leave the work to the staff and only go over ideas, which the staff kept reporting to the Commission what they were up to, what they planned to do, and the Commission would consider it. They never controlled what the staff was going to do, but they always were aware and approving of what the staff was going to do.

When the whole thing was over, we submitted a report that was called the Report of the Staff of the Special

Study to the Commission. And this was put forth in this great volumes that you've been told about. But there were two sources of objection to it. One was the Congress. The minute they saw the study coming from the staff, they sent word back that they wanted a report from the Commission, and not from the staff. So the Commission had to go through what we had done, what they were familiar with in general.

And the other great thing that happened was that after the report came out, a professor of economics at the University of Chicago, where there was a great source of market anti-regulation and pro-market control of the markets. And this was the only really critical study of work we had done. It was really a very strongly-worded indictment of

everything we did. And what really got me going -- it still makes me angry -- as he went through the thing, he never called it anything but "The Cohen Report."

(Laughter.)

MR. COHEN: So I guess that explains the best I can the answer to your question.

MR. POLLACK: What motivated you in undertaking this herculean task?

MR. COHEN: Well, back in Chicago, where I was practicing law after having left the Commission after the

Public Utility Holding Company Act was pretty far along, Bill Cary was a professor at Northwestern Law School, and a friend of mine. And we just bumped into each other sort of by accident, I think. And it turned out he was looking for somebody to head up the Special Study, and he remembered that I had done this work on the Public Utility Holding Company Act. So he said, "Would you take it over?" And I said yes. And that was how I got to be director.

MR. POLLACK: Ralph, you were responsible in helping to staff this group of people. I think it would be helpful if you could give us a resume of how you went about choosing the people to do the study, and perhaps how you organized the various projects that the talented people were assigned to perform.

MR. SAUL: Irv, I'd say putting together this

wonderful team was ad hoc. Milton and I on the way down were trying to recollect about how some of these people came to the study. And actually, some were recommended by Bill Cary. I think Bill had a number of people. Dick Paul, who was one of those who unfortunately died, was the general counsel. There were many others that came from the Commission staff. Gene and Fred Moss, Bob Birnbaum, Norm. So there were quite a number in the Division of Trading and Markets at the time who came on over, and then I think some came from Corp Fin.

Then there were others -- what was very interesting, I think there were others that were recommended by staff people. In fact, our good friend Judge Sporkin, I don't know who recommended him. I've got to find that out.

(Laughter.)

MR. SAUL: But you were -- as I recall, Stan, you were with a law firm here in town, weren't you, specializing -- I'm going to test my memory -- specializing in FCC law.

MR. SPORKIN: Absolutely.

MR. SAUL: How do you like that? Anyway, I don't know who recommended you. But anyway, I remember we interviewed Stan and hired him immediately. What was that?

MR. BIRNBAUM: We're still looking for the guy who recommended him.

(Laughter.)

MR. SAUL: But I would say in answer to your question, Irv, it was ad hoc, but we singled out -- we tried to single out very talented people. And I can just look at the group that you have here.

In terms of your second question, organizing the study, you know, I made a contribution. But it was Milton Cohen who organized the study. I mean, Milton brought his tremendous brainpower to seeing how the study should be -- what it should focus on, how it should be organized. And I got into the task of helping decide who was going to serve -- who was going to do what part of the study.

But I think the organization, the intellectual organization of the study, was Milton Cohen. I did the administrative part, hopefully getting the right people. And I think we did get the right people, and we assigned them to the right task. And basically, that's it.

MR. BECKER: Could I ask David to talk a little bit more before we turn to the substance about how did the interaction work with the staff of the Commission? To what extent was there an interplay between the study itself, the staff of the Commission? How did you maintain those relationships going forward?

MR. SILVER: I think the relationship was a good

one -- a very, very good one. There was, I think, a pervasive sense of the Commission itself and the staff that the securities world was ready for a Special Study. And so I think that there was a widespread view among the Commission staff of, essentially, more power to them. And we received, I think, help from every one of the active divisions at the time.

I might say one thing. Milton mentioned the Re and Re case and the American Stock Exchange investigations as the predicate or the prequel of the Special Study, if you will. That certainly provided the publicity steam engine which fueled the legislation, which led to the Special Study.

However, it not only revealed that the Commission had lost touch with the markets as such, but there was also a sense that the Commission -- and I think this has been somewhat lost in history because of the Re and Re case and the AMEX investigation -- that the Commission had lost touch with an awful lot of what went on in the securities world.

I have a memorandum, I have a document written by Barney Woodside, of course who was a towering figure at the SEC, to Bill Cary giving his ideas of what the Special Study should do. And I'd just like to quote one passage.

He says, "The world and the Congress assume that we are the experts on all aspects of the securities business, including the distribution of securities. C." -- that's his

next letter. "C. Anyone making the assumption referred to in 'B' as to our expertness as an organization, or even our knowledgeability on the subject of the process of distributing securities, is indulging in serious error, and we'd better be the first to realize it. Such knowledge on the general subject now in the possession of staff members is fragmentary, unassembled, and generally unavailable as a basis for decision-making."

So Barney brought the other half of the Commission's work into the ken of the Special Study.

MR. BECKER: Can I just turn it to Gene, then, and say we've got hot issues, Re and Re, the market break of May 1962, how do you go about deciding how you allocate your resources? What issues do you decide? How do you actually then come up with the list of what you're going to pay attention to? You've got such a smorgasbord in front of you.

MR. ROTBERG: Well, first, before I answer that, let me make a comment which I hope is accurate, which I know will be somewhat controversial, which is what I do all the time, I'm afraid, on the relationship issue. I think that Dave and Ralph are right, that the relationship between the Special Study and the staff was excellent. The relationship between the Special Study and the Commission itself was testy. Because as Milton has indicated, at some point, the Commission had to say yes or no with respect to every

recommendation that we realized was beginning to affect what was written and what was not written.

I think it's fair to say that most of the staff at the Commission at that time had, for want of a better term, a healthy cynicism toward the Commission itself in the sense that "Look, we don't know what's going on in the markets. You don't know. We are not political." And a lot of that, obviously, took place during, and certainly after, the Special Study, particularly when it came to a lot of controversial issues, where I can tell you a half a dozen cases where the staff was working as if there were two independent regulatory agencies in the building. One was the Securities and Exchange Commission. The other independent regulatory agency was the Division of Trading and Markets.

MR. EISENBERG: That's still the case, Gene.

(Laughter.)

MR. ROTBERG: Having said that, and you saw the staff during the study and after the study working with Justice Department, regional stock exchanges, parts of the securities industry, the third market, to implement things in the marketplace or in the legal system outside of the Commission's regulatory authority because of the bit of unease whether the Commission itself as an entity would be able to act. I think -- fortunately, I know -- that has changed.

In answer to your question, it was pretty much the truth be had that it was ad hoc. That is, Dave knew about what was going on with respect to odd-lot dealers, specialists, and floor traders.

There was another group which said, "Look, stock prices come out on new issues." I don't think the term IPO was known at the time. "At $4 the next day, it's paid. How come?" That doesn't happen, of course, anymore.

Someone would say, "You know, you got all these commissions that are being distributed to the securities industry, but it has nothing to do with execution of orders, and they're not going for the benefit of stockholders from the mutual funds." It's funny, because the firm who's doing all the work isn't getting paid for it. And fortunately, that issue, I understand, has also been solved.

So that there were perhaps a half a dozen major structural issues dealing with how the market worked, which just took up 90 percent of the attention. And it just went straight through the study. They were known ahead of time. Though I don't think there were many issues which came up during the study, except for the market break itself.

And essentially, it was staffed, as you know, by lawyers. And Dave just pointed out to me walking over here that there is an enormous body of factual information, very little policy in the text, that is "This is what people do

for a living. This is why they do it. This is their rate of return. These are the motivations. These are the conflicts. These are not conflicts. This is why a given person does what he does. This is how it's financed." It was just this huge body of information.

My own personal view is that the great quality of the study is not the regulation or the laws which came or didn't come out of it, but rather this accumulation of simply how the securities markets work. That quickly became available to everybody on the staff and to the Commission, and in a sense, I think, created a mutual respect between the securities industry and the staff of the Commission -- because they finally said, "Hey, these men and women know what we do for a living" -- on the issue of the structure of securities markets, which had not previously really been explored.

MR. POSER: I agree completely with what Gene said about the fact-finding role of the Special Study. And I think that was its great contribution. I think if you divide the role of the study into two parts, one being what Gene described, the accomplishments of putting out in a massive report information about the securities markets, that's one part of it. The other part is the normative part, the recommendations that were made.

And I think in that part of it, I think it's very difficult today to cast ourselves back 40 years. I think it was a very conservative time, and I think the Special Study was very conservative. It was, you might say, pragmatic. I think it attempted to do certain things that could be done. It did not make recommendations that really involved changes in the structure of the markets to any major extent. There were some.

I think that what happened was that this body of information that the study produced had a long-term effect, and I think that it was after the back office debacle of 1969 to 1970 that Congress got really interested in the structure of the securities markets. And I think when you look at the 1964 amendments, the main thing there -- there were several things. But the main thing was over-the-counter disclosure, disclosure by over-the-counter issuers. That had been in the works and had been kicking around for many years before the Special Study. The Special Study got it done.

But as to other things, the role of the SEC vis-a-vis the self-regulatory organizations, for example, it was not until the 1975 amendments which followed two congressional studies of the markets, that the reforms that were necessary were made. I don't meant of minimize the role of the Special Study, because I think that the work that the Special Study did to some extent lay the groundwork for the '70s, when Congress and maybe the markets were ready for it.

It was not until 1975, 12 years after the study came out, that Commission rates became negotiated. However, the work that the study did in putting out on paper what was really going on with commissions led to another study, which I think Gene was very much instrumental in, in the middle to late '60s.

So the study really got a lot of things going, but it took a long time before they were finally -- I shouldn't say finally -- but until they were really put into effect.

I'm not sure. I think Ralph and Milton would know a lot better than I would, but I don't recall, as Gene mentioned, the tension with the Commission. Because as I recall it, it wasn't until Milton and Bill Cary went up to Congress to present the Special Study that Congress said, "We are not accepting the study" to Chairman Cary and Mr. Cohen, "because we want to know where the Commission stands on every recommendation." It wasn't until that day that the Commission itself found out that they're going to have to have a position on all of these recommendations.

So I don't think -- I didn't see myself, anyway, but, of course, I was so low down the totem pole, I wouldn't have known -- but I didn't sense there was any tension with the Commission itself. I think they were very supportive. And certainly Bill Cary and Art Fleischer, who we used to have a lot of battles with, were certainly involved all the time. So I didn't see that, I mean, as Gene pointed out.

MR. POLLACK: I think we would ask Milton and Ralph, who are in the better position to explain that. And before I let them speak, I might say that the 1968/'69 back office crisis was predicted by the Special Study. If you read the Special Study, they said that unless something was done for the clearing and settlement process, we were going to face that debacle. And they proved correct, because I had to deal with it, and I regretted that I hadn't paid more attention to the Special Study.

Let me ask Milton and Ralph. And might I ask when you address this, one of the questions that is posed is was it an advantage that you at least were not directly within the Commission and the Special Study, rather than having been an operating section of the Commission itself?

MR. COHEN: I think it was an advantage to be outside of the operating work of the divisions, because the old problem with seeing the forest and the trees. People working closely with some of these questions just never were able to perceive how they all fit together. And it took something like the Special Study to relate a lot of the things that had been happening, but people hadn't paid attention to, and some things that were in the process of happening.

We were, I think, the first to spell out at the

Commission level three things that have since dominated the market scene, but which really weren't perceived or paid attention to until the Special Study. And those were institutionalization, globalization, and automation. Those things were just coming into the field, and nobody was paying any attention to them.

I remember visiting the New York Stock Exchange, and we were beginning to talk about automation. And I talked to Keith Funston, who was then the head of the stock exchange, and I said, "Mr. Funston, have you done anything about automation?" And he said, "Of course we have. I'll show you what we've done."

So he took me to a room, and on the wall of the room were a bunch of telephones hanging on the wall. And you could pick up the telephone and ask for a quotation for a particular stock, and the telephone would answer you. He said, "You see how we have progressed with automation."

(Laughter.)

MR. COHEN: And it was just symptomatic to the fact that automation was there. The Special Study didn't produce it. The Special Study merely recognized it's importance and pointed out the need for it to be taken into account in the work of the Commission and by the industry.

And the same is true of globalization and institutionalization. The institutional market at the time

of the Special Study was just beginning to appear as an important component of market. Most orders were individual orders, and the prices were fixed by individuals trading. And nobody was noticing the fact that these great institutions were beginning to dominate the market, I mean the pension funds and the mutual funds.

And again, we didn't create the forces of those factors, but we did talk about them and awakened awareness to their importance. Ralph, would you say something?

MR. SAUL: Could I add one thing, Irv, to what Milton said? I think, too, there was another thing that was incipient at the time of the study, and that is the coming of the idea of deregulation of the markets, and relying upon the markets themselves for regulation. I think that whole movement was just -- was beginning to start, and of course blossomed in the '70s, and of course came to full flower in the '80s. I would think that was another -- would you agree with that, Milton, that that was another factor that was not on the scene? That was not on the scene in the early 1960s, the whole concept of deregulation and using the market as a tool to control behavior.

MR. COHEN: I don't think I would quite agree with you, Ralph. I think that on the whole, we on the Special Study believed in regulation and not the power of the markets. The study was dominated by -- we had some good

economists, but it was dominated by lawyers who thought in terms of legal norms, and I don't think paid enough attention to the emerging importance of the market itself as determining how things were going to happen. So I disagree.

MR. SAUL: No. All I'm saying, Milt, is that the concept of deregulation had not arrived on the scene when we were doing the study.

MR. COHEN: That's right.

MR. SAUL: And we would have had to deal with it. That's all. I'm not disagreeing with you. I mean, obviously, the study was a regulatory study. And I think most of us around this table believed in some kind of reasonable regulation of the market.

MR. POLLACK: Let me just follow up, if I may. I understand the reluctance of the Commission to ad hoc approval all of the recommendations that the Special Study was coming forward to. But what I would like to address is the relationship between the Special Study and the Commission with respect to the inquiries that you were making during the Special Study. Was there influence by the Commission which at all debilitated your ability to carry forward your study?

MR. COHEN: I don't think so at all. We did, as I said before, keep the Commission informed of what we were doing. And of course, they had opportunity to make suggestions or criticisms. And to that extent, they might

have influenced our future conduct of the study. But it was not at any time a tension between the Commission and the staff.

MR. SILVER: I think our inquiries were not at all limited by the Commission. The disagreements to the extent that there were disagreements came with recommendations. But it was nothing but unstinting support for the inquiry itself.

As a matter of fact, when we ran out of money at one point, I discovered that the Census Bureau had something called computers, and it would be very helpful to do a trading study of New York Stock Exchange specialists. Milton and Ralph went to the Commission, and Bill Cary gave us $17,000 to pay the Census Bureau to do the study without any reservation at all.

Also, the Special Study staff learned, I think, what every generation of staff members learned, that probably the most effective way of communicating with the Commission is not to send memoranda. But a judicious call to a New York Times reporter or a Wall Street Journal reporter will get the Commission's attention very quickly.

MR. SAUL: You know, I might say -- I've got one thing to add to that. Dave taught me the fine art of leaking.

(Laughter.)

MR. BIRNBAUM: That's because he liked that woman

reporter on the New York Times.

MR. POLLACK: First Fred, and then Mike. And then we'll have to take a recess.

MR. SIESEL: As Chairman Pitt and others have mentioned, I think the biggest impact of the study was on the Commission itself, especially with respect to market structure. And it was just at a time when the institutionalization of the market was starting. You had block trading starting. And you also had that tension between the growth of block trading and institutional trading and this fixed commission rate structure on the exchanges where it was based on a hundred shares, and the rate was ten times for a thousand shares what it was for a hundred shares. And that led to all sorts of -- practices and reciprocal practices, which Gene has conducted hearings on in the late '60s.

And the end point of that was really the 1975 act amendments with the unfixing of rates. And that was the context in which it was almost perfect timing, in one sense, that the study came out at that time just as these changes in the market and the market structure were beginning to take place, because that had a direct bearing and impact on that structure.

Ralph referred to deregulation and to -- the Study itself didn't -- while it made a recommendation on commission

rates, that there be a volume discount established, and to change this pattern, but the danger was that the Commission would be getting into the business of rate regulation, which it really hadn't been in before.

And I think one of the footnotes I want to add was there was a member of the Special Study -- if you look in the transmission letter, you won't find his name as a member of the Special Study, but that was a bit of subterfuge -- and that was Walter Werner. And he joined the Study sometime in the first third or so of 1962, and he was listed as Associate Director of Corporation Finance. But Walter was really a key member of the Special Study. And after the Study was over, he became Director of Policy Planning, and Chairman Cary quickly changed that to Policy Research.

And Walter was the first person to propose and suggest that commission rates be unfixed. And that was sort of a deregulation move that started. I think there were as many people stunned by that idea within the Commission as there were outside the Commission. And I just wanted to make that part of the record, that he was the source of that idea within the Commission.

MR. BIRNBAUM: Ralph and I, when we were at the Commission, we thought Walter had a terrific idea on unfixing the rates. But somehow, when we went to the American Stock Exchange, Ralph and I had a complete change of heart.

(Laughter.)

MR. POLLACK: Mike?

MR. EISENBERG: Just a couple things. One is that not being a division of the Commission, had the effect of insulating us from the Commission; the Study had the freedom to explore matters that other divisions did not. And the junior staff of the Study was able to explore those issues in some depth. It was pretty clear that members of the staff had certain interests that they were going to pursue. I mean, nothing was going to stop Dave Silver from exploring what was going on with floor trading. A lot of that had to do with what they learned from the Re and Re case, which was a very significant event, even though a lot of people here don't know what Re and Re was about. It showed there was real trouble in the market, and it wasn't in Denmark. It was downtown, and it had to be looked at.

I think with respect to unfixing the rates, early on -- very early on -- once we learned that Weeden was around, and that there was a third market, and that the third market was doing trades at significant discounts and in large blocks, and the question of "Whether fixed rates could be justified?" came up, and that was pursued. And the fact that May Day 1975 saw the final unfixing of commission rates obscures the fact that the phase-in started a lot earlier.

And I think it's fair to say that one of the objectives of the staff of the Study was getting those

rates "unfixed." And we knew it wasn't going to be done necessarily by the end of the Study, but when Gene and I and others did the commission rate hearings, which were right after the Study, that was just a continuation of what we were doing in the Special Study.

When you talked about what the mutual funds were doing in chapter 11, and give-ups, and how give-ups were being sloshed around, the people at the Exchange who were supporting fixed rates of commission, which enabled the give-ups to be circulated, we were, in effect, saying, "Well, you know, let the market do this." And they were saying, "You're all just a bunch of Communists. What we need is the government to support us in fixing commission rates." That got us to anti-trust, and the Kaplan case, and what the Commission's role was with respect to anti-trust, which was the centerpiece of the commission rate hearings held after the Study.

So the history of the Commission is sort of a continuum, that the Special Study was the starting place. We got the facts. I mean, we actually went to Wall Street, spent weeks at firms finding out what it was they did. And we, at the end in the Study, knew more about what was going on than the regular staff of the Commission. And that was transmitted to the Commission.

I mean, we would meet with Barney Woodside and with Manny Cohen. By the way, Manny Cohen thought calling it the

Cohen Study was a terrific idea.

(Laughter.)

MR. EISENBERG: We'd sit around with them and they would ask, "Well, what did you learn when you up there?" And in addition to telling war stories, they really were interested in knowing how the market worked, and that interested and energized the Commissioners.

I think a tribute goes both to Chairman Cary and to Chairman Cohen, who were instrumental in moving the Study along. And I don't think it was a conservative group in the

Special Study at all. Don't forget, this was the beginning of the Kennedy Administration. There was still the idea that service in government was a good thing. The denigration of the civil service and of the people who worked for government didn't come until much later, in the Reagan Administration. Serving at the Commission and serving on the Special Study were viewed as an honor and was a great thing to do.

And that spirit carried through the Special Study, basically, under Milt's leadership. And I think that spirit and that feeling had a lot to do with why 90 percent of the Special Study people turned up at the twenty-fifth reunion. I mean, there was an esprit de corps there that was hard to duplicate.

MR. BECKER: Stan, just one more, and then we'll

try and break.

MR. SPORKIN: Yeah. Let me tell you what it was like --

MR. EISENBERG: What it was really like.

MR. SPORKIN: -- as a young person working here. Milton Cohen was a tough taskmaster. He would make Marty Schottenheimer look like a puppy dog. He insisted --

MR. EISENBERG: He was a lot more successful than Schottenheimer.

MR. SPORKIN: I know. You had -- this is something that the staff, I think, would find helpful. If you came with something, you had to prove every single word. Everything had to be footnoted. You had to show him. He insisted that the integrity of that report was the most important aspect of it. Everything had to be fully proven.

And we worked hours beyond belief. You know, nobody has said that, but no shorter than 12-hour days, 7/12, I guess. Everything fully documented, everything specific. It was extremely well-written. And Ralph made sure that everything was coordinated. So that even though you had different people who were writing different parts of it, and there was a lot of overlap there, that had to be wrung out so that this paper made the sense it did.

And I would say to you that if you didn't have those latter ingredients, if you didn't have the fact of it

being well-written, if you didn't have the fact that it was documented -- I don't think Milton or anybody ever took you up on any of the facts of it, as I can recall -- and if you didn't have that, the credibility of this report wouldn't be what it is. And I think that's important.

And you're right, Mike, the spirit was -- because even though we worked like dogs, and even though we -- there were no -- remember you canceled all vacations and everything.

(Laughter.)

MR. SPORKIN: Even though we did all that, we did have a camaraderie. We did have a closeness that developed. And a lot of people stayed on after the Commission, because they believed -- they wanted to see what was in there to be implemented.

MR. SAUL: There was no air conditioning, Stan.

MR. SPORKIN: You're right.

MR. EISENBERG: On Thanksgiving Day, Milton gave us off at 3:00 so that we could go back to our families and have Thanksgiving dinner and come in the next morning.

MR. BECKER: Well, on that happy note --

(Laughter.)

MR. BECKER: -- why don't we take a 10-minute break, and then come back for the second half.

(A brief recess was taken.)

MR. POLLACK: Before we get started, I just wanted to explain what the case Re and Re was about. Re and Re was the name of the specialist firm on the American Stock Exchange, which had engaged in violative activities on the exchange. And an administrative proceeding brought against them in which they eventually admitted the violations and were thrown out of the business was the reason or one of the reasons for the Special Study's start.

With that, I'd like to start back now on the panel. And before we go on on a new topic, would anybody like to add anything with respect to any of the morning topics?

MR. SILVER: Irv, the whole question of market solutions versus regulatory solutions did, in fact, come up in the study in one important area. And it was an area and an issue which was never resolved by the Special Study, and indeed remains alive today and has not been resolved by any Commission since. That is the question of the nature of the marketplace. Do you opt for a central market, which is a monopoly, and regulate it, or do you go for market diversity? In those days, it was the regional exchanges and the third market, and you let, essentially, the markets compete with each other. That occasioned a lot of discussions within the Special Study. And you can see in the report the ball is batted up and back across the table several times without any conclusions.

I may say that there were those of us -- paraphrasing what Gilbert & Sullivan said - you're born a little liberal or a little conservative. There were those who preferred centralization. I have to say I was in that school.

Unfortunately for me, the director of the Special Study was a Brandeisee in from Chicago. And he was not about to see the regional exchanges go down the drain. He believed in the dictum of Justice Brandeis that there was room among the State for diversity, experimentation, and competition.

But as I say, the issue was never resolved then by way of a clear recommendation, and it has come back over and over again in various guises ever since.

MR. SPORKIN: Let me ask you, is there anybody left in the audience in the Enforcement Division?

VOICE: We shot them all.

(Laughter.)

MR. SPORKIN: The reason I say that is because -- and Irv, you're going to have to correct me. I could be way off base here. But my recollection is in the Re and Re case that the Commission was so incensed when the case was presented that they exercised a law that I don't think had ever been exercised where they suspended them immediately.

MR. SILVER: As a matter of fact --

MR. SPORKIN: Without a hearing.

MR. SILVER: -- separation of functions had been

waived.

MR. SAUL: They didn't waste any time. They suspended them right away.

MR. SILVER: Bill Cary said, "I don't want them wandering around south of Canal Street tomorrow morning. Can we act now, with an opinion to follow?" And Leonard Helfenstein got very upset -- writing and hemmed and hawed. And Bill Cary kept coming back. "Can we legally act today?" And finally, Leonard said yes.

And when their counsel -- this was immediately after the argument -- got off the shuttle in New York -- Milton Gould - the reporters are waiting for him and said, "What do you think about the Commission's action suspending your clients this afternoon?" And Milton looked at them -- he was a man of great composure -- and said, "They might have waited until I got back to my office.

(Laughter.)

MR. SPORKIN: Has that ever been done before? I don't think it's ever been done since. But that just shows you what times sometimes dictate when you think of what we're --

MR. SAUL: But, you know, this gets into a whole maybe an ancillary point, but it's a point I think I've heard you make, Irv, over the years. It seems to me the Re case

was really the first case that really got into the heartland of the market. Enforcement cases became much more significant, beginning with the Re case. I think, Irv, you made that point a number of times.

MR. BIRNBAUM: I had that same issue, Stan, with the present chairman, who's not here now. When John Shad had called and told me that they were going to take an action against Boesky, and he said, "You can't tell anybody," and I said, "It's great that you're telling me."

(Laughter.)

MR. BIRNBAUM: I called my people up, and I said, "Look, 4:00, I want an announcement out that Boesky is suspended from the New York Stock Exchange. I don't want that guy coming on my floor tomorrow morning."

So the announcement went out. Three minutes later, his eminent lawyer, the chairman, calls me up and says, "Bob, you're a smart guy. How the hell do you suspend the guy without due process?" I says, "Do me a favor. Sue me."

(Laughter.)

MR. SPORKIN: He was in a different role at that time.

MR. BIRNBAUM: A different role at that time.

MR. EISENBERG: Well, Harvey's slowly converting, but he'll get there. Hopefully, we'll be able to do summary

suspensions so that we don't have to --

MR. BECKER: On the auction market issue, before I turn it back to Irv to get us back on agenda, if you haven't read Milton Cohen's piece, "A Modest Proposal for the

National Market System" in the George Washington Law Review, you haven't done all the reading you need to do about the national market system. Because while it is less appreciated than truth in securities, it is just as insightful and will reward anyone's time.

MR. POLLACK: Okay. Try and be concise, because we're running out of time, and I want to cover all of the topics we can.

MR. SIESEL: Very concise for the record. Because I think it's sort of indicative of the trend of what was happening at the Commission. We continue to refer to the Division of Trading and Markets. In effect, it was a minor recommendation, but it was the first recommendation of the Special Study to be implemented, because the division was called the Division of Trading and Exchanges before then. And it contained within it the regulatory end for exchanges and the over-the-counter markets and the Enforcement Division. And subsequently, they were separated into Market Regulation and the Enforcement Division.

But that little step was an indication of the changes that were going to take place within the Commission.

MR. POLLACK: Yeah. That emphasizes what Ralph just said.

I'd like to address this to both Milton and Ralph. If you had to do the Special Study all over again today, would you do it differently? And if so, in what regard?

MR. COHEN: Well, I think you've looked at today's condition the way we tried to look at conditions 40 years ago. And I can't tell you how I would do it differently, because I really don't know enough about what the problems are today. But I do know that I would start by looking over the situation first and trying to get my facts straight, and then proceeding.

MR. BECKER: Thank you. Could I ask you to elaborate on one point there? Repeatedly, people have emphasized that one of the really brilliant aspects of the Special Study that gave it it's oomph and its credibility was that factual information was gathered and presented in such a powerful fashion.

You had subpoena power. You were authorized by the Commission. But how important was that? How did that play out? How did the fact gathering work as a practical matter, and what was the significance of that? Because much of what the Commission does today is sort of by notice and comment with formal papers coming in.

MR. COHEN: We had the subpoena power, but we very

rarely used it. It was always important to have it there so that it could be used. But we mostly relied on questionnaires, because that was a smart, economical way to gather more information than going one-on-one.

I don't know what's happening here.

MR. BECKER: Just keep going. You're all right.

MR. SPORKIN: They're trying to get your words down.

MR. COHEN: I see. Well, I think I said what I needed to say there, that the subpoena power was important to have, but it wasn't what we relied on.

At the same token, we might have held more hearings than we did. We had only a few public hearings of a formal nature. Because while that's the way to dramatize certain issues and certain situations, it's an uneconomical way to cover the ground. But you can cover it with questionnaires and private interviews, and that's what we did more of the time.

MR. SILVER: If I can just add a footnote to that. In fact, we did have -- I had at least 30 New York Stock Exchange specialists on the record. These were not public hearings. These were, in a sense, private interviews. But as Milton indicated, the subpoena power was there. They knew it. And each one did get a formal warning, as a matter of fact, before they testified.

And although a huge amount of the data, as Milton suggests, came in via the questionnaires, I think we really got to understand how the market worked in those interviews, or testimony, if you want to call them that.

Just one line I remember, the issue of floor trading by exchange members. And to hear a specialist testify that he used to call floor traders the basketball players. And I said, "Why?" He said, "Because they could reach in and get an order ahead of the public every minute of the day."

That was very vivid testimony, not reproducible, I think, in a questionnaire or by any other method except interview.

MR. POLLACK: Ralph, you had responsibility, really, for the administration on the study. Did you have everything money, really, to do it? Was the budget really sufficient? And also, while you're saying that, or answering that, could you tell us how you maintained the morale of a staff that was working, as Stanley said, 12-hour days, 7 days a week, and where all the wives were coming in and crying that their husbands were not there to help raise their families?

MR. SAUL: You should have heard my wife. She said, "Make sure you bring it up at this meeting today."

I think it gets back to something talked about

before. That is there was a great sense of public service. We were not well-paid, and we worked, Stan said, abominable hours. But I think there was a spirit that we were really doing something for the public investor. And it was -- to be very honest with you, a good deal of it was fun. I think we had a lot of fun in the tar paper shack without the air conditioning. So I think that's really the glue that held it together.

But I would like to come back to the question, Irv, that you asked Milton. You know, based on the facts that we then had, our knowledge of the markets, I think the basic areas of study for the Special Study made sense. I mean, they were right at the time.

If I had to -- in retrospect, I think in the area of commission rates, I think we should have listened much more closely to our dear departed Walter Werner. Because he argued very powerfully that we should recommend the abolition of the fixed rate.

And then I know I took the other side. Of course, I learned -- well, when I became head of the AMEX, I was, you know --

MR. POLLACK: Converted.

MR. SAUL: Anyway, I was converted. But I think that's one thing where I think we missed the boat. And we could have -- I think we should have had a recommendation

that ultimately, that's the direction in which we should go.

Now, maybe under the circumstances of the time, that was too revolutionary. I don't know. But that's the one area I regret where we didn't take a stronger stand.

Because as all of you well know, that became a key change in the markets and had a dramatic impact on the market.

MR. POLLACK: You did raise, though, the question of volume discounts.

MR. SAUL: We did.

MR. POLLACK: And secondly, I recall you raised the critical question if you're going to have fixed rates, and the Commission is responsible for supervising them, how is it carrying out its duties?

MR. SAUL: Yeah.

MR. POLLACK: And that was the underpinning when Gene and the rest of us undertook the program to create the record, which really forced the unfixing of the rates. The 1975 amendments were really just codifying what the staff and the Commission had accomplished through the hearings that we held in the investigation of the fixed rates.

You want to comment on it? First Gene, and then Bob.

MR. ROTBERG: You know, if you look from this issue and related issues of what the study was all about, it essentially looked at the economic and financial distance

between buyers and sellers. That's where 80 percent of the study's work went. That is, the odd-lot dealer, the floor trader, the specialist, the market maker in the over-the-counter market, the distribution system between issuer and buyer, and then on the outside, the mark-up and the commissions being charged to the ultimate investor. That is 85 percent of what that Special Study is all about.

The effect, as a matter of public policy, was to narrow that distance over the years. And I think it got narrowed by abolition of odd-lot dealer, floor trader, tighter controls on specialists, the liberation of market makers, and obviously, the unfixing of commissions narrowed the economic distance between buyer and seller.

In retrospect, although we tend to say within this room, "Gee, we unfixed commissions." And as Irv points out, and Norman, that wasn't done till '75, it was done essentially not by regulatory or legislative action. It was done by enormous pressures from the Justice Department, private lawsuits against investment company managers who said, "You weren't capturing it at fixed, because you're giving it away"; third, the regionals; fourth, the third market; and fifth, the private lawsuits which were being brought. And the Commission staff kept pushing and pushing. It took nine years. Because the sense was we'll never get it through the Commission. And the economic forces basically

undercut it.

My problem, looking back on it now, is now that everything got narrowed, partly because of the automation, and the economic and financial distance between buyer and seller is virtually zero, no one has asked, "Well, what are the implications of it? Is it a big deal that you have now very little distance in a hundredth of a point spread between buyer and seller? So what?"

I would suggest that one of the unintended consequences was that firms, member firms and non-member firms, having seen that their profit bases are going to be eroded because there's no more fixed commission per volume discount than negotiated rates, and there is massive competition, and automation put buyers and sellers virtually in touch with each other without the need for any financial intermediary, what would they do? What, in fact, did they do?

They went into five areas -- one, leveraging; second, proprietary trading; third, off-balance sheet transactions; fourth; derivatives; and five, program trading -- as a way of making a decent living. That's what they do for a living.

That is a direct effect of this narrowing of the distance between buyer and seller. That's what the member firms that I went to did when they saw that there was no more

profit to be made from the traditional lines of business.

And that subject, the new products, is something that I have a knowing feeling is where this Commission does not have the knowledge base, the new products, that were the outcome of the narrowing of the economic distance between buyer and seller. And it's that area that we have, and I certainly have, very, very little expertise.

MR. SILVER: Gene, you, as usual, tell a terrific story. But the fact is, as you recall, Merrill Lynch, at the time of the Special Study, was already pushing for public ownership. And it was clear that the ambitions of the retail firms on Wall Street went much further than their traditional role.

Second, the area to which they turned as commission rates disappeared was asset management and mutual funds.

MR. ROTBERG: That's in your field, Dave. In my field, they went into proprietary trading. Witness Salomon Brothers and Goldmann Sachs. And then when that became unprofitable because of volatility, they went into derivatives. Because it's "A," off-balance sheet, and a rolling loan gathers no loss.

(Laughter.)

MR. SILVER: The 7 trillion dollars in funds, Gene, if you look at the distribution, the participation of New York Stock Exchange member firms stems from the abolition of the

commission rates. As you recall, Merrill Lynch wouldn't sell mutual funds to their clients while the fixed commission rate still protected their profits.

MR. ROTBERG: Well, I would be the last one to argue that money management is not a huge business. It is not a business which I suspect that the Commission staff has a gap between its knowledge of what goes in money management and the street.

My only point was there are products out there which are enormous, and the volume of program trading is a -- for example, using one example, might be 30 to 40 percent of the volume of the New York Stock Exchange. I don't think that there are three people in this room who can talk more than 30 seconds on the subject, even though it's 30 to 40 percent of the volume of the New York Stock Exchange.

MR. BECKER: Bob?

MR. BIRNBAUM: I think Gene is right in what he says, but I think -- Ralph, I don't think that the Special Study could have recommended the abolition of commission rates. I don't think we would have got that by Milt Cohen. And I feel relatively certain that Chairman Cary would have not endorsed that kind of recommendation. I don't think we had enough.

I don't think it was until the first day of the hearings, I remember very well, was that in '75 -- when was

that? No, that was much earlier. Sixty-eight.

MR. EISENBERG: Sixty-eight.

MR. BIRNBAUM: Yeah, I had just gone to the Exchange. They sent me back to the hearing. And I think the first --

VOICE: Bishop.

MR. BIRNBAUM: -- was Bishop. And Gene questioned him, and naturally, in his very kind way, got him to go right into the spider's web, and then ripped him apart. Bob Bishop was -- well, he was an EVP, basically in charge of operations at the Exchange.

But it was the second witness that Irv Pollack questioned, Mike Keenan, who was a floor broker on the AMEX. He had floor seats. And Irv and Mike -- Irv had him -- with his personality, Irv got him -- charmed him out of whatever he was supposed to say. And Mike -- he said to Mike, "Well, how come you don't keep those commissions that you get on the four people you have on the floor? You seem to give away a lot of those commissions."

And Mike was a real old Damon Runyan character, and he said -- he hands it off. I remember this well. He said, "What would I want to do with all that money? How rich do I want to be?"

(Laughter.)

MR. BIRNBAUM: I was sitting there, and I said, "That's the end of commissions."

MR. POLLACK: For a light touch, I met him in the pool in Arizona at one of the conventions. And I asked him what his profession was, and he told me about being on the floor of the AMEX. And I said, "Tell me a little bit about how you make your money." And he told me essentially what you just testified, plus the fact that he was making so much money that he had two floor people that he doled out the orders to and in those days paid them $60,000 a piece.

So your story is right. He was a lovely person. And when he got off the stand, he asked me whether he had done well enough.

(Laughter.)

MR. BECKER: Could I just bring the issues back to the study itself and the implementation thereof, and ask Milton again if you wouldn't have done anything differently? How in terms of the implementation of the recommendations, life after the study, right after the study, where you're presenting it to Congress, you're trying to get the '64 Act amendments through, the implementation, how did that play out? How did it work? What might you have done different in that context? Or were you comfortable with how that worked?

MR. COHEN: I can't think of anything I would do differently, because I can't quite remember what went through our minds then.

MR. BECKER: Ralph, do you want to supplement the record?

MR. SAUL: Well, I think, you know, because I remained after the Special Study was finished. I was very deeply involved, and some of the others around this table, in the implementation of certain of the recommendations.

I think we had -- I think probably the most important one came during the study, and that was the disclosure requirements, extending the disclosure requirements to over-the-counter issues. That was a tremendous step. What was that, the Freer --

MR. BIRNBAUM: The Freer Fullbright.

MR. SAUL: And I think that we just pushed it along, because I think, as you said, Milton, that was pretty much in the works.

But I think the Special Study gave it an extra push. And then, of course, there was the fight about getting insurers and banks, bringing them under the umbrella, which eventually occurred. And I think that was a major accomplishment, in my view.

I think the emphasis that we put in chapters 2 and 3 on training, qualifications, supervision, I think that was a tremendously important step. It had

ramifications later. I remember when things started to break apart again, and then all the firms started to hire compliance people, and you had to -- and Bob knows all about this, because he was with the New York Stock Exchange at the time, and maybe he'd want to elaborate on it.

But I think the setting up the whole supervisory compliance structure within firms, I think a lot of that is due to the Special Study. We emphasized that.

The other -- I think the -- and this is, I think, due to Gene, I think, the understanding of how the over-the-counter market worked. In fact, I remember -- was it Don Regan who came up to us after we put out the study and said, "That was" -- to him and Merrill Lynch at the time -- "That was the most interesting part and most illuminating part of the study."

And, of course, what that led to, as Dave and I know -- and I don't know who else was involved in this. And this was in the implementation phase -- and that is changing the corrupt retail quotation system. You know, that was phoney. And, of course, we finally got them to put in the wholesale quotes. But even then, there were problems with the quotation system.

But at least we got it started. And then, of course, with automation and NASDAQ, that took it down a whole

different road. Or a better road. Let's say an improved road in terms of over-the-counter quotations.

Dave, I think, particularly worked on the specialist obligations. That was, I think, very important. It's one of those things in the securities business that a lot of people didn't focus on. But I think we implemented those sections of the report which talked about the obligations of specialists. And I think we started the New York Stock Exchange going down the right road there.

And then, of course, we got into the tremendous floor trading controversy. We converted floor traders into something.

MR. POSER: Registered traders.

MR. SAUL: And then, of course, we eliminated the odd-lot dealers, which was a racket on the floor of the New York Stock Exchange. And so I think there were many things that were done to implement the Study recommendation.

But I think if I had to give another major impact of the study in terms of the study and its implementation, I think it was the waking up the New York Stock Exchange particularly, and to some degree, the NASD, to the fact that they had important self-regulatory responsibilities. And look what's happened over the last 30 years. I mean, my God,

they are now the primary partners of the SEC in enforcing the securities laws. I think that's a major change, and that in part came from the study.

But, you know, there may be a lot of other specifics that I don't remember, you know, don't recall. But I think that was -- if you ask me to look at the highlights of the study and its implementation, I think that was it.

MR. BECKER: Dave, you look like you want to --

MR. SAUL: People might want to add to that, because this is an important question.

MR. SILVER: As far as a lesson is concerned, I think one of the lessons would be if you're going to implement recommendations coming out of the study, do it quickly. Because new problems pile on. Personnel change. Chairmen change, come with their own agendas, new agendas. And except for projects like commission rates, a change carried forward, tends to become old business. And it has to move quickly.

And I think that a part of the strength of the study and the report was what you might call in SEC terms an "inter-divisional approach." There was no segregation between people who worked on the disclosure areas, the people who worked on the exchange areas, and people working in the over-the-counter market. And we each drew from one another.

You would never have been able to put together the

whole commission rate database unless you understood the way mutual funds operated, how they distributed their shares, what give-ups meant to the advisory organizations, et cetera.

So there was sort of an inter-divisional approach, which was very difficult for the Commission to maintain when it has three or four operating divisions, each marching, as a practical matter, to somewhat drummers.

MR. POLLACK: Bob?

MR. BIRNBAUM: I think there were a lot of collateral benefits that nobody thinks about. One is, I think, just the fact that there was a study going on. There were changes by the exchanges before the completion of the study in '63. Of course, they knew we were coming down the pike.

Secondly, almost everyone at this table -- not all, because I don't think Milton stayed -- but most of us stayed with the Commission. And I like to think we had a little bit of unique knowledge, because we had two years to study, while everybody in the Commission is working so hard, they don't have a chance to do that.

And then subsequent to that, I mean, people from the study became President to the Boston Stock Exchange, the American Stock Exchange, the New York Stock Exchange. Dave became the head of the Investment Company Institute. Gene was an EVP at Merrill Lynch. A lot of us -- Fred Siesel went to a broker dealer. Jim Bacon went to a broker dealer. Fred Moss went to a broker dealer.

So there were a lot of people from the staff who went out, and I don't think -- we never forgot our regulatory background.

I remember when Ralph -- Ralph mentioned that the New York Stock Exchange adopted this compliance thing when I was there. And I have to say that it was mainly the influence of John Phelan, who was the chairman. Even though he didn't know what the hell the subject was about, he wanted something, because he was mad that there were problems.

And then when the thing came out, somehow it got in the newspapers that the industry was very unhappy because we made the CEOs sign the documents, and they were livid about that. And when it got out into the newspapers, they said in the papers that Bob Birnbaum, who came from the SEC, he was responsible for that. The chairman got off scott-free on that. He blamed it on me.

MR. ROTBERG: I have a lighter funny story to tell you, because the name of Don Regan came up. How many of you here know who Don Regan is? Don Regan, a key person at Merrill Lynch, became President and CEO of Merrill, and then became Secretary of the Treasury. True story. And he was very, very involved with all of the negotiations during the Special Study and after the Special Study on the unfixing of commissions. And that was the one firm, I think, if any, which turned around and began to be in favor of the unfixing of commissions, because Don felt that Merrill would have a substantial advantage.

Well, come 1969, I've left the SEC, and I'm now at the World Bank and on a visit, a trip, that I took to Saudi Arabia. I'm in Saudi Arabia, and I'm meeting with the Governor of the Central Bank of Saudi Arabia. That's called SAMA. They have $190 billion from oil revenues. And they are managing their money. I'm there to negotiate a private placement on behalf of the World Bank from Saudi Arabia of $1 billion.

So I'm meeting with him, and he gets a phone call. And the phone call, he hangs up, and he says to me, "Gene, do you know this fellow Don Regan?" This is in Jetta. I said, "Yeah. He's at Merrill Lynch." He says, "He wants to come here and visit with me. He's outside in the anteroom asking whether Merrill can manage some of the Central Bank reserves of SAMA," the Saudi Arabian Monetary Authority, the depository of the Central Bank reserves. I said, "Of course I know him. He's an old friend."

He then says to me, "Are you Jewish?" I said yes. He says, "I tell you what we're going to do. You sit behind my desk." This is Saudi Arabia. He said, "When he opens the door, let's watch his face what happens when he sees you sitting there."

(Laughter.)

MR. ROTBERG: Managing the Saudi Arabia Monetary Authority. Well, Don opens the door, and he sees me sitting there. He thought -- well, he almost fainted. He thought he was in a time warp.

MR. BIRNBAUM: One of the things that happened that I think still goes on today -- I know it does. And this was really under Norm's regime, when I was working for Norm at the Commission. After the study was over -- you have to understand that the people at the Commission in those days -- and I'm talking about the top people, chief counsel, they had never once been to New York. They had never been to the New York Stock Exchange or the American Stock Exchange.

And I remember we went up to New York, and we sat down with the President of the AMEX and then the President in New York and told them that we were going to institute a program where people from the SEC would inspect various parts of the exchange self-regulatory function, and stay for a couple of days and report back.

Well, I tell you, when we told that to Ted Etherington, the President of the AMEX, he almost died. I mean, he couldn't believe that these young idiots were coming up to inspect the stock exchange.

And the same thing happened in New York. They couldn't believe that. Nobody from the SEC entered the building unless there was some kind of a crisis. And I think today that program has benefits, because it still goes on. I know from other exchanges where I've sat on the board and the SEC shows up and does their job. So it's a completely different one.

Just to tell you, speaking about the NASD, in those days, the SEC had one person on staff -- one -- who had oversight of the NASD. That's all. One person. Joe Keenan. One person. And that tells you something about, you know, what is going on. And now the changes today, God knows how many people are looking at the NASD. But it was a different world.

And we also got paid a lot, because I know working seven days a week, 12 hours a day, as Stanley said, I was making $5,000 a year in the Special Study, because I had a wife and a kid already. They took pity on me, and they used to give me $20 a week in expense money, because it was very hard to get raises. You know, you had to go through written amendments and all kinds of -- so they used to give me $20 cash to supplement my pay. So it was a different world.

MR. EISENBERG: I think in honor of Freddie Moss, Gene has got to tell the story --

MR. BIRNBAUM: The Morgan Stanley story?

MR. ROTBERG: All right, I'll tell it.

MR. BIRNBAUM: And we want the truth, Gene. We don't want it embellished.

VOICE: Well, maybe Fred wouldn't appreciate the story.

MR. BIRNBAUM: Yes, he would.

MR. ROTBERG: It was at the very beginning of the Special Study. And as most of us know, we went up to firms to interview them and ask them, as Dave suggested, "What do you do for a living?" You know, "What's going on here?"

And we went up. And as Bob said, normally, nobody had ever been to the New York Stock Exchange or the American Stock Exchange. No one from the Commission staff ever walked into Morgan Stanley. That was one firm that you just didn't go near. Morgan Stanley was a firm which didn't even permit another firm to be its co-underwriter. It did everything by itself. A very elegant and elite form, as it still is.

So Fred and I were told that we would have an audience, and we're permitted to go up. And Fred and I go up to Morgan Stanley, and we were very scared, very frightened. The meeting had been set up -- it may have been either by Milton or Barney Woodside. I think Barney Woodside had set it up. No one had visited them since 1933 from the Commission staff.

And we walk into what, to me, at the time, and perhaps even now, is the largest room I had ever seen in my

life. And it was a room like this size. And a man from -- comes to -- brings us up to the room. And red jacket, gold buttons, white braids across them, and dark pants and little yellow stripe, and brings us into the room by a door. And even now, I have difficulty telling this story, partly because Fred has died. And I'll never forget what happened.

We walked into a room like that, and there's one person sitting in that corner, one in that corner, one in that corner, and one in that corner, and we're in the middle of the room.

(Laughter.)

MR. ROTBERG: And there's a man sitting at a far desk with a gigantic portrait that you may have seen if you've been to Morgan Stanley of J.P. Morgan. And he says to us -- we're young, very young, and we're very scared. And he says to us, "Who are you?"

And I said, "I'm Gene Rotberg." And Fred says -- I say, "This is my colleague, Fred Moss. And I think a meeting has been set up for us to see you." And he pauses and says, "Yes." He said, "But who are you?"

So I said, "Well, as you know, we're from the SEC." And I repeat it. He says, "Let me tell you what I need." he said, "My name" -- I'll never forget this. He said, "My name is Perry Hall, managing partner, managing director, of Morgan

Stanley, Princeton." And he points way to the far end. He

says, "Hudson Lemcow, partner, Morgan Stanley syndicate."

Then he points and says, "John Young, partner, Morgan Stanley, Princeton." And then he pointed to a third person, "John Petito, partner, Morgan Stanley, Williams. And in 1910, he was captain of the football team."

(Laughter.)

MR. ROTBERG: "Now, who are you?" So Fred says, "The name is Moss, M-o-s-s. And before that, it was Moskowicz. And before that, it was Morgan. And in 1933, we changed it from Morgan to Moskowicz."

MR. BIRNBAUM: That's Freddie.

MR. ROTBERG: But that's my recollection -- what Fred did say, as I remember, is "The name is Moss. And before that, it was Moskowicz. Brooklyn College Law School. We're here to discuss fraud, and we thought this was the best place to start."

(Laughter.)

VOICE: That was a great story.

MR. ROTBERG: I mean, those of you who didn't know him, he was one of the most direct, straightforward, smart, ethical human beings you ever had the pleasure to work with. I mean, I shared an office with him for seven years, and it was just a big loss. You know, you think you're going to -- just another person, but you live your early life with people you become very close to. And I was very close to him.

And another person, by the way, who isn't here today who's in the hospital who also was very active on the very subjects that Ralph mentioned is Sheldon Rappaport. Sheldon is having a heart operation, or heart problems. He's okay today. But I talked to him yesterday. He sends his best to everyone.

MR. SAUL: You know, I have to read from Jan Moss's note to me. This describes Freddie Moss. She says, "What a wonderful ride we, this family, had with that fun, funny, and often outrageous man." That describes him.

MR. POLLACK: Let me just start -- first of all, I want to say I have the Special Study volumes right here. Unfortunately, we don't have a camera taking pictures of them. But just the group of reports here demonstrate what they accomplished in the year and a half, two years that the study took place. And I would recommend to anybody in the audience who wants to get a flavor of how even the markets today operate, this would be a Bible to start with.

And I want to mention we have in the audience a gentleman whose name was mentioned here as the originator, or at least his dad was, of the third market, Donald Weeden.

Why don't you just raise your hand so the audience can see.

(Applause.)

MR. POLLACK: With that, I'd like to put to each of the panelists the question what do you think was your major

accomplishment, major recommendation? Is there something you would have done differently in carrying out your particular project in light of what we are facing today, particularly after the September 11th debacle? Why don't we start with you, Robert.

MR. BIRNBAUM: Well, I think it's been said, actually, what Ralph said about, I think, bringing the reporting and the proxy and the insider trading provisions to the over-the-counter market was very significant. I think the start of the unfixing of commission rates -- because that definitely was the start of the exposure of give-ups, and the fact there was no discounts or whatever -- was very influential.

The education of the SEC staff and people who stayed, or people who were on the staff besides the people on the study, I think there was a lot of interaction, and everybody picked up a lot of knowledge. I think it made the Commission a much more aggressive agency for a long time, up to today, I would say. And the fact a lot of people went in the industry was big.

I think, though, when you look at the study, you have to think about -- if you're certainly on the Commission staff today, you have to think about what's different, I mean, today than then. And I think that probably the biggest things that stand out is the kind of -- I remember in 1974

when I was at the AMEX, we averaged a million shares a day, and New York for the year averaged 10 million shares a day. And today, they average over a billion. The volume, the way the public is in the marketplace today is much greater than that period. So there was different responsibilities.

The diversity of product is enormously significant. And I agree, I think it was Gene said that he believes -- and I agree with him -- that the Commission staff doesn't know enough about these products. They're very complex. I always used to say when people brought that up when I was at the AMEX in New York, I'd say, "Look, I'm an old stock boy. What the hell do I know?" But these things are very complicated, and they may be having influences that we have not figured out today.

And the over-the-counter market is a completely different place than it was. I don't think when we did the study that the over-the-counter market was in any way competitive with the New York Stock Exchange. The New York Stock Exchange never thought about the over-the-counter market. Didn't mean anything to them. And today, you have a very powerful over-the-counter market, which I think is competitive. That's one of the things, though.

And Dave brought up the question of whether centralization or diversity, while we used to talk about it a lot, I think the history of the Commission from the beginning

of time, certainly until the Special Study -- and I don't know what goes on in the halls here today, but I guess still today -- the Commission has always been biased towards competition, and not monopolistic tendencies.

And I think if you look at the regional exchanges -- and I learned a lot about being a lawyer, because that was my first assignment on the study was to do a history of the regional exchanges. I don't think I had passed the bar yet. And I worked on it. I'm sure it was a piece of garbage. And I handed it in. It was about yea thick. And I saw Milton Cohen in the hall, and I handed it to Milton. And he took the thing, and he went like this (indicating). "Good job, Bob." So I figured out to be a good lawyer, just a lot of quantity will help, you know?

But I think that if you look at the regional exchanges today, yesterday, they've done a lot, I mean, without getting a lot of volume from New York. I mean, even some of the volume that they get really comes back to New

York on trades that are done from the regionals back to New York, so you don't even know how much they're taking out of New York.

But back in those days, the Midwest Stock Exchange, which today is the Chicago Stock Exchange, they developed a back-office system which was adopted by everybody. The Pacific Coast Stock Exchange developed net clearing,

which was very significant in the back-office process. The development of the exchange-traded funds by the American Stock Exchange, the development of options by the Chicago Board Options Exchange. Very, very significant developments. New York was nowhere to be seen on any of these things.

So I think while you could say maybe if you didn't have the regionals today, the NASD could take all that over, because today they're a real force. And maybe that's true. It's hard to look at the regional exchanges -- and we couldn't find it in those days -- to see in the SEC's administration of the trading privileges in 12-F-2. We could never see any damage that was being done to the securities markets by the fact that the regional exchanges were allowed to trade all the securities listed on New York and the AMEX on unlisted trading privileges. And I think today it's also the same. It's hard to see the harm.

So I think the policy was right, and I think it's still right today, that the more competition you can provide

-- because if you go back in history -- my friends in New York won't like me to say this -- but there were times in the '40s and in the '50s where the New York Stock Exchange tried to put the regional stock exchanges out of business, period.

And so I think it's better to have the competition. So I think that argument of centralization of diversity, I think that's been decided, and I don't think they should keep

arguing. But that's about all.

MR. POLLACK: Norman?

MR. POSER: Well, first of all, on a personal level, I would subscribe to, I would agree totally with what Stanley said earlier. It was a marvelous experience. It was a tremendously important experience for me to learn something about the markets, and this is basically what I've been doing ever since.

I think we all had enormous respect for Chairman Cary and for Milton and Ralph. And Milton was a hard taskmaster. I just mentioned one little story that was a guy who hasn't been mentioned here, Richard Meyer, who was on the study. And Richard wrote one of these reports and gave it to Milton. And just to make sure that Milton was really reading everything, he injected a few dirty words around page 64 of a 125-page report. The next morning, Milton had read it and had -- didn't miss the dirty words. And he read everything.

And it was a marvelous experience.

Now, I want to mention one part of the study that hasn't been mentioned thus far, and that was the question of informal disclosure by corporations. And that was part that I spent some time working on, and the role of analyst, the role of public relations counsel in the disclosure area.

I think there were -- when I look back at the study, I found that there was a specific recommendation made

for a legislative change for providing criminal and civil sanctions for intentional or reckless dissemination of false and misleading statements which may reasonably be expected to affect investors' decisions.

Well, I think that one of the things that we certainly could not predict was the development of Rule 10-B-5 over those years since then. We have to remember that this was before Affiliated UTE, it was before the Texas Gulf case, and all the other Supreme Court and other decisions that have developed this huge body of law under 10-B-5. 10-B-5 was fairly rudimentary then. And looking back, I see that this recommendation was never adopted, and it didn't have to be. Probably the development of the law through the SEC through enforcement, and also through judicial decisions and private lawsuits, has accomplished -- has certainly accomplished the goal of that recommendation.

On the activities of analysts, that, of course, is something -- and the relationship between issuers and analysts, that was something that was dealt with in some detail in the Special Study. But that probably, going back and saying, "Well, what might have been done differently?" perhaps that might have been implemented, a reform of that of giving analysts favorable treatment and so on. That might have been done a little -- more attention might have been paid to it.

When we come to other things that were brought out in the Special Study, what was happening in the markets, insider trading. And then I go back to 10-B-5. We discovered that the business editor of Time Magazine was regularly scalping, buying stock with a group of people, putting out an article about the company, and then immediately selling the stock at a profit. Well, we all know later on that it happened at the Wall Street Journal and led to a successful criminal prosecution of the people.

It seems curious at this time in 2001 that this is all in the study. It's all in there in great detail. But the Commission at that time, perhaps because what 10-B-5 meant was so unclear at the time, never took any action about that kind of activity. So a lot of what -- today it's clearly a criminal offense, and it's -- the misappropriation theory hadn't even been thought of at that time.

So the Special Study played a part, but so did the development of -- the very dynamic development of the law, particularly Rule 10-B-5, which was just beginning in the early '60s.

MR. POLLACK: Gene?

MR. ROTBERG: I wish that I had the wisdom at the time to understand the unintended and possibly negative consequences of two subjects. One, the driving aspect of the need for liquidity, which was the underpinning for much of

the Special Study. We'll do anything to increase liquidity. And the implications of that. I just didn't think about it in terms of would it increase volatility, would it increase speculation? To this day, that still troubles me. I just didn't have, and do not know have, the handle on that. It used to be a positive truism. I don't think it is.

The second was something I mentioned before, the implications of narrowing the economic distance between a buyer and a seller in the world of globalization and institutionalization, what that did to the securities industry, and what it is now doing to it. I didn't think about it. It was just, "Gee, it's cheaper for the consumer. Therefore, it must be good." And I just even now don't have a handle on it. I wish I had the wisdom to have thought about it then.

That then, therefore, brings me to where I am today, which is a plea. And my plea, of course, as you can imagine, is there to be another Special Study, that it be directed to subjects such as those and the kinds of products that are deliberated.

And my thanks, essentially, is the sense of integrity and ethical behavior, and the importance of public service, which was so intrinsic and fundamental in Milt and Ralph, and indeed, all of my colleagues at this table, or those who are not here, which they instilled, and hopefully,

which lasts.

MR. BIRNBAUM: I have to say, Gene, I didn't come to the SEC because of public service. I came because I was desperate to make a living for my wife and kid, and I would have gone to work for a lot of people if they offered me a job. I wasn't thinking about public service. That was a by-product that was lucky.

MR. POLLACK: Fred, you're the only one here who's an economist. It might be helpful if you could give us an indication of how economic analysis fit into the Special Study. What would you have suggested maybe be done differently today?

MR. SIESEL: Well, you know, the data that we were looking at is so different today than from those days, and the products that are being dealt with are so much more complex. It's complex to the point where many of the traders who are trading these products don't understand them. And I think it's important to -- for everyone, you know, the regulators, self-regulators -- to be aware of these risk and to understand these products as much as possible, and to see that the firm understands these products that they're trading.

I think it's also -- you know, in light of what happened on September 11th, it just underscores the importance of clearing mechanisms, especially problems that

took place in the government bond market, which was thrown out of kilter for many days. And these are sort of nuts-and-bolts things that aren't as glamorous as some of the other issues. But they're fundamental. And if they break down, everything will break down around it.

And also, the importance of redundancy in systems and the ability to have disaster recovery for these markets. There was, I understand, one important -- this is not -- but one important source of government bond information was without any kind of backup, and they were -- I know that was undone in the World Trade Center.

So the markets have changed enormously. And I don't know if -- and it's going to take a very sophisticated and detailed study, you know, for anyone to look at -- and to bring everyone up to speed. But I think it's an urgent requirement.

MR. SPORKIN: I've got to tell you one, I think, amusing story. Does everybody remember Jim Bacon?

VOICES: Sure.

MR. SPORKIN: We used to send out every day -- there was a Jewish deli on Pennsylvania Avenue. What was the name of it?

VOICE: Barney's.

MR. SPORKIN: And everyday, we would send out. And it used to drive me nuts, because Bacon would order his

corned beef sandwich on white bread with mayonnaise. You remember that? You guys don't remember. All right. But that was just a --

MR. BIRNBAUM: By the way, Stan, I spoke to Jim Bacon recently, and he thinks the reason he wasn't invited here today, because he wasn't Jewish. I told him, "Ralph Saul is on the panel. What the hell are you talking about?"

MR. SPORKIN: Well, let me tell you what I think happened here, which -- I think what we did is that we had a redistribution of power which started, I think, with the Special Study. It went away from Wall Street down here to Washington. The Commission was always a secondary player up until that time. Wall Street was run by the people -- the Morgan Stanleys, the Keith Funstons -- in an elitist group.

And they treated the SEC like it was some secondary organization.

And what you had is you had yeah, the Cohens and the Mosses and the Grassos who then came into power. And the SEC, I think, for the first time -- well, not for the first time, but I guess right after the big crash, they had a big say. But starting with the Special Study, it was the emergence of the SEC as the power broker. Everybody looked to it. It became a dynamic organization. It did control things. Everybody looked to the SEC. We had Irv with his enforcement program that was driving things.

And so it really started this redistribution of power, which at this stage in our lives, that we now see another change that's taking place. Because market forces now are coming into play, which is cutting back on the SEC's power. And in many instances now, a lot of the things that are taking place in the market are, in effect, drowning the SEC. The SEC doesn't have the -- in other words, things are happening so fast that we can't rely on the SEC to solve all our problems, and the market is solving the problems.

So this change in power, this balance, which the Special Study started with a tip going to Washington from Wall Street, is now evening up and going the other way because of these tremendous time frames that the bureaucracy needs to react when it -- and the market can't facilitate that. And so you are now seeing another redistribution of power. Where it's going to end, I don't know.

MR. SILVER: I think I end almost where I started, with Barney Woodside's memorandum, which pointed to the problems of internal fragmentation at the Commission. The division of labor between the operating divisions allows problems to drop on the floor and not get the attention they deserve. Gene's cure is another Special Study, and perhaps that's the way it has to be done.

Now, the one study recommendation which has been alluded to, which, in effect, was a failure, was the

recommendation that led to the creation of the Office of Policy Planning, then changed to the Office of Policy Research, and then somehow disappeared.

I would suggest that had there been -- had the study perhaps been more forceful with respect to the institutional failures of the Commission, which may have been impossible -- but the institutional failures of the Commission, which led it to lose touch with distribution of securities, which led it to be divorced from regulation of the markets, had the Special Study focused on those issues and been in the position to more successfully urge the creation of something on a permanent basis like the Office of Policy Research, then years later, Al Sommer, when he went to the White House to tell the White House that the Commission had no interest whatsoever in the regulation of futures, he might have been positioned to give a much better answer to the White House, and perhaps a number of the problems that Gene has talked about would have been opened earlier.

With all due respect to Stanley, who stepped into the breach, I always thought that it was something of an anomaly to have the Enforcement Division of the Commission to be in the position of having to make up substantive law, where the substantive law really should stem from the operating divisions. As Norm talked about, the whole issue of financial public relations, et cetera, to the extent that

was dealt with, it was dealt with by Stanley. It wasn't part of an institutional built-in program. And so I think that I would view that as a failure of the Special Study, and I would do it differently.

MR. POLLACK: Milton, can you reconcile all of these different views?

MR. COHEN: No.

(Laughter.)

MR. POLLACK: We want, really, the view that counts from you.

MR. COHEN: One question. What would you like me to comment on?

MR. POLLACK: I think if you could suggest what a Special Study today might do, in a general fashion. I understand you're not as familiar with all of the different developments that have taken place. But you had shown such wise wisdom when you did the Special Study, because you started from scratch there, really, with little background to go on, and you were able to design with Ralph a number of projects which hit the most important parts that the Commission didn't really have the background knowledge of and which it had to address its attention to. And you were able to come up with conclusions and recommendations which, if you read them today, are still very meaningful. And some of them that weren't implemented you now say should have been

implemented.

Is there something that you can go back to and reflect upon and suggest that if you were today called to be the director of a Special Study you would try to do, maybe by selecting people to do it, or by suggesting topics that might be considered, or some general approach that an agency like the Commission could use to get a better handle on what its issues and problems are today?

MR. COHEN: Some years after the Special Study, Congress authorized a new Special Study that Stan Sporkin recommended. I forget on what occasion. But he said there's a need for another Special Study. And he testified at Congress, and they went along with it, and they authorized a new Special Study.

And I took this seriously enough so that -- I forget what year this was, but some years after the 1963 study -- I wrote an article which is published, I think, in the Business Lawyer, entitled "What Should a New Special Study Study?" And as of that date, I tried to answer the question.

I haven't looked back at that article. I don't know whether I've answered it the same way today. But I do know that you have to rethink that question each time the opportunity comes along. And right now, there is no need for answering it, so I just can't help you.

MR. SAUL: Following up on what Milton said, you know, and I'm going to quote Irv here. You know, if the Commission attempts something broad like a Special Study, or attempts to get into structural reform, like they did in terms of market structure, they can't without a thalidomide case. I mean, you need something to stimulate the Congress.

So I'd say -- and this combines maybe some of your other questions about, you know, the future, and whether indeed there is a need for a Special Study -- I think you would need that kind of major event in order to have a Special Study.

But I think there's one thing I'd like to point out, and this gets back to something that Dave said. I think the Commission is much better equipped now, but it's not all the way there. It's much better equipped than it was back in 1961 to get into some of these issues. But I think it does need, and I think this was a major recommendation we had in the study, for this Office of -- what did we call it --

MR. ROTBERG: Policy Research.

MR. SAUL: -- Office of Policy Planning to look ahead to research some of these issues to see where there would be incipient problems in the markets. And certainly there are a whole host of incipient problems in the markets at the present time. But I don't think you can put together another Special Study at this time without what I would call

a thalidomide case.

I could go through a whole bunch of things that I think if I were heading a new Special Study what I think they ought to take a look at. But I think -- I just don't see that happening. I don't know what Milton said in his article.

MR. BIRNBAUM: Ralph, didn't we almost have the thalidomide case in the long-term capital situation? It almost brought the entire industry down.

MR. SAUL: Yeah. But it was --

MR. BIRNBAUM: And nobody knows anything to this day.

MR. SAUL: Nobody knows anything about --

MR. BIRNBAUM: Nobody knows anything to this day. In fact, the Federal Reserve, Bob Rubin, the SEC chairman at the time, they all went up to Congress earlier than -- when the problem happened, they said, "These people -- there's absolutely no need for any regulation." They all testified, okay? They should have been criticized very severely, but Greenspan and Rubin were on a big honeymoon, and maybe they still are.

But I think we almost had it. And if that didn't cause somebody at the SEC to say, "What the hell is going on here?" They didn't even know about it. I think that's -- it's very serious, I mean, and I think we almost had it. And

we can't wait for it. Because if that would have gone down, I don't --

MR. ROTBERG: Right before that, Ralph, we also had the Salomon Brothers scandal on the repo in the government bond market which collapsed Salomon Brothers.

MR. BIRNBAUM: That's right.

MR. ROTBERG: You had Orange County, you had --

MR. BIRNBAUM: There's no shortage of cases here.

MR. SAUL: But you didn't have a Re and Re. You didn't have a Re and Re.

MR. ROTBERG: Well, you had --

VOICE: Long-term capital --

MR. POLLACK: One at a time. One at a time.

VOICE: Long-term capital was worse than Re and Re.

VOICE: Much worse than Re and Re. Much worse.

VOICE: Too limited.

MR. SILVER: But it didn't have Lou Donovan, Chuck Dressen, Leo Durosher, and the colorful Re, father and son.

MR. BECKER: Well, another aspect -- I'll just -- to the extent the panelists could address, one other aspect is, from my impression, the Special Study was able to deal within a set of issues that were subject to the Commission's jurisdiction. And the Commission made decisions about matters under its jurisdiction. It did not do a Special Study with the Commodity and Futures Trading Commission, the

Federal Reserve Board, both Washington and New York, as well as the other sundry state bank regulators, and with entities that were not subject to its jurisdiction. And that, I think, makes a significant difference in the ability of an agency or a study to respond to these.

MR. ROTBERG: If you watch the next one, each one will get worse. You had Orange County, Diawa, Sumotomo, Merrill or mortgage-backed securities, long-term capital. Each gets worse. Each are basically looked upon as political issues which the fed can take care of by making money available and opening up their window at the banks.

It is a dangerous precedent. Far better before the next one to find out what people do for a living with their new products, how is it leveraged, and what are the potentials for harm in a managerial sense in the securities industry.

I agree with Ralph. You probably need to have something visible at the time. But we've had five or six already. My guess is we'll have others.

MR. SPORKIN: The problem is, Gene, the timing. You don't have two years anymore. Time frames are so short now. They're too short to -- that's one of the great things with the Special Study, you have the time. You don't have that time anymore.

MR. EISENBERG: A couple of observations. And one

is that it would be more difficult today because the industry is so much larger. What the Repeal of Glass Spiegel did was to diversify the regulatory jurisdiction, and now you've got to deal not only with the investment companies and Wall Street, but you've also got to deal with the banks, and maybe even the savings and loans, and God knows what else. You also have unregulated off-shore hedge funds which also play into this.

MR. ROTBERG: One other point I can add to that. When we were working in this area, the constituencies that we had to worry about or think about were the exchanges, the NASD, the regional exchanges, the institutions, including mutual funds. I don't remember anybody worrying about what will the public think about this. They were such minor players.

Now, with everybody involved in the stock market, they become a constituency which does not want so easily a major investigation of their industry. The public calls it their industry. That did not exist 40 years ago.

MR. EISENBERG: I think that you really need a thalidomide case for the public to be energized.

A couple of things. You know, the question originally is what's different. And I think Bob and Gene have pointed out what's different. You know, tremendous volume, the over-the-counter market, diversity of products,

complexity of the market, and so on.

But there are a lot of things from my point of view with my now being back at the Commission that are the same. You would be surprised how much is the same. The elimination of the minimum commission rate and the resurgence of things which are the functional equivalent of the minimum commission rate, which now are called posted rates, and it's 5-1/2 cents a share, and that's it, and that's best execution.

There were give-ups, and now they're called step-outs, but they're functionally the same thing. We used to worry about interpositioning, and now you have "introducing brokers," and they are functionally the same thing. You used to have reciprocal business, now it's payment for order flow.

And so as different as the market is, when you get to the core of it and you try to analyze it from the point of view of the staff and the Commission now, there are a lot of things that we learned in the Study that are important if we are to deal with the new market and the complexities of today.

Another thing that strikes me is the degree to which we operated across division lines. I was in the General Counsel's Office, and then I was -- I wasn't in Corp Fin. I was in the Division of Corporate Regulation. But we talked to each other, and the people were friends. I could go to Gene or to Bob or to Dave, and we trusted each other, and it wasn't a matter of turf or who was going to do what.

If you're going to put together the commission rate study, you'd have me and Peter Archie and Gene and the other people that were dealing with that, and they came from different divisions. There wasn't the kind of turf that there is now with a much larger bureaucracy. And a lot of those people remain friends to this day and have been close.

I'm not sure that you have that kind of thing today. I think there's too much concern over "turf" at the Commission today.

Another thing, these views are my own, and not necessarily the views of the Commission.

(Laughter.)

MR. EISENBERG: It is important now --

MR. POLLACK: Don't go there, then.

(Laughter.)

MR. EISENBERG: Yes. That's all right. What are they going to do to me? It's important now, probably more than ever, that we get knowledgeable commissioners, that it is vital to the operation of the Commission. And I think that Harvey recognizes this, that it is important that we have knowledgeable commissioners, and not just people that are put on the Commission because they have the kind of political connections which gives them a reward. Knowledgeable commissioners are essential.

You also have to attract the kind of young people

that we hope we were and the kind of leadership that you get from people like Milt and Ralph and Dick Paul.

Those kind of things were able to make a Special Study work. I have no doubt that whether it's the Long-Term Capital II or something else like that, there are opportunities. But these are very dangerous times, because that which could be contained three, four years ago may not be able to be contained today.

The last part of this was that the Study was run by lawyers. And that was very important. It was important to have the back-up of the economists. It was important to have the facts. But the techniques of cross examining a witness and getting the information and putting it together and making a brief out of it and making a persuasive case are things that good lawyers do. And hopefully, they will be able to do that again.

MR. POSER: May I?

MR. BECKER: Briefly.

MR. POSER: I'll be very brief. I think when it's been said a couple of times here how relevant the Special Study is today -- and I think in many ways, it is -- that's a two-edged thing. Because when we look at -- if you look, say, at chapter 4, the hot issue of the chapter -- and we know that a year or two ago, we had the same kind of problem, a lot of that stuff is still coming out -- it indicates that

the Special Study was not successful.

As I remember, the only legislative recommendation was that we increase the 40-day period for the prospectus for 90 days for the IPO. That was the whole thing. I think that in that respect, the Special Study may have been too timid.

Ralph mentioned self-regulation. I agree that there were some changes, and one of the principal reasons is one of the first things that was said here was the Re and Re case and the AMEX, the absolute collapse of self-regulation at the AMEX.

Well, unfortunately, the study ended up saying, "We believe in self-regulation despite that." We've seen -- I can think of three major collapses of self-regulation since the Special Study, one of them occurring only about seven or eight years later -- that was the back-office scandal -- two collapses, one at the NASD and one at the stock exchange, during the 1990s.

And despite the fact that the Commission had greater powers, which were to some extent a result of the Special Study's recommendation, that problem apparently hasn't been solved. I don't know how to solve it. But self-regulation is clearly -- maybe it's the only thing we can think of how to regulate the markets, but it's flawed. Because every now and then, like somebody with an illness, they suddenly have a relapse.

So I don't think we should be totally self-congratulatory about the Special Study. It did great things, and it was a great experience for us. And it did transform the Commission. I agree with all of those things. But there's a negative side to it too, and I just wanted to at least bring that out.

MR. BECKER: Bob?

MR. BIRNBAUM: I think, Norman, you're overstating the case against self-regulation. I think the fact that the NASD had a 21-A problem with the SEC doesn't mean that the NASD self-regulatory operation completely failed. In fact, I was on the board of NASD regulation after that SEC action, and I can tell you that the NASD has some extremely, extremely competent people in self-regulation. I mean, really very good people. I was very impressed by their staff, and they're as dedicated as anybody. And I think the fact that New York had a problem, I think you're talking about the brokers on the floor.

MR. POSER: Right.

MR. BIRNBAUM: I mean, the fact that you're doing a -- we all recognize, you were running self-regulation at the AMEX when Ralph and I --

MR. POSER: That's why I know about it.

MR. BIRNBAUM: We all recognize that we could be working our hearts out and doing everything we thought was

possible in self-regulation, and you still might have a problem. That doesn't mean there's a failure of self-regulation.

MR. BECKER: Okay. On that debate --

MR. SAUL: Could I end with a story here? We go back into the 19th century, and there's a peer in the House of Commons who's arguing very, very strenuously for electoral reform, spreading the vote to a whole new group of people. And he's a very young, avid peer.

And he argues with this Colonel Blimp in the House of Lords. And he goes on and on about the need for reform. Finally, Colonel Blimp stirs himself up and says, "Reform? Reform? My dear young man, aren't things bad enough?"

(Laughter.)

MR. BECKER: On that note, I think it's time for Alan Levenson.

MR. LEVENSON: In substance, the Special Study was amongst the Commission's finest hours. And I want to thank, on behalf of the Historical Society and the SEC, each of the panelists who participated, and those panelists who aren't here today, for the contribution that they made, which is unique.

Our next Oral History Roundtable, to be co-

sponsored by the Society and the SEC, will be on integration. And that will be at a time and a date to be scheduled.

At this time, I want to thank everybody for attending, and we stand adjourned.

(Whereupon, at 5:05 p.m. the Roundtable was adjourned.)

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