

SEC HISTORICAL SOCIETY
FIRESIDE CHAT ON THE SEC DIVISION OF ENFORCEMENT TRANSCRIPT
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THERESA GABALDON: Good afternoon and welcome to today's Fireside Chat presented by the Securities and Exchange Commission Historical Society and broadcast on www.sechistorical.org. I am Theresa Gabaldon, Lyle T. Alverson Professor of Law at the George Washington University School of Law and moderator of the Fireside Chats.

The SEC Historical Society preserves and shares the history of securities regulation through its virtual museum and archive at www.sechistorical.org. The museum is free and accessible worldwide at all times and is on track to welcome 100,000 visitors this year. The virtual museum and archive as well as the Society are separate from and independent of the U.S. Securities and Exchange Commission, and they receive no government funding. We thank Pfizer Inc., for its sponsorship of the 2008 Fireside Chat Season. Its support, along with gifts and grants from many other institutions and individuals, make possible the growth and outreach of the virtual museum and archive.

Today's program is one in a series of Fireside Chats looking at the distinctive history and work of many of the major SEC divisions and offices. This series is a part of the Society's commemoration of the upcoming 75th anniversary of the SEC approaching in 2009.

Our Fireside Chat today looks at the SEC Division of Enforcement. I am delighted to welcome Irving Pollack, who served as the first Director of the Enforcement Division when it was formed in 1972 and later was SEC Commissioner from 1974 to 1980. He currently serves in private practice. His remarks today are solely his own and are not representative of those of the Society. He cannot in his context give legal or investment advice.

After our broadcast, I encourage all the listeners to access the treasure trove of materials on the SEC Division of Enforcement currently in the virtual museum and archive including a rare 1937 manual on enforcement, emphasizing that the SEC has been an enforcement agency since its founding; a training manual from 1972 when the Enforcement Division was being formed; oral histories, interviews with former Enforcement directors including Irv, Stanley Sporkin, John Fedders and Gary Lynch and with former Associate Director Theodore Levine; a wonderful online program from 2003 in which then-Enforcement Director Stephen Cutler debates then-New York State Attorney General Eliot Spitzer; and a 2002 Roundtable on Enforcement, also in Online Programs, which discusses why and how the Division of Enforcement came to be. This program is accompanied by a history of the division written by Daniel Hawke, now SEC Regional Director in Philadelphia. Today's program will join this unique collection of information. Irv, welcome.

IRVING POLLACK: Thank you.

THERESA GABALDON: I am honored to talk with you today, not just because you were the first to lead the Division of Enforcement, but also because you have an expansive and insider's view of the SEC's enforcement work from the 1940s to the present, as an SEC staff member, a Commissioner and now as a practitioner. Also I'll be adding to our discussion today the questions shared by some of our museum visitors

for this program. Irv, probably the logical starting place is at the beginning. I have read the motives for establishing the division - that is, for breaking the enforcement function out of the other divisions may have been more than meets the eye. Can you tell us a little bit about the founding?

IRVING POLLACK: Yes. Chairman Casey, who was responsible for establishing the Enforcement Division in 1972, was about to leave the Commission when he did that, and I had a conversation on the last day of his sojourn at the SEC, in which we discussed the basis for that decision. He admitted that one of the primary reasons for it was to get me out of the Regulation Division because he felt that, after he left, I would get the Commission to change the prescriptions that he had put in in some of the rules. He said that I was probably right that the market developments were going to do that but it was too late to make any change.

THERESA GABALDON: Now with that start does that signify in any way that Enforcement was either a favored or unfavored child of the Commission?

IRVING POLLACK: I think the predecessor of the Enforcement Division was really the Enforcement Group in the Division of Trading and Markets, and we had responsibility for the general enforcement that was principally being done in the regional offices in the early days of the Commission. But in the 1960s, Chairman William Cary understood that we needed a more broadside national program for enforcement and so he asked me to go down and become the Assistant Director of that Division and to start a more global enforcement program. And we did and during the Special Study of Securities Markets in the 1960s, we established a broader program than that in the original days of the SEC when it was all balkanized in the regional offices. Their principal problems were with the bucket shops and the boiler rooms instead of the more clever national schemes that we were encountering in the 1960s. That program continued until 1972 when we had the single division of Enforcement but prior to that we cooperated closely with enforcement in the Corporation Finance Division and enforcement in the Investment Management Division, and the Public Utility Holding Company Act relied on us to enforce that Act.

THERESA GABALDON: Since its breakout, would you say that the Enforcement Division has been given the tools that it needs to do the job as you think it should be done?

IRVING POLLACK: I think they have much improved tools over those we had in the early days. In the early days, we had really only the injunctive remedy that we could use against violators, in addition to the program to refer criminal cases to the Department of Justice. What we tried to do was to use the equity powers of the court and get greater remedies than just the injunction and we were successful. We took the position that since the order in an injunctive case was issued by a court, the court had its full equity powers to make it really work and enforceable and we were successful in doing that. Eventually, of course, the Commission got the legislative authority to do that and increased authority to impose penalties, for example as well. So the powers have been considerably broadened by the legislation and the Enforcement Division has an increased number of tools that it can use in enforcing the securities laws.

THERESA GABALDON: Would you say that there are any tools that it is still missing?

IRVING POLLACK: I think one thing that might be considered is, right now they can get all the information by demand from the regulated entities. If it's outside of that area, they have to use either Section 21(a) of the Exchange Act, which permits them to ask people to file statements under oath, or to issue subpoenas. It might be a quicker way of getting the information if they could have the authority to give a civil demand letter to issuers and others whose information is necessary to understand what's happening in the markets rather than having to institute formal proceedings.

THERESA GABALDON: Somewhat related to the question of remedies and tools, Mr. Richard S. Kraut of Dilworth Paxson LLP in Washington DC emailed to ask when and what was the first instance in which a consent order went without admitting or denying the allegations was used, and how did that settlement technique come about?

IRVING POLLACK: I don't recall us ever having a settlement without that provision in it. My best recollection is we probably borrowed it from the Anti-Trust Division that I think used that language in its consent decrees.

THERESA GABALDON: I am curious about how the Enforcement Division has interacted over the years with the other divisions. Obviously, before the division itself was created, its function was played by the other divisions. After a split out separately, how did it get along, how did it work and play with the others?

IRVING POLLACK: We had an excellent coordination with the other divisions. Part of that was engendered by the fact that in addition to my role as an Assistant Director of the then Division of Trading and Markets, I was also in charge of criminal reference to the Department of Justice and so the other divisions if they had a case that required criminal referral would have to coordinate with us before that could be done. But more so we had such broad experience in the enforcement area, and the other divisions had a combined role of regulation and enforcement in their areas, there were issues that would come up so they would always consult with us. Eventually, we became sort of a service entity for not only the regional offices but also the other divisions and we had excellent coordination with them and had many excellent cases that resulted from that because of the coordinated efforts of the various divisions.

THERESA GABALDON: Would you say that there was some sort of feedback loop between Enforcement and the other divisions as far as setting regulatory policies were concerned?

IRVING POLLACK: Yes, of course. In the Division of Trading and Markets, we had our own regulatory control over all of the regulated entities. Take one example, the penny stock frauds. They were a problem then as they are today and so we tried to get a regulatory remedy and adopted a Rule which said you couldn't trade the security initially unless you had some information as to the company and had examined its filings. That partially helped. It still is a problem today because it is a very easy area for clever people to fraudulently sell them. So the SEC is still struggling with it. Wherever we saw items that we thought could be improved by regulation we would try to get a rule, the duty of broker-dealers to supervise their employees. We eventually got legislative authority as a result of the program incorporating the principles that we tried to enforce as part of our enforcement activities.

THERESA GABALDON: Is it a two way street? Do other divisions try actively to influence the policies and priorities of the Enforcement Division?

IRVING POLLACK: I would say there was a cooperative effort with the other Divisions. We would see problems and we weren't in competition. We were engaged in a cooperative program. The SEC had a very dedicated staff; it was not a 9 to 5 job. People who took these jobs were very talented and very bright. For example, we had two outstanding associate directors in the Division of Trading and Markets during my career, Stanley Sporkin, who is Judge Sporkin now; and Gene Rotberg, who were absolutely fantastic people in their particular fields. So we had that cooperative spirit within the division where both worked very closely on problems that arose and in trying to devise not only enforcement remedies but regulatory remedies as well.

THERESA GABALDON: I just mentioned priorities and policies and it certainly has given me a good start understanding how those things are set, but I was wondering if you could expand a little bit on the proposition that enforcement priorities might be set at the Commission level as opposed to at the enforcement level, or would you say that it's one or the other?

IRVING POLLACK: In my time it was principally set by the Enforcement Division as it recognized problems out there but, on occasion, if the Commission saw something that it thought was a problem they certainly would direct the Enforcement Division to pay attention to it. But I think in most cases it was as a result of what the Enforcement and regulatory people saw as issues that required our attention and I think that will vary with the problems. Just to bring it right up to date now with the present issues, you saw how the Commission took action to remediate some of the problems they have now, for example, emergency rules that they have just announced in the short sale area and the other areas.

THERESA GABALDON: I was going to ask, as matter of fact, if you were directing Enforcement right now, what do you think you would want to be doing?

IRVING POLLACK: Try to act as fast as I could, as vigorous as I could, as fair as I could and to also recognize, and I think this is important, that they can't do the job themselves, they have to rely on instilling in the regulatory area a desire to have good compliance, good supervision. I think one of the early things that we stressed was to try and get a culture of compliance in the people that we regulated. I do think one of the very successful things that we accomplished was we sued a lot of people, we sued all of the eight accounting firms in my day but we got their respect and that respect was terribly important. Even though we sued, they believed we were fair and we handled ourselves with an understanding of the needs of the people that we regulated. So I think that's critical. If you are going to have an enforcement program, it has to be fair, it has to be vigorous, it has to be aggressive, but one thing you want to do is get the respect of the people who you have supervision and regulatory authority over. I think that's the most compelling principle you want to have. You can't have a policeman in every firm or over every individual. You have to create a culture out there that alleviates your enforcement program, and you are not going to get perfection, but if you ever could you wouldn't have to enforce cases against your regulatory people, it would be the outside people who aren't subject to that regulation that you would have to concentrate on. But perfection is something that you always try to achieve even though it's impossible.

THERESA GABALDON: As far as the numbers of players who have been accused of some sort of culpability, as far as current events are concerned, would you be more interested in holding one group than another accountable?

IRVING POLLACK: No.

THERESA GABALDON: As Director of Enforcement?

IRVING POLLACK: I don't think so. I think that you will find it spread out. You take the present situation which is probably a good example. I guess you can put blame on a lot of people but remember the basic cause of this was the industry themselves, the banking people and the investment houses that engaged in leverage that was just unconscionable and which they should have learned a long time ago, were risks which they could not control and they are now paying the price for it. So I think if you are trying to assess blame, it has to go back to the marketplace and the people who participate in it. If the market worked perfectly, you wouldn't have any problems but people who believe in that are deluding themselves. Unless you have good regulation, good supervision and good enforcement, you are not going to accomplish your task. You have three parts really as I see it to an overall program; you have disclosure, the Commission has the Corporation Finance Division; you have regulation, you have the Department of Trading and Markets; and then you have Enforcement. If you are given the best statutes, best regulations, best disclosures in the world, but they are not enforced so that people have to obey them, your system is not going to work. I think the present situation has demonstrated that in spades. The failure of the regulatory people to control the abuses that were occurring in the market has led to this present crisis.

THERESA GABALDON: You mentioned before that you were interested in a culture of compliance and I think I have also read in a transcript of one of the other programs, a discussion of targeting gatekeepers as far as bringing about that culture of compliance. Are there lessons for us today perhaps with respect to rating agencies or SROs?

IRVING POLLACK: Yes, you have people who grant access to the market, we called them access people. You have the people in the regulated entities, you have the lawyers, you have the accountants. As Judge Sporkin pointed out in the Lincoln Savings case when he became a judge, "Where were the lawyers and the accountants when this program was being done?" And then you have corrupt lawyers and accountants. A best example of that as I can remember is back in the 1960s, we had an accountant and a lawyer who were corruptly engaging in a stock promotion. We convicted them for their conduct, it went to the Court of Appeals that affirmed the convictions. I have to paraphrase their language but Judge Friendly said, "Lawyers and accountants with their certificates and opinions can do more damage than the ordinary criminal with a crowbar." And then he said, "Lawyers and accountants who come from an ancient profession should well know that they cannot commit a fraudulent act and get away with it and moreover they can't close their eyes to conduct which they know is improper or fraudulent." I think that its very important that they and the people in the industry know their securities, don't give access to people who are attempting to corrupt and manipulate the market. And so it is essential again as I mentioned earlier, you can't oversee everybody. But I think that the basic principle the Commission can be proud of from its enforcement and regulatory programs, was to give people who they regulated the understanding that the better culture that they had in supervising and in compliance would lead to successful business. When I left the Commission, I did work with other

companies that would establish programs that said, "Remember, good compliance will mean good business for us." I think you have seen those businesses that have been most successful and stayed out of trouble pretty much have accommodated to that principle. There are going to be cases where you have people that work for you who are going to be bad and you have to try to discover them before they do too much damage and get rid of them. But if you have that culture, I think it's critical to preventing a crisis as we have today.

THERESA GABALDON: That tells me quite a bit about allocations of resources and reasons for allocating them in one direction or another. I have always been curious about it was likely to be an enforcement strategy, to go after institutions to catch the biggest players or whether it might be an effective strategy to go after individuals and send the signal that even the very small fish can't get away?

IRVING POLLACK: I think you have to have both but I think it is a mistake only to go after individuals when you have entities that are corrupt; you are not going to stop that. For example, if we had sued every individual accountant and not brought an action against the firms themselves, that would be just a part of doing business, don't worry about it. Individuals will get hit but the company goes on and does its usual activities without any kind of correction. So I think you want to impress on companies that they have a responsibility for complying with the law just as you are going to sue individuals who engage in misconduct. Sometimes you have to go after individuals who are on the periphery because you have sued others who have consented and accepted a settlement and you can't let others who haven't consented to get away. So its a combination of both. Take the Enron and WorldCom cases which were extraordinary frauds, you had to go after the individuals as well as the companies. What also resulted from that was the biggest piece of corrective legislation since the 1930s, the Sarbanes-Oxley Act and had it not been for those two cases and the enforcement in those cases you would not have had that legislation. I can tell you that from my personal knowledge in talking with the people who were drafting that legislation.

THERESA GABALDON: Do you think that there are any cases that Enforcement traditionally has avoided either because of political pressure or because the subject matter is just too complex and technical to make a real public impact or has it been fairly even handed?

IRVING POLLACK: In my experience no. I didn't find any cases that were too complicated for us to act. One of the geniuses of somebody like Stan Sporkin was to look at a very complicated case and bring it down to simplistic terms and then in any complicated case you are going to be able whether it's a manipulation or an ordinary fraud to simplify it so that people can understand it. That's a technique that you must have. If you are prosecuting cases or if you are defending, is to make them simple.

THERESA GABALDON: Because few things could have been more complicated than some of the Enron wrongdoings and the message nonetheless was conveyed. So I see what you are saying there.

IRVING POLLACK: Yes. I think that people can try and complicate it and they did that in the early days by creating utility holding companies that they hoped were so complex that none of the states could regulate them because they wouldn't understand them. Eventually they would self destruct in the 1930s, despite the attempt to make them as complicated as they could. And then on the other side you see today the derivative

market was gaining great promise by making them as complicated as they could, so that the regulators couldn't understand them and they have self destructed now as well. If you are going to create instruments that are not transparent to the people who buy them, including some people who should know better and get stuck with them eventually you are going to have ruin and there is no way out of it. I think that's demonstrated by, the credit default instruments we now have. I have heard two figures, one was \$46 trillion, the other one was \$60.2 trillion. You get those two amounts, there's something wrong. So my own view is people can have complicated schemes but we have very talented people on the other side in the SEC, very bright and dedicated people and if they apply themselves they can get to the bottom of it. I don't recall any case that we couldn't eventually understand, it might take us a little longer than it would in any ordinary case but we were able to get to the bottom of all of the big cases that came to our attention.

THERESA GABALDON: Do you recall any instances in which someone on the outside, that is other than the people who are being investigated, might have tried to throw you off the scent or distract you so to speak that any apolitical force has been brought to bear on the Enforcement Division that you can recall?

IRVING POLLACK: No. I think in our time the political people understood that it was death knell for them to interfere in any case we had except for one Congressman who tried to reduce the budget of the SEC because of a case the SEC brought against some constituent of his. But aside from that, I think we had an excellent relationship. The Congressional people respected the job that we were doing and those who were aware of the danger of interfering in a fraud case would stay away from it. Occasionally, you might get a staff member who might call on you and try to discuss it with you and normally what you would say to him, "You better go back and tell your boss that this is not something that he should have any interest in." And if you take the Lincoln Savings case you remember that five Senators got in trouble in trying to interfere with the regulation there. So I think political people, if they are bright and smart, will stay away from that kind of thing. Of course, we had scandals in the Nixon administration and there as a result of an investigation we were doing of a big con man named [Robert] Vesco we ran into a payment of \$175,000 or \$150,000 that was unusual and we traced it out and it got back to Attorney General Mitchell and Secretary Stans in the Nixon administration and we got the Southern District of New York U.S. Attorney's office to indict them. We lost that case, because of testimony that one of our people had to give after he had initially perjured himself but eventually they were convicted. So it's very important that Congressional people and other political people realize the dangers of engaging in that kind of conduct.

THERESA GABALDON: Would say that Enforcement sometimes has actual legislative objectives that it might choose to bring particular cases to highlight particular problems hoping that either there will be an SEC regulatory response or a Congressional response?

IRVING POLLACK: You always try when you are trying to get either legislation or regulation improvements to bring what I call a "Thalidomide" case and sometimes it will fall into your lap. Enron or WorldCom are special examples of that. They come along not very frequently but you concentrate on those kinds of cases which will illustrate some misconduct which is so egregious that it gets the attention of people outside who come forward and say, "We have to do something about this." I can't think of a better example than Sarbanes-Oxley because that legislation never would have passed in ordinary

times had it not been for those cases and so you see in different degrees of importance that will happen. But let's go back to the insider trading cases. When we brought the first case, Texas Gulf Sulphur, it was not successful in the district court but it was overturned in the Court of Appeals and even after we won that case, I had to go around the country to answer all of the people from economists on to former Supreme Court Justice Abe Fortas who were saying that we were ruining the markets because it was much more efficient to get that inside information into the markets early on. And we heard some of that more recently but I don't think we are going to hear it much more again that the market will take care of itself. And so those cases eventually brought on very severe legislative remedies where you get triple remedies in some cases for insider trading and imposed duties on companies themselves to make sure that they have procedures in place to try to avoid that from happening. So that's another case where legislation followed enforcement cases despite great clamors that we were ruining the markets by going after insiders. It seems silly today but those arguments were made back then.

THERESA GABALDON: I remember them.

IRVING POLLACK: You even see them today.

THERESA GABALDON: I think that I have also seen some speculation that Enforcement had a profound effect in shaping the Foreign Corrupt Practices Act. Would you agree with that?

IRVING POLLACK: No question about that and that can be singularly ascribed to one person and that was Judge [Stanley] Sporkin who, together with Senator Proxmire, was responsible for that legislation. There wasn't a fervor at the Commission for that legislation. But as a result of the 500 cases that came forward after one case was brought on bribery, Judge Sporkin, who happened to be a CPA, recognized that that couldn't have occurred without a phonying up of the books and records. So when he received the call from Senator Proxmire on what could be done to help the SEC in addressing this he said you need books and records and internal control provisions. Proxmire took that but he added on the bribery provisions and in recent years we have seen an increase in the activity in that area. The SEC has become more aggressive, the Department of Justice has become very aggressive in that area. The evil in the bribery, taking it away just from the foreign bribery, is if you have bribery anywhere and people are able to do that with the consent of higher ups, what happens is everybody starts to feel he deserves a bigger piece of that pie, and they start to embezzle on their own. So you frequently find that you have bribery and then embezzlement or you have embezzlement and then you have bribery; they work with symbiotic relationships.

THERESA GABALDON: This brings me to a question contributed by John Reed Stark, Chief of Internet Enforcement of the SEC. I take it that there was a sort of an amnesty feature at the time of the Foreign Corrupt Practices Act. Do you think that, that was useful and is there a lesson to be taken from that that might be applicable today?

IRVING POLLACK: Yes, absolutely. What happened there was as a result of Judge Sporkin's actions in suing some of the people. It turned out that this had gone on in a large group so, as I mentioned earlier, there were about some 500 cases where we could have brought actions. It was impossible for an agency to do a job like that. So he and Alan Levenson, who was then the director of the Division of Corporation Finance, in

concert with Chairman Garrett, who recognized we had this problem that couldn't be solved by suits alone, and asked them to come up with a program which they did. If you came forward and you gave a full disclosure of what had gone on that the Commission would consider that and not sue you as a result of your violations. So as a result of that you had a lot of settlements and no action had to be brought and they were given complete amnesty.

Now, that kind of approach was used elsewhere too. We would have broker dealers, who after we had brought actions and who had respect for our enforcement or regulatory actions would come forward and say, "Look, we have this problem. We're looking into it. It's that okay. What can we do? How can we solve it?" And we would say, "Go ahead, and do that and then report back to us. And if we find you've done a good job, we may not be able to give you absolution, but we certainly will take that into account in any remedy that we take." And as a result of that the independent investigation that you now see being done, really started back then when people would do that. I remember getting a call from someone who did an erroneous short sale and was very upset. I said "All right, don't lose your calm. Do what you have to do to correct it and come in and tell us what was finally done. And if it's appropriate, we'll consider that to have taken care of the issue." We had a crisis in the back offices, in the late 1960's. We had a lot of the brokers that couldn't control their books and records and because of the inter-relationships, the brokers trading with each other, it affected each of the brokers that traded whether they were doing it properly or not. I remember one case in which Lehman, which had a terrific problem was called in by Stan Sporkin and told, "Look, you have this problem and unless you go out and hire 50 accountants to put your books and records in order, we're going to bring a proceeding to suspend you from doing business." They did it and we settled the case after that.

So, it's a situation that's not unusual and if you are doing it properly, you want to reward people who are trying to do the right thing. That's tremendously important. If people come in and say to you, "We have a problem. We're addressing it and we just wanted you to know about it." Fine, when they're done there's no necessity of bringing an action unless there's something, you want to get money back, or something that they're not going to do voluntarily. But if they do it voluntarily that's fine. What you're trying to accomplish, again gets back to our very initial discussion on culture. I think the most important thing you can do whether you're in regulation or you're in enforcement is to get people to be their own self regulators and have them understand that in the long run they will be much better off and they will be much more successful. And I have seen that in my own experience not only when I was at the Commission, but in more recent years when I have done outside work in helping people improve their compliance regimes.

THERESA GABALDON: That's sort of an uplifting message given current events. Do you think that there is still sort of time for some of the miscreants involved in the current disasters to come forward and take care of things?

IRVING POLLACK: I think if they're smart they will try to do it. Litigation is tremendously expensive and more expensive today than it's ever been because of the Internet. Just to produce e-mails is tremendously expensive in an investigation. I know of a case where a company spent over \$10 million in just producing e-mails. Eventually it was able to get out of the matter, but it was very expensive. So, if you have a problem, you're going to spend money trying to find out why it occurred and how it occurred. But

if you can come forward and convince the regulatory authority that you have done a good job in correcting it and it was not evil so that somebody should go to jail, then I think you've accomplished your job well. Some people's first reaction is to fight every case. I think you have to evaluate when you're representing someone and determine what would be the best choice for them in terms of the overall objective you're trying to accomplish. Frequently it will be to go in and say we're not interested in fighting this. We're not arguing with you. We just want some time. We're going to do our own inquiry and we'll come back and report to you what we find. And, hopefully, when we show you what we've done and you feel that we've done enough, no further action will be necessary. I found that in the cases where I was appointed, after I left the Commission, as an independent counsel to review situations where there had been improper conduct. One of the most rewarding things is to go in there and find that people were trying to do the right job after these occurrences sometimes because they came in later than the people who did the improper acts and you help rebuild the business. We've done that with exchanges and individual, securities houses. So, I think a competent regulatory and enforcement program should reward those who are trying to do the right thing. They should punish those or take remedial action for those who don't get the message.

THERESA GABALDON: Would you say that a prospective defendant's attitude towards doing the right thing, making a clean breast of things is much affected by its choice of counsel. I am sure you've had an opportunity to view a number of people from both sides of the fence and does personality matter?

IRVING POLLACK: You're going to get different views. There are some people who will believe that litigation is always the proper action and you shouldn't try to do anything else. You have other people who feel that that's the last thing to do. I think it depends on what people have experienced. Some of them will get turned off if they try to come in and do it in a fair way and they get clobbered by someone who isn't reasonable, who doesn't understand what prosecution should be like and what you're trying to achieve. But I would think speaking generally of the bar, I think most people understand that you have to make a choice. If you think it's a defensible case, and the Commission may be overboard on something, then you have to really make a determination - do I litigate this or do I settle it even though I think that maybe the Commission is over reaching a little bit. You get some of that. If I had an individual who was part of a large group that was settling an action, and I was professionally convinced that he didn't do something wrong and was being unfairly targeted then I would put all my effort into trying to defend him. And I had such a case in the past where we were successful. But that's the unusual one. Normally it's more of - is it worthwhile to engage in litigation? Is there sufficient basis for the regulatory agency's conduct that it's better to go in and try and reach an agreeable settlement and avoid all the costs. Besides the actual costs in an investigation, it's very disruptive to have a person trying to conduct a business and at the same time respond to these inquiries. More recently we've seen the Department of Justice become much more active in cases than they would years ago. In my early days I had to go to the Southern District of New York and convince them that they should bring a Securities case because they felt it was too complicated or too extensive and time consuming for them to do it. But once they brought some of those cases and they saw the tremendous rewards they were getting for it in terms of publicity and commendation they asked our assistance in establishing a fraud section and that actually occurred with respect to the Commission's program.

THERESA GABALDON: I was going to ask something about how the criminal referral process worked. And you've given me part of the answer there that not only were you making referrals and lobbying for them to bring actions, but now there might be some sort of affirmative interest in doing it even without being asked. Is that right?

IRVING POLLACK: Yes. In the early days there was a reluctance because the U.S. Attorney's Office, for example, in the Southern District in New York had part-time lawyers, not full-time lawyers. They didn't want to get involved in a big case because they would like to try a case and then go out and do their private practice. The Department of Justice here in Washington had little control over the U.S. Attorney's Office in New York because of the political situation. They were pretty much independent. I first went to the Department of Justice and said, "Can you get these cases that we sent up there prosecuted?" And they said, "We have little control over them". And so I said, "Do you have any objection if I go up there and try and do that myself"? They said, "Be our guest, go up there".

THERESA GABALDON: Did they give you your ticket?

IRVING POLLACK: Yes. I did that and spent a considerable number of years up there trying to convince them to prosecute our cases. Eventually I was able to convince them to bring one case and even though they were unsuccessful in it, it was clearly a manipulation they were impressed. I gave them a second one and they received tremendous publicity after the conviction. And from that time on it was easy sailing. All that they wanted was our co-operation in sending people in to help them because they didn't have the expertise. And as an aside there was really no white collar defense bar in the early period. We did not have the competent people you now have out there. So, the SEC was principally the cause for the development of a white collar defense bar. The Department of Justice relied on us at the SEC when U.S. attorneys had problems in cases that involved fraud issues, and they would refer them to us for assistance. We had an excellent relationship with the Department of Justice who helped us establish a very successful program. So, in the early days, we were very careful to try and give the U.S. Attorney the best cases with the best proof so that they could be successful. And once that was established and they saw the tremendous indirect benefits they received from both the publicity and from the training they welcomed SEC cases. After the people left the U.S. Attorney's Offices they became excellent white collar defense counsel on the outside. And so it was good. You had respectable people who were doing that and I think it helped a lot on both sides to accomplish their missions.

THERESA GABALDON: That's very interesting. How are the relations over time been with the states and state enforcement programs?

IRVING POLLACK: That had sort of a mixed combination. In some states because of political influence there was a question as to their trustworthiness. So you had to be careful, but toward the later years the states became much more responsible. And now that they have their NASAA group, they have been most successful in co-operating in cases. They will get the local fraud cases, many people will go to them to complain. They don't even know the SEC exists. And so the states may get the first indication of a fraud. For example, in the Prudential fraud case which resulted in a payout of about \$1 billion in the ultimate settlement, a part of the incentive for that case came from the states. A number of states created a task force that looked into the limited partnership interests that were being sold to vulnerable investors. There were over 700 limited

partnerships that were sold by fraudulent representations. The states finally brought the results of their investigations to the attention of the SEC, and an action was brought that resulted in a settlement. It resulted in the \$1 billion payout which was the largest settlement that I can recall in that period in terms of any SEC action.

THERESA GABALDON: Now, something I have picked up from some of your comments is that a lot of the job the Enforcement Division is necessarily responsive if there's a crisis or there's a wrong doing or the state will point out that something has occurred. But I'm also interested in finding out whether the enforcement division tends to have its own long term plans? That is, is it simply a question of playing Whack-a mole when a problem comes up or is there a five year, ten year plan?

IRVING POLLACK: I don't think there is a five year or ten year plan, but there is a plan to address things that you see are endemic. There is a tendency in the business if somebody is making money in excess, and it may not be completely kosher, for others to copycat it. I've mentioned the Prudential case where they were making a lot of money selling wirehouses limited partnership interests. After Prudential was successful, some of the other wirehouses also got into that game. So, after the Prudential case was finished, the SEC went after some of those others and brought actions against one or two of them for the same thing. It's important that you concentrate on activities that are endemic, that spread throughout the industry. And if you take it right up to the present time, you see it in the leveraging that occurred. It's almost inconceivable that having had a big leverage case back in 1999, with Long Term Capital Management, where you had some of the top so-called geniuses running an operation where they thought they had solved all of the downside risk and leveraged 30% and more; they eventually had to be rescued by the Street. And so if you look at that and compare it to today, you say to yourself, didn't people learn then that leverage is a dangerous thing? It can work both ways. You can make an increased profit when you're in something that works out well, but you can get murdered if you have over-leveraged when it goes down. And that's what we are seeing in the present crisis. That was one of the principal causes of the debacle that we're now trying to work ourselves out of.

THERESA GABALDON: I think you're going to encounter substantial agreement on that point at least on this side of the table. Another recent chat discussed the SEC Regional Offices and the ebb and flow of regionalization at the SEC. Has that had much effect on the enforcement function?

IRVING POLLACK: As I said in the early days the regional offices were really the principal enforcers. And then of course when the problems became more national, you had the program Chairman Cary saw as needing additional remedial action by the SEC. And I think today there's so much going on that you need a strong regional presence and you need a strong national presence, so that the regional offices can handle cases that are principally more localized than some national cases like, let's say, Enron or WorldCom. They are like the cop on the beat. But they also are very instrumental in not only dealing with cases that are restricted to their areas, but even cases that may spread nationally where they can cooperate in a task force within the SEC to take the necessary actions. If you have it spread across the whole country it is necessary to go after people in various regions. It should be a symbiotic relationship between the home office and the regional offices.

Occasionally you'll get some jealousy because people will want a case that they think is going to get a lot of publicity. And they'll say, "Why did you take the case away from me?" But I don't think that that's a real problem. I think in most cases, they have more to do than they can possible handle. So, there's no debate as to who should handle it. And more and more you're seeing because of the global nature of the problems that the SEC is facing it will establish task forces not only within the SEC itself, but with FINRA and NASAA as well. I think there is enough to go around for everybody to have things to do. And the issue is to just make the most effective use of the tools and personnel that you have. You'll never have enough money to do all of the things you would like to. So, you have to try and cooperate and do the best you can. Even the Attorney General in New York who has been very active in cooperating with the SEC even though he's done a lot of things on his own.

THERESA GABALDON: Speaking of personnel, the Enforcement Division has a terrific reputation for hiring very good people and for truly being a meritocracy. In your view has it been a good place for women and minorities to work?

IRVING POLLACK: Yes, I think the SEC was one of the first agencies to concentrate on hiring minorities and women. In my days, I think we had the first woman attorney that was engaged in enforcement activities. The SEC also had another woman who was in charge of broker dealer regulation that was very good. I think that opened it up. I think partially that was because you had an agency that really was inspired by the Depression. You had people there who were dedicated to the mission. They were very inspired and they stayed on for years because they had been through the Depression and I think security in part was something that they wanted. They all believed in the program that they were engaged in. They were the most dedicated people and hours meant nothing to them. They would work day and night when they thought that there was something that was not correct and that they wanted to eliminate.

One of the great things about the agency was the consistency of their personnel. They stayed for years, and just to give you one example, they had the most outstanding oil and gas engineer in the country. I would see people coming in from the outside, to get advice from him. His name was Tell White and numerous oil and gas people would consult with him on issues that they had. If Tell White says it's a dry hole, it's a dry hole. We also had an outstanding mining engineer. And, of course, the Director of the Corporation Finance Division in the early days was the person responsible for writing the Japanese securities legislation after the war. They were remarkable people and I must tell you when I first joined the Commission, I looked upon them as geniuses and this anecdote will confirm it. I was getting married and I was looking for life insurance. The insurance agent asked me, "Mr. Pollack, where do you think you will be six years from now?" I said, "I'm not going to be very far up from where I am now. There are geniuses in this place, I want to tell you, and boy, are they good." The agency had a reputation as being the best independent agency in the government in ratings that were done by the Hoover Commission and others. It was recognized as a great place to work. The people there were very much engaged in establishing a spirit of coordination and comradery. It was more like a family than it was a government organization.

THERESA GABALDON: In just the couple of minutes we've got left, I was hoping you could answer a final question contributed by John Reed Stark. Which was the better job, being Director of the Division of Enforcement or being a Commissioner?

IRVING POLLACK: I think they both had rewards. The enforcement job was better because you were pretty much in charge by yourself. The Commission was pretty much hands off so long as you were doing your job well. When you joined the Commission, you had four other people who you had to convince of whatever your program was. But I would say I enjoyed both of them. There was more freedom down in the Enforcement Division than there was in the Commission. But I was fortunate; the first Commission I went on was absolutely fantastic. We had people there that were incredible. We had Chairman Garrett; Al Sommer, who was a very outstanding lawyer; Phil Loomis, one of the best legal minds that you have; and then a non-lawyer, John Evans, who could not have been a more personable, dedicated person to protect investors. We didn't always agree when we started out, but we all sort of agreed when we got done. It was a tremendously competent Commission, one of the great Commissions that I had the opportunity to serve on.

THERESA GABALDON: Irv, thank you for sharing your perspectives on the work of the SEC Division of Enforcement today. It's been a privilege for me to talk with you and I am positive that our audience felt the same as they listened to you. You have exemplified the best of the SEC's commitment in ensuring fair and open markets since 1934.

Today's Fireside Chat is now archived in audio format in the virtual museum so you can listen again anytime. A transcript of the discussion as well as the chat in MP3 format will be added to the Online Program sections in the coming months.

Again I would like to thank Pfizer Inc. for its generous support for today's program. Our 2008 Fireside Chat season will conclude on Tuesday October 21st at 3:00 pm Eastern time, with a discussion of the SEC Office of Compliance Inspections and Examinations, with Lori Richard, OCIE Director, and John Walsh. Please join us again on October 21st and thank you for being with us today.

IRVING POLLACK: Thank you.