THE ROUNDTABLE ON ENFORCEMENT

Wednesday, September 25, 2002
2:00 p.m.

William O. Douglas Open Meeting Room.
U.S. Securities and Exchange Commission
Washington, D.C.
ATTENDEES AND PANELISTS:

Theodore A. Levine, President
Securities and Exchange Commission Historical Society

Hon. Harvey L. Pitt, Chairman
U.S. Securities and Exchange Commission

PANEL ONE:

Irving M. Pollack, Co-Moderator
Stanley Sporkin, Co-Moderator

Theodore Altman
Thomas Rae
Richard H. Rowe
David Silver
Theodore Sonde

PANEL TWO:

Irving M. Pollack, Co-Moderator
Stanley Sporkin, Co-Moderator

David P. Doherty
Benjamin Greenspoon
Theodore A. Levine
Alan Rosenblat
Theodore Sonde
Wallace L. Timmeny
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The Roundtable on Enforcement

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MR. LEVINE: Good afternoon. I am Ted Levine. And as President of the SEC Historical Society I would like to welcome you to our third Oral History Roundtable. It is going to be a roundtable on enforcement. I would like to thank the SEC for their continued assistance in helping the Society to present the history of the Commission and the securities industry. For the first time the Society is broadcasting the roundtable live on our website. So I welcome all Society members and friends who are listening at this time.

I invite all of you to visit the virtual museum of the SEC Historical society on our website which is www.sechistorical.org to see past roundtables, listen to oral histories, read original historical records and papers and see some great old photos all relating to the history of the Commission. The museum is available free of charge on the website 24 hours a day, 7 days a week. Each month we add new materials. And this roundtable will be online in the next several months.

I would like to thank three persons who have helped make this roundtable today possible. Alan Levenson, the Chair
of our Oral Histories Committee since its inception who is unable to be with us today but has really been the driving force behind these oral histories. Carla Rosati who is sitting here, the Executive Director of the Society, who actually is the person who put all this together. And third, Dan Hawke who is with the SEC Division of Enforcement and a member of the Oral Histories Subcommittee who did a splendid job in preparing the paper on the history of enforcement which is in your program and outside for your reading pleasure.

The Society is beginning to form operational committees for each of the major divisions of the SEC, the Chief Accountant's Office, the General Accountant's Office, the regional offices and the Commission itself. Each of these committees will help to identify and secure material for our museum as well as to host programs and activities relating to their specific area.

Steve Cutler will be here, the Director of the Division of Enforcement, and will be coming later. And in order to keep on schedule with Irv and Stanley looking at me this way I would like to now introduce Chairman Harvey Pitt. Harvey was a founder and past president of the Historical Society and has agreed to say a few words before we start the
Chairman Pitt.

(Applause.)

CHAIRMAN PITT: I know everything us all right when Carla is here.

Let me say that I am proud to welcome all of you to today's Roundtable on Enforcement. And it's an introduction — it's an honor to introduce two people who need no introduction, Irv Pollack and Stanley Sporkin.

Before I do, I had a meeting yesterday with some of the folks in our Pacific Regional Office. And Sandy Harris who as you know is in charge of a lot of our enforcement work out in L.A. gave me personally a copy of the 1938 SEC Enforcement Manual. This is a manual that was issued when William O. Douglas was Chairman and Messrs. Mathews, Healy, Frank and Hanes were on the Commission. And what I thought I would do is turn this over to Ted for the Historical Society's archives. It's really fascinating. It's a great piece of work.

I think you know that Irv joined the Commission's most distinguished office, its General Counsel's Office, in 1946 after having served in the Armed Forces during World War
II. And 15 years later Judge Sporkin joined the SEC as an attorney working on the Special Study. Most people think that Irv and Stanley are joined at the hip, and they are to some extent, but there was this 15-year hiatus.

Both Irv and Stanley were instrumental in making the Commission and the Division of Enforcement what it is today which I think is one of the most highly regarded governmental enforcement programs, and deservedly so.

As I think you will be able to tell today, Irv and Stanley in addition to being joined at the hip have worked together for a long time. Prior to the creation and running of the Division of Enforcement Irv was the director of what was then known as the Division of Markets and Trading, actually it's Trading and Markets, and Stanley was his deputy.

At that time their division housed much but not all of the Commission's enforcement program. Pieces of it were scattered around in the regulatory divisions as well.

Eventually the enforcement function was split off from trading and markets. And today we have a Division of Market Regulation and the Division of Enforcement. In August of 1972 Irv became the first Director of Enforcement. And in 1974 Stanley succeeded him when Irv was appointed to the
If I am not mistaken, Irv, I think you were the first, maybe the only director of the Enforcement Division who ever served on the Commission.

Irv, of course, helped establish the Commission's credibility with other regulators through his meticulous work habits. For example, Irv used to read every reported criminal case. And he developed an extensive card file of case notes. For those of you who don't recall, in the old days we used to have a criminal reference process and it was quite an involved project to make a criminal reference. Somehow over the years, and particularly even after the Fields case we found easy ways to make those references.

In any event I would say both Irv and Stanley share zero tolerance for corruption and their attitude serve the investing public well. Together they built a national enforcement program with a reputation for integrity, tenaciousness, fairness and creativity. And looking back at the problems that Irv and Stanley took on such as off-the-book transactions and corporate accountability it is somewhat striking that those issues seemed similar to challenges we at the Commission are facing today. And that's why today's
program is really quite timely and relevant.

Stanley delivered a speech in which he said the following:

"What I find," -- I can't do it the way Stanley would do it -- but "What I find particularly troubling in the attitude of corporate executives is the extent to which they define their responsibility to shareholders only in terms of the bottom line. They are willing to disclose the amount of their company's earnings but not the manner in which those earnings have been achieved. They attempt to argue that shareholders are not interested in this information despite its reflection upon the quality of the company's earnings and management."

Now, I'm sure you all remember that this was, these words were uttered by Stanley at the UCLA Dean's Forum in Los Angeles on January 15, 1976. I have to say, Stanley, I don't even know why I bother writing new speeches, I mean I could just recycle the things you've already said.

In any way, in any event I think that Irv and Stanley continue to be influential as leaders of the securities bar. The Commission and the public can always look to Irv and Stanley as honest brokers on any issue. And it is
a privilege to have them here today.

I also want to take a moment to publicly acknowledge the pro bono project that Stanley undertook at my request in reviewing our administrative process. It is my fervent hope that we will completely revitalize and revamp the administrative process creating the equivalent of a rocket docket so to speak. And Stanley wrote a report on this that is just absolutely phenomenal. And for those of you who haven't seen it we posted it on our website so it's available.

I would also like to thank the SEC Historical Society for putting together today's program. Our agency has a strong sense of history and through programs like these the Historical Society helps us to learn and understand that history. Euclid called history "philosophy teaching by examples." And I can't think of any better examples to teach us than Irv and Stanley and the panelists we have assembled here today.

I would also like to take a second to recognize Daniel Hawke who is an attorney in our Enforcement Division. The Roundtable has outside a summary of highlights for distribution that Daniel prepared. And his summary turned into a 41-page history of enforcement at the SEC completed
with 216 end notes. I think Daniel deserves a lot of recognition for what he's done and we're very appreciative. (Applause.)

One of the reasons why I think it's so important to take a moment now to recognize what Dan has done is that today's staff are tomorrow's panelists. And people like Dan continue the tradition that Irv and Stanley helped establish in the Division of Enforcement, vigorous protection of investors and then spreading the message.

And so now I would like to turn the program over to Irv and Stanley.

PANEL ONE

MR. POLLACK: Thank you, Harvey, for your very gracious remarks on behalf of the panel and Stanley and myself.

I would like to start off by just mentioning one program in the old days that was principally a regulatory program but also had enforcement aspects to it. And that was the Public Utility Holding Company Act of 1935. It was referred to in those days by the opposition as the death sentence for public utility companies.

It turned out after the innovative and imaginative
enforcement by the then SEC staff to be the savior of the
public utility industry. And in a few years, using voluntary
cooporation from the companies, it restored these completely
devastated companies into the blue chips that we knew for many
years.

And with that brief introduction I will let Stanley
have the first question.

MR. SPORKIN: All right, folks, let's throw up an
easy one.

Division of Enforcement, you people all had you own
little enforcement programs. Good or bad idea to consolidate
enforcement into one division? What do you think, Richard?

MR. ROWE: I think history has proven that it was a
good idea.

MR. SPORKIN: What did you think at the time?

MR. ROWE: I wasn't quite sure at the time. You
know, the expertise that the Division of Investment Management
had in their enforcement program, that we had in our
enforcement program and business, corporate finance --

MR. SPORKIN: Right.

MR. ROWE: -- had something to be said for it. But
if you stop and think, each of us had only limited authority.
The Division of Enforcement has authority to refer things criminally, to go into court and prosecute any kind of civil case that the Commission is authorized to prosecute. And we didn't have that broad authority.

Now, there is something to be said for centralizing the enforcement in one division. You get more consistency that way. You get a, you also get a Stan Sporkin and an Irv Pollack heading it up which also has been helpful.

MR. SPORKIN: Well, Ted, what do you think? You were an investment man -- what happened prior to the Division of Enforcement which was created in '72 each of the divisions had their own enforcement. The first part of our panel is going to consider those people that had enforcement programs outside the Division of Enforcement. Of course, Ted, you later came in. So you can now give your view both having your own enforcement program in the Division of Investment Management and then coming to the Division of Enforcement.

MR. ALTMAN: I think it worked out extremely well. I'm not sure if it was designed to work out the way it worked out. It increased the resources available for investment management and better integrated the enforcement programs of the divisions with each other. I think it enhanced the
Division of Enforcement as well as enhanced the investment
company, investment advisor enforcement program.

MR. SPORKIN: Tom, let me ask you this question:

You served in the Division of Trading and Markets
at the time. You were not here I remember when the Division
was formed. What would you have done if the Chairman came to
you and said, Hey, we want to have, we want to consolidate it
in one division? What would you have done?

MR. RAE: Well, as you recall, Stanley, I started,
and probably the only one here who started in the San
Francisco Regional Office. And I served there for three years
from '57 to '60 and then came back to the Division with
President Kennedy's inauguration. No, I would have been for
it. But I think I saw the reformation and the renaissance of
enforcement take place in 1961 and '62.

When I came back to the Commission in 1960 the
Enforcement Division was a pretty sad sack of characters I'm
afraid. It wasn't proactive at all. It was reactive. A lot
of old thinkers. The best talented attorneys wanted to work
in other divisions. Enforcement was thought to be the bottom
of the heap as far as getting a job.

But when Ralph Saul started the revolution and when
he brought Irv Pollack down from the Office of General Counsel
we saw a real renaissance in morale, on new attorneys, on a
different attitude and what have you. And at that time, and I
think in the next six or seven years I mean we just thought we
were the best. And with the proper talent I would have loved
to see a merger of all enforcement activities in one division.

MR. POLLACK: Ted, you ought to comment because you
were in the General Counsel's Office and I think you had an
oversight.

MR. SONDE: Well, I used to serve, I was in the
General Counsel's Office slightly after Irv left and saw the
enforcement more as a service arm for what I did. I mean I
used to handle those cases. And a lot of the cases were
scattered. And, frankly, I don't think that you could have
the program that you did have if the divisions and the
enforcement programs were scattered the way they were.

There wasn't a cohesive program. There wasn't
someone to plan and execute. You had people in four or five
different groups who each had their own constituencies. And I
don't think it would have been nearly as effective if it had
stayed in the disparate form that it was.

MR. SPORKIN: Let me ask, and I will throw this up
to anybody. And probably you, Irv, would know the answer.

How did it happen? I mean this wasn't because -- we all now see what were the consequences were but what was behind it? This is what a historical society is all about. Was it all good motives or were there some not so good motives to create the Division of Enforcement? Some people are thinking that you might have been a little too tough there, Irv, and they were trying to send you to Coeur d'Alene, Idaho or something if they had an office up there.

MR. POLLACK: No, I don't think it was because I was too tough in the enforcement area. I think it was more in the regulatory area.

MR. SPORKIN: Yeah.

MR. POLLACK: I think there was a feeling that perhaps the Enforcement Division was too overpowering in determining the regulatory policies.

MR. SONDE: Irv, I always thought that you were transferred out of Trading and Markets because there was an antitrust concern and they figured that the best way to get you out of the marketplace was to move you over to enforcement so you wouldn't be jockeying with the Antitrust Division about the stock exchange.
MR. POLLACK: Well, that later came in.

MR. SPORKIN: Yeah.

MR. POLLACK: But that's a different story.

MR. SPORKIN: Yeah.

MR. POLLACK: But getting back to what Tom said, I think that Chairman Cary recognized when he came in that there wasn't a viable national enforcement program. And so it was his thought to transfer me with my criminal reference responsibility that I took as assistant general counsel from the General Counsel's Office to the Trading and Exchanges Division, as it was then known, to take up the enforcement program which Ralph Saul had started but was then over in the Special Study.

So that I think the only thing that you lose when you separate, for example, regulation from enforcement was the symbiotic relationship that we had in the division so that when we had enforcement issues or programs that we saw and took action we could at the same time direct the regulatory people to take steps because enforcement, like law, is the last resort.

Your regulatory program and your disclosure programs are really the basic foundation of your statutes.
And Stan and I tried to use the enforcement program not only
to take care of the egregious violators and put them in jail
but also to use the civil and administrative remedy to create
in the marketplace a feeling that it was to your benefit and
the long interests of the success of your institutions to obey
and respect the laws because they would help you do a quality
business that would satisfy your customers, the investors, for
whom all these statutes were enacted.

Stan, you can probably add something on your access
theory --

MR. SPORKIN: Yeah.

MR. POLLACK: -- in terms of that program.

And then, Dave, you can.

MR. SPORKIN: Well, Dave wants to.

Let me ask you this question then you can add what
you want to add.

Special Study was a fantastic effort. Did the
Special Study at all address the subject of enforcement? And
if not, why not?

MR. SILVER: Not directly. I think the Special
Study's impact on enforcement was really the creation of an
cyclopedic store of knowledge and knowledgeable individuals
who then later were able to take that information and put it to use wherever they were in the Commission.

But to go back a step, you asked the question of how did it come about? I think Irv put his finger on it when he said that Chairman Cary was not only the symbol but the potent force behind what had happened. But there is always the old argument do events make the man or does man make the events?

Well, in the early '60s and late '50s was an enormous period of transition in the economy. The markets were becoming national as they never had before. So the regional offices of the Commission were becoming rapidly obsolete whether they knew it or not. And there had to be a change sooner or later to a national program.

I would not be quite as harsh as Tom was on the inhabitants of the Division when he came there. I came in 1960 also. I think the bureau or Office of Enforcement in the Division of Trading and Exchanges did what they were supposed to do. They acted as a service agent for the regional office processing papers.

When Ralph Saul came to the division and he saw problems in the marketplace, etc., I think he also saw, shared
Irv's views who was up, then up in the General Counsel's Office, that enforcement had to achieve a national posture. Ralph was very wise in this respect, he did not take on the established bureaucracy directly, he bypassed it. He set up task forces to handle specific large cases and drew on the resources of the Division to handle those cases.

It was almost a free form period as far as enforcement was concerned because Ralph ran a very non-hierarchical shop. That can be a lot of fun, it can also be a lot of frustration involved. But that's the way Ralph ran the division.

And I think with the revival of the interest in regulation by Bill Cary who very shortly after his arrival wrote the decision in the CaDy, Roberts case and then the activity referrals in the General Counsel's Office and the activities of Ralph bringing large enforcement cases in the Division led to a de facto centralization of enforcement long before it was actually embodied in any Commission order.

MR. SPORKIN: All right, let me ask you this question, folks. In your divisions where you operate how was enforcement policy created? Did it come from the staff or did it come from the Commission? In many agencies that we see
operating in this town that the staff waits until the commission tells them what to do. Was that the case, for example, Corp. Fin., did you and Alan generate the program or did you wait till the Commission told you what to do?

MR. ROWE: No, we didn't, we didn't wait for the Commission to tell us what to do. I remember one time Manny Cohen tell Al Levenson that he didn't want any bad cases. But other than that we really didn't have direction from the Commission.

(Laughter.)

I'll give you an example. For many years the only thing that Corporation Finance could do was bring to a stop order proceeding which is to stop the registration statement from being effective. Wouldn't really have to have real time enforcement because once you started the proceeding the offering couldn't go forward. But we weren't touching '34 Act reports. And then Frank Wheat came out with his study and emphasized the importance of '34 Act reports.

We found a provision in the statute, Section 15 (c) (4), that allowed the Commission to institute administrative proceedings against '34 Act reports. We convinced the Commission we could also go to court and sue to remedy
delinquent filers. And so we concentrated on the '34 Act
whereas in the past it had been only a '33 Act statement.
That came from the staff, not from the Commission.
MR. SPORKIN: And that was something that came
about through your discussions with Alan and the --
MR. ROWE: Right.
MR. SPORKIN: -- people on the staff.
Tom, what about you, would you sit around waiting
or did Irv tell you what to do?
MR. RAE: Well, I think it was a little bit of
both. I think Chairman Cary did have an image that --
MR. SPORKIN: Yeah.
MR. RAE: -- the division's function had to change.
For one thing, the regional offices were so
undermanned they couldn't undertake large investigations that
really used a lot of manpower or multi-regional in aspects.
And for the first time a headquarters office itself organized
a special investigative unit. We took on the boiler rooms in
Washington, D.C. and we took on cases wherever ---
MR. SPORKIN: The boiler rooms in Washington, D.C.?
MR. RAE: Washington at one time was full of human
boiler rooms.

MR. SPORKIN: Oh, my gosh.

MR. RAE: At the same time that Irv was there once we were given the authority and the range and the encouragement I think it came a bit of both, of things we thought should be done, we should be proactive and what have you. So I think it was both a combination of both the staff itself and the Commission. It was just a new atmosphere created, all to the good I must say.

MR. SPORKIN: Ted, was it you or Saul or who?

MR. ALTMAN: As far as I could see when I got there in 1967 it all came from the staff. First of all, the investment companies and investment advisors were nowhere near the force in the industry that they are today.

And to the extent that issues developed, and this is one of the I think usefulness of putting all enforcement in one area, to the extent that issues developed there tended to be overlaps and sometimes different perspectives. For example, the big issues of the day were, they're still around today, whether or not people have conflicts and are properly using brokerage in transactions or other aspects of industry activity.
We had such fundamental issues as how do you value unmarketable securities? Until the late '60s there were no real guidelines around for how a mutual fund or any other organization might value restricted securities. And the scandals would come about with somebody who'd buy a small company stock in a private placement for a couple bucks. The fact of the acquisition would turn that $2 stock into a $20 stock and all of a sudden you have a hero on Wall Street. Those types of conflicts, brokerage, valuation come up in different forms today.

But what happened, those issues all came from the staff, there wasn't any direction I saw coming from the Commission.

MR. SPORKIN: Ted, you probably are the person that was most responsible for this get tough with the professionals, well I guess Irv and you, but was that something that was a creation of the staff or was that something that the Commission called you up one day and said go after those S.O.B.'s in the accounting profession and the legal profession?

MR. SONDE: I think, Stanley, with very few exceptions the initiative throughout the Agency was at the
staff level. There were very few situations where the Commission initiated anything. I think that the initiative with respect to the professionals came from the staff. And I think I only played a small part in that because there was a high level of frustration at the staff both in seeing the accounting professional fall down on its job and the legal profession essentially aiding fraudulent schemes of one sort or another. And --

MR. SPORKIN: Well what was this, this was yesterday; right?

MR. SONDE: No, this was 30 or 40 years ago.

MR. SPORKIN: Are you kidding me? That was 30 or 40. Then what are we talking about today?

MR. SONDE: I remember, Stanley, the frustration of some of us trying to work with a fellow who was just a loveable character named Andy Barr who was the chief accountant and trying to convince Andy to let us bring our first case against a major accounting firm. And then after that there were a series of cases and he was joined -- he was succeeded by Sandy Burton. And Sandy Burton helped us bring I want to say 12 to 15 major
cases against accounting firms. And I remember when Corp. Fin. brought me the National Student Marketing case and we had to decide whether to go after the lawyers or not. And Allen, who is not here but played a major role in that, and Dick, we debated whether or not we could do that. And the big question was could we get it past the Commission?

At that time Bill Casey was the Chairman and he was surrounded by a number of people who had just come from large Wall Street firms and frankly didn't think we could get it past the Commission. To our surprise there was no dissent from the Commission and it sailed through but.

MR. POLLACK: You know, you mentioned Andy Barr, the accountant. The opposition by the chief accountant resulted in the first indictment of accounting personnel in the Continental Vending case. The U.S. Attorney who was presented with the chief accountant's views as to the responsibilities of accountants was shocked and said if that's what the accountants' position is maybe we have to indict them. And they did. And two of them were subsequently convicted.

So the criminal reference program served a great function in centralizing all of the Commission's enforcement
activities because that was the one service that was concentrated initially in the General Counsel's Office and then in my role in the Trading and the Markets Division. And we used that service because of the shortage of our personnel, to get a great hit for the time and effort we put into those cases.

Of course, we then had the U.S. Attorneys' offices around the country, but principally in the Southern District of New York, to bring our enforcement cases. And once they understood how good our cases were, and how important they were and how valuable they were to their offices in increasing their reputation in the white collar crime area, we had a symbiotic relationship where they would open their functions and their people to us, particularly in major cases we could really accomplish something in the national enforcement program that we had.

MR. SPORKIN: David?

MR. SILVER: Irv, did the Commission ever distill from the literally hundreds of enforcement cases involving accountants anything from those cases and feed it back into its regulatory program or did those cases really from the Commission's and the public's point of view all turn on what
you might call a bad guy theory of history that there was one
bad guy and that was really the problem in the picture, not
weakness on the auditing side?

MR. POLLACK: Because of the opposition of the
Chief Accountant's Office to regulation of the accountants
Stanley and I had to bring cases against the accounting firms,
not against the individuals but against the accounting firms
on the theory that that would get their attention and that
they would then do a self-compliance program.

And for a period of time it did work consistent
with the overall philosophy that I mentioned much earlier in
my comments.

MR. SPORKIN: I think what happened was that it was
probably under control at that time. It got out of control
when a Commission decided that you don't sue accounting firms
anymore, you sue bad accountants or you sue bad brokers. And
I think that, that caused a bit of a problem.

But, David, let me ask you as the philosopher here,
what do you think of the balance between where these ideas
ought to generate from? Should it come from a Commission who
is put on by the President with confirmation or should it come
from unelected, unconfirmed staff members? Where should it --
MR. ROWE: You're leading the witness, Stanley.

MR. SPORKIN: Well, I'm asking which way.

MR. SILVER: I'm not sure where he's leading me.

MR. SPORKIN: I think in 14 years I'd learn how to answer a question that wasn't a leading question. I'm saying --

MR. SILVER: Only 14?

MR. SPORKIN: -- I'm saying which, where should it come from? I'm not suggesting it.

MR. SILVER: I've got to tell you a story. Stanley has never been able to lead me when I knew it.

The third or fourth day Stanley was at the Commission he was heard going down the hall yelling he'd uncovered the greatest fraud in the history of the Commission and that an enforcement action and probably a criminal reference should be made immediately. And I wondered how a guy who was hired to study extensions of credit had, well, he discovered this tremendous sin of a mutual fund that had decided to sell its shares on credit cards.

Well, of course I thought this was pretty innovative myself. But of course it technically was a violation. And I remember thinking that this strange guy in
the green eyeshade would never go anywhere. That was 1962, Stanley, '61?

MR. SPORKIN: Oh boy.

MR. SILVER: A question of where regulation should come from.

MR. SPORKIN: Now where should this regulation and enforcement generate? Should it --

MR. SILVER: Well, let me --


MR. SPORKIN: What do I think?

MR. POLLACK: Yeah.

MR. SILVER: He asked me the question, Irv.

MR. SPORKIN: You go ahead.

MR. SILVER: I think it's really a two-way street. And I think too little time has been spent on the issue I tried to raise before that while an enforcement program, Irv, I think can straighten people or a profession out for a while, unless it carries over to a regulatory program its effects are likely to be transitory. And I think in the history of the Commission in looking at a lot of the cases I think that the Commission has lacked a mechanism for distilling from
enforcement cases the lessons for regulations.

I will give you a few quick examples: The Tino DeAngelis Salad Oil case which in its day was a big, big case, big fraud, 1965. That case involved and brought down into bankruptcy the sixth largest firm on the New York Stock Exchange, Ira Haupt and Company. The whole gimmick here was speculation in future contracts on soybean oil.

And the case was resolved. It was a very colorful case. Tino DeAngelis went to jail. Ira Haupt creditors were paid off by the New York Stock Exchange. However, only six or seven years later Al Sommer went over to the White House, something he told me he regretted, but at the behest of the Commission to tell the White House that the SEC had absolutely no interest in the legislation that established the Commodities Futures Trading Commission. Somehow it never percolated back onto the Commission's agenda that futures trading could lead to the bankruptcy of New York Stock Exchange firms.

Georgia Pacific was treated as a big case. What was neglected was that in Georgia Pacific, looking at this from a regulatory standpoint, that in Georgia Pacific the company was using its pension plan to manipulate its own
stock. Yet, at the same time the Commission manifested no particular interest in the congressional hearings that led to the enactment of ERISA.

So that the lessons to be drawn from these cases and legions of others is that there has been no mechanism to create an historical memory or distill the experience of enforcement into a regulatory program.

MR. SONDE: Dave. Dave, I disagree. I think that, I mean I think the essence of the program at its best was not to bring cases that were just bad boy lessons that anyone could separate him or herself from. I think the genius of Stanley and Irv's program was that you went after the institutions and you tried to prove to the institutions that they couldn't simply say it was this one rotten apple in the institution that somehow infected it and made it the job of the institutions.

I have a very different view of the CFTC and the ERISA than you do. I frankly think that we had such, and by "we" I mean the enforcement staff, had such a reputation for tenacity and integrity that the industry was afraid to leave it in the hands of the Commission. And so they went off to something that was supervised by the Agricultural Department
or the Department of Labor rather than to give that power to
the SEC.

And I think if you look at the institutional
reaction when we pushed at the accounting firms and we went
and brought cases after cases and we brought them against law
firms the industry, in this case the accounting industry and
the bar pushed back and pushed back in a political and
institutional way and said get off my back. And there were
responses at the elected level to those kinds of things so
that for a while it did happen. And it's only this year that
we actually see substantive regulation now for the first time.

MR. POLLACK: I think there's part truth to both of
your arguments. The principal reason that the Commission did
not want to take it on was that it viewed the futures business
as one dealing in pork bellies. We did not at that time
appreciate the growth that was going to take place in
securities futures and other financial instruments trading.

With respect to the pension funds I think they felt
that was adequately covered by ERISA. We had a view that we
had a tough time getting our appropriation. We had a small
staff. We felt that if we got into these other areas we would
not get the money that we needed or the personnel that we
needed to do an effective job. So you're right, David, that
they missed the big one.

But take McKesson & Robbins which showed that the
auditing profession missed completely, the physical taking of
inventory. Take Ward LaFrance investigation back in the early
days, that exposed the lack of power in the statute to take on
frauds in the purchase of securities. And that led to Milton
Freedman’s suggestion to adopt a rule under Section 10(b) of
the Exchange Act covering both the purchase and sale of
securities.

My own understanding was there was a basic
reluctance to extend the legislative scope of our activities
into areas that we thought did not directly affect the
securities industry. We weren't that smart to be prescient
about how futures trading was going to grow or how people were
going to use pension funds for piggy banks.

I would think that was the principal reason for the
actions of the Commission at that time.

MR. SPORKIN: Irv, well obviously our whole purpose
was always to have a regulatory response. We did it with 15c-
211. We did it with Taeco. We'll get, we'll get into all
those. But it was never really to leave it in a few cases.
But my recollection, and you fellows tell me if I'm correct, there was always a fear on the Commission about taking enforcement action. They seemed to cringe when Irv or I would come there with a new case, afraid what that would do to the industry, to the markets and whatnot. And, therefore, I think that was one of the reasons that you didn't have a lot of the enforcement activity generated by the Commission.

Now, that's different than I think Corporation Finance because, as you recall, Richard, there used to the word around the Commission was "the Division." There was no other thing but "the Division." And you knew what "the Division" meant. It didn't mean the Division of Enforcement. It meant the Division of Corporation Finance.

MR. ROWE: There was no Division of Enforcement, Stanley, so it couldn't have meant that.

MR. SPORKIN: Well, I mean but there were other divisions. But it was "the Division" was the Division of Corporation Finance. And that's what it seems to me is where the Commission put its emphasis and resources. Am I right or wrong on that?

MR. ROWE: Well, I think you're right, Stanley, for a variety of reasons. The mutual fund industry at that time
was burgeoning but it hadn't anywhere near reached the level
it is at today.

MR. SPORKIN: You had Barney and Manny who were
division directors.

MR. ROWE: We had ex-division directors on the
Commission. But also that was the gateway to financing
companies. And you put a lot emphasis on that. It was the
first statute, it was the first statute, the '33 Act, which is
the disclosure statute. And so our enforcement program as
such was to enforce the principal regulatory statute we had
which was not really a regulatory statute, it's a disclosure
statute, but it was to put teeth into the disclosure.

But we didn't, we didn't need injunctive authority,
for example, because if you start a stop order proceeding the
offering can't go forward but you're not accomplishing
anything unless you bring a case and establish some kind of
standard through that case.

MR. POLLACK: You know, it's also the separation of
enforcement for example from regulatory that had the same
impact. Because we could in the one division immediately
after an enforcement case get the regulatory people to take on
a new rule or a new approach to the problem. So I think that
is also what caused you to think there were deficiencies.

MR. SPORKIN: And now you had --

MR. SILVER: Well also, Stanley, just to say it's clear that in the '50s the Commission for general philosophical reasons had abandoned regulation as an avenue for the markets and in other areas. So that you had a turning away. You never regulated the exchanges or the markets in the '50s.

Second, as Dick implies, in the '50s certainly there was a revival of commerce and industry after the war so all of the action was on financing new companies. And then you had the two towering figures of Manny and Barney even before they were on the Commission who drew the Commission's resources into this area.

MR. POLLACK: In those days the Commission personally reviewed every registration statement.

MR. SILVER: Yeah, yeah.

MR. POLLACK: So they didn't have time to do anything else.

MR. SILVER: It was then Irv and to a degree Ralph Saul, two towering figures in their own, who if you want to personalize the thing started to draw the Commission back into
other areas. But again as I say the whole thing time makes
the man or man makes the time?

MR. SPORKIN: Let me ask you fellows, Ted, let's
see if can, Tom, well, Ted, what was the most important
accomplishment that the division, your division had during
your time, the enforcement accomplishment?

MR. ALTMAN: I think it fits into what you were
just talking about. To spend a minute on the subject we just
finished, I think the reorganization of the Commission in the
'70s, when the current Enforcement Division was formed, was
intended in large part to get enforcement out of policy
making, to let policy making be done by regulators. It had
some political overtones to it. But just put enforcement in
the enforcement area and take it out of policy issues.

But what I observed was that enforcement cases
started leading the way for regulation. I mentioned
previously valuation of securities. The first matters that I
recall with the Commission paying any attention to valuation
of securities were enforcement cases. From those enforcement
cases came a series of releases from the Commission that
created a milieu in which investment companies, and from the
investment companies others who would be faced with valuation
problems would have a guideline to operate.

Similarly, enforcement cases led the way into brokerage abuses. Ultimately that turned into abandonment of the minimum rate structure at the New York Stock Exchange, NASD rules trying to separate distribution of mutual funds from use of brokerage commissions to pay for that. Now there's been a pushback and an ebb and flow in it but what I saw and what I saw get more effective with the creation of the Division of Enforcement is focus on problems through enforcement cases and a regulatory pushback.

Today there are notorious accounting and financial reporting scandals. If there is going to be any kind of effectiveness that comes out of the enforcement cases these matters generate it's not going to be the cases themselves but it's going to be the atmosphere and the procedures and the attention to integrity they encourage and help build into the reporting system.

There are regulatory initiatives coming out right now that require an apparatus where personnel all the way down the line and up to the top companies are accountable for how they put financial and other information into their reports and make it available to the public and how timely they do it.
Although it starts with enforcement, if it's going to be effective, comes out in a regulatory program.

MR. SPORKIN: Tom, I guess I don't have to ask you what was the most important case but why don't you tell us a little about Texas Gulf Sulphur. That was your, you brought that did you not? It was during your time?

MR. RAE: Well, it was generally Ed Jagermann and Tim Callahan, two of the most famous cowboys in the Commission's history, investigators who were from New York, Washington, or wherever they'd choose to be. But there was for the first time in New York -- or Washington at that time we'd organized a market surveillance unit that watched unusual aberrations in the marketplace from day to day. And a gentleman named Peter Fried started to notice in Texas Gulf Sulphur a number of aberrations in the trading, unusual purchasing in that. So we after investigation obviously this company had made a sizeable discovery of ore. I believe it was in Labrador as I recall.

MR. POLLACK: Canada.

MR. RAE: In Canada. And the insiders knowing when that discovery was announced would have a profound effect on
the market value of the stock went out and bought a lot of stock.

MR. POLLACK: Well, that case really also started because the young woman who was watching the Dow Jones tape noticed --

MR. RAE: Ingrid? Ingrid Novak. She worked for Peter Fried, yeah.

MR. POLLACK: Yeah. She noticed that on one day there was an announcement of the greatest mining discovery in Canada in history. Ten days later there was a disclaimer. And the reason the company did that is because it was trying to go around and buy up the surrounding land.

And so, you're right, we sent Jagermann up to Canada. And in two weeks' time he made probably one of the most outstanding insider trading cases in the history of the Commission. And then, of course, once we brought that case we also turned to the regulatory side. That's when we asked for disgorgement for one of the first times.

MR. RAE: Irv, if you recall though we went to the Commission. We were opposed by the Office of the General Counsel in Texas Gulf Sulphur because these were not face to face transactions between these members of management and
members of the investing public, they were done on exchanges. And we asked whether the Commission itself had authority to bring this kind of case. And if you could believe it, these issues were argued for two to three days before --

MR. POLLACK: Chairman Cary had put that to rest in the Cady, Roberts case.

MR. RAE: No. Came up again.

MR. SILVER: Cady, Roberts the argument at the table, Tom and I were chatting about this, the decisive meeting was a four hour Commission meeting with about a dozen staff members taking a dozen different points of view, maybe 13 or 14 different points of view ranging all the way from do nothing to release.

MR. RAE: I think Cady, Roberts more pressed on the existence or non-existence of a prior fiduciary --

MR. SILVER: The street had been trying to distinguish Cady, Roberts on the grounds it involved a broker, a regulated person. And, therefore, the argument was that people have fair warning that this might apply --

MR. RAE: There was no face to face transaction.

MR. SONDE: Part of the irony of Texas Gulf Sulphur
was after the case was brought it was actually tried by the
General Counsel's Office rather than what used to be the
enforcement staff. And ultimately I think a lot of the
effectiveness of the program was lost because the messages
didn't get back the way Ted Altman's describing them to the
regulators. And it ultimately dissipated what I thought
otherwise could have been a significant accomplishment.

MR. ALTMAN: What dissipated?

MR. SONDE: The notion, the notion that there could
be lessons learned by the same staff --

MR. ALTMAN: Right.

MR. SONDE: -- that could carry it back to the
mutual fund industry on valuation or otherwise because the
kids got caught up in the actual trial of the case and got
lost if they were still around to come back and --

MR. SPORKIN: Well, there's no more landmark cases
in the insider trading program than Texas Gulf Sulphur. I
mean that still is the keystone case. And I think, but I
think really the point was, and this happened in a number of
cases, Irv, if you recall, that you had more difficulty
getting the case through the Commission than you do getting it
through the courts.
MR. POLLACK: Well, but eventually my recollection is that the Commission was the one that rejected a compromise in that case and said go to court and sue them.

MR. SPORKIN: Right.

MR. POLLACK: And it may have been Commissioner Owens if I remember correctly who was the strongest up there. He wanted to put them in jail.

MR. SILVER: Yeah. Manny, Manny Cohen was home recovering from his heart attack. Hugh Owens was in the chair. And those of you who remember Hugh he wasn't a man of many words. But he listened to these arguments go on for hours about what to do. And I could notice he was getting red in the face. And finally he burst out saying I think this should be a criminal case. And that sort of decided the issue.

MR. POLLACK: The problem, the big problem we had incidentally was because this was a novel promotion of the law as well as regulation, we had to go around the country debating with people as to the value of insider trading cases. Some economists said we were crazy, there's an efficient market out there and you want these people to do the trading so that there will be something in the market to indicate
there's information that hasn't been given to the market.

    I thought that economic analysis had been put to
rest. But about two months ago I read another economist who
wrote the same thing.

    One of the reasons enforcement is so important in
policy making is what Stanley said. The Commission may be
reluctant to go out and attack what looks to be established
principles in the establishment that are holier than God. And
so unless you get some enforcement activity that shows that
there is some skullduggery, there is some corruption there,
there is some abuse there, it sometimes is very difficult to
push a policy issue.

    I think your Sarbanes legislation is probably the
most dramatic example I can give. If it hadn't been for your
Enron and your WorldCom and your Cendant cases there would
never have been that legislation. Indeed, it started off with
just the auditing legislation. But once you began to get the
other scandals there was no opposition anymore because the
lobbyists were destroyed in their ability to lobby and
Congress, the administration could not defend the existing
structure even with all the best economists in the world.

There was something wrong with the regulatory program that had
to be addressed. And so you get the pendulum swinging all the other way.

And it shows you the importance of what disclosures will do in creating the necessary environment to get your programs enacted.

MR. SONDE: Irv, do you remember that one of the things I remember about a lot of the Commission discussion was the notion that these respectable accounting firms, these respectable law firms, these respectable brokerage firms wouldn't be a party to this fraudulent scheme. And how could we even possibly suggest that these institutions would be parties to this type of activity?

Fortunately that argument has disappeared a bit. But in the current climate --

MR. POLLACK: But if you take the Carter Johnson case the enforcement people were able to show that here was a law firm that knew that this issuer was continually putting out erroneous information and yet did nothing about it except internally. They never tried to do anything other than --

MR. SONDE: But, Irv, you remember the debate. I mean it was only settled by Stanley's efforts in the Sarbanes legislation about what was the lawyer's duty when confronted
with fraudulent activity and how far did you have to go? And
the bar went bananas over whether or not a lawyer had a duty
to do anything.

MR. SPORKIN: Well, went so far as the Commission
or staff, General Counsel put out a letter that said they're
not going to use 2e to discipline lawyers anymore. And that
always bothered me. And by some hook or crooks the new
legislation has that rule is now part of the statute.

But we will let that go to the next discussion.

Now let me ask you this question here: what about,
you know, we always had a problem of, Irv, you and I were
always afraid that we were taking on one of the big boys or
the big girls, or the big boys I guess, that we were afraid
that we were going to be, they were going to run around us to
go up and talk to the Commission. Ex parte was a big problem
then.

What do you know about it? What was the --

MR. POLLACK: Well, what I know about it is I can
tell a quick story. You came to me one day --

MR. SPORKIN: Oh, Jeez.

MR. POLLACK: -- and said that somebody had gone
to the Commission or the chairman and had obtained their
understanding that we would remove a suspension of stock or
something like that.

MR. SPORKIN: Yeah.

MR. POLLACK: And they had a release that they had
typed up that they gave to you. And you said this is
terrible, what are we going to do about it?

I said where's the release? You said you threw it
in the basket. I said get it out of the basket, that's going
to be the first exhibit when we sue them. And that's what we
did and that's how we handled an ex parte communication to the
Commission.

MR. SPORKIN: What did you fellow do though? Did
you have, Richard, did you have problems with people going
around you, going to the Commission, speaking to Manny or
Barney? Well, they wouldn't talk to Barney, would they?

Barney was very --

MR. ROWE: Sure, there were efforts to do that. I
remember in National Student Marketing, Ted probably remembers
this too, that White and Case which was one of the law firms
that was sued in that case put a tremendous amount of pressure
on the Commission or attempted to. The Commission did not
cave to the pressure.
MR. SPORKIN: Was there any rules against it? Did we have any rules then?

MR. SONDE: Yeah, you had the same rule that you have today basically. But I don't think anybody paid attention.

MR. SPORKIN: What is the one we have today?

MR. ROWE: Well, I think the Commissioners had to put something in the file that there was an ex parte communication.

MR. SONDE: But the real concern, Stanley, I thought was more on a political level. I mean we had heard shortly after White and Case was sued in the National Student Marketing case that the Commission, that is the staff who were trying the case, that the Commission was about to withdraw or amend the complaint. And we understood that to be an institutional concern.

But I think the more serious one frankly was the political pressure. I mean I remember when I was still in the General Counsel's Office and Murray Chotiner showed up in my office one day -- those of you that don't remember, Chotiner used to be part of the Republican establishment in an earlier day and era -- and he told me that the chairman had just
instructed the staff as to how to settle the case. And I said
I don't get my instructions that way.
And the next thing we knew we picked up the phone
and we had a grand jury in New York. And if Chotiner hadn't
died he probably would have been indicted.

MR. SILVER: Well, the political thing of course
went all the way back to the time of the Re and Re
investigation and the AMEX. Congressman McCormack, I think
then Democratic leader in the House, later Speaker of the
House, called Ralph Saul and just point blank directed him to
drop the investigation. Ralph didn't and the rest is history.
But these things go all the way, all the way back.

MR. POLLACK: His assistant was indicted in that.

MR. SPORKIN: Well, you had the Goldfine case
there, what was that all about?

MR. POLLACK: Well, that was Sherman Adams and the
White House and their attempt to interfere in a case against
Goldfine based on a failure of his company to file its reports
for numerous years. And the then General Counsel I think, or
he was associate --

MR. SPORKIN: Was it Meeker?

MR. POLLACK: Meeker.
MR. SPORKIN: Yeah.

MR. POLLACK: Had been called to the White House and had some meeting over there that he never told us about. But the result was Mr. Goldfine's indictment.

I think all of this illustrates that the staff had a impeccable reputation that it was a mistake for anybody to try to use either political or congressional pressure because it would merely get them into worse trouble.

Indeed, I remember a former U.S. Attorney in New York asked the Corporation Finance Division for a one week delay in some stop order case, as I recall. And the question was should we give it to him because he went through some congressman rather than asking for it directly. And so the way we resolved that is they were entitled to the one week extension, it didn't mean anything. But I called him up and said the next time you do this you're not only not going to get an extension you're going to be subject to an investigation.

And he said, Gee, Irv, I'm sorry. Somebody told me that was what I should do. I should have been smart enough not to do it.

And I found in the time of my career that
congressmen or their staff if they would call up and you would
just say you should tell your congressman that this is
something that he ought not to be interested in that would end
it. And when it didn't then it would normally lead to
something worse. And so the result was, for example, the
Speaker's assistant gets indicted for attempting to influence
some matter.

I think that's the core. If you're going to run an
enforcement program of any respectability, the people out
there, whether it's the politician or whether it's the
lobbyist or whether it's the law firms or the accountants,
they have to know that influence will not affect how cases are
handled. And I think we made a major effort to do that.
Indeed, when there was any corruption on the part of our staff
that became a priority for us and they wound up being indicted
and convicted in the very limited number of cases which we
had.

MR. SPORKIN: You know, let me ask you this, we're
talking about staff, Commission, but there are human beings
here. Ted, in your division you had a number of interesting
people. Just describe who these people were and what they
did. You had Sid Mendelson working in your division. You had
Sid Mendelson and a number of others. What were the characters, what were they like these characters?

MR. ALTMAN: When I came there Sid Mendelson was what was then called the chief enforcement attorney for the Division of Corporate Regulation. He was responsible for all investment companies, investment advisor regulation. I'm not sure people in trading and markets would agree that he was responsible for investment advisor enforcement but there was a little turf battle that went on there.

He --

MR. SPORKIN: Sol Friedman you had.

MR. ALTMAN: Sol was the head of the division. He would hold meetings. And the division would function. I wasn't high enough at the time to really understand what Sol was doing.

MR. SPORKIN: Yeah.

MR. ALTMAN: I'm not sure even the guys who were real high understood what Sol was doing. But the division ran. I think it, well, from what I could see it was effective.

MR. SPORKIN: Tom, your area?

MR. RAE: We had wonderful, wonderful people. We
had Art Matthews and Chick Marku and, you know, we had a great staff, tough roster.

MR. SPORKIN: Later you had Eddie Jagermann. Go ahead, tell us about it.

MR. RAЕ: I was going to talk about ex parte communications.

MR. SPORKIN: Go right ahead.

MR. RAЕ: Because you were the worst one I experienced at the Commission.

Irv and I, I was associate director and Irv was director, we were going to name an assistant director. You very much wanted that job and I'd made it clear you were certainly the favored son. But I said I shouldn't talk to you because I'm not talking with the other people being considered. And Stanley said okay.

The next morning about 9:00 o'clock he opens my door and he said, by the way, Judy had a baby last night and we named it Thomas Sporkin.

(Laughter.)

He wanted anything for that.

MR. SPORKIN: Oh, my God. Oh, my God.

MR. RAЕ: It's true.
MR. SPORKIN: All right. All right. That's not ex-
parte that's bribery. What do you mean?

(Laughter.)

MR. SILVER: Stanley, Tom referred to Eddie before
as I remember you were cowboys. The notes I made referred to
him and Tim Callahan as knights errant of enforcement. They
roamed the country righting wrongs wherever they would see it.
Others called them loose cannons. So it depends on your
point of view.

The interesting thing is that Tim told me that his
background, I'm not sure where Eddie came from, but Tim had
come over to the Commission at the end of prohibition and that
he said that a lot of the early enforcement people,
investigators at the Commission came from the agencies of
government that chased rum runners around. And that does
remind me of some of the attitudes of some of the early
regional administrators who would raid the offices of
broker/dealers and give them 24 hours to get out of town,
which meant they were simply going to go to some other region.
But that was typical for the time.

MR. SPORKIN: Let me ask you, well, Eddie Jagermann
couldn't exist in today's environment. There's no such as a -
- Eddie Jagermann what I used to love, what Irv did to me one
day he calls me in he says, Stan. Yeah? He says, from now on
you're going to supervise Eddie Jagermann. And I said, Well,
Irv, what happened when you were supervising Eddie Jagermann?
Well, he didn't answer that.

But in any event Stanley starts to do that to me
when I went down to the division. I won't put names on the
table but there were a number of people used to say I should
have supervised, and I couldn't supervise.

Now, but they told me this, can you imagine
supervising Eddie Jagermann now? Could you imagine? Nobody
could supervise. Eddie Jagermann, the story you tell, Irv, is
that one day he had a call from the immigration people they
were holding somebody in custody who claims his name is Eddie
Jagermann and he works for the SEC. He had gone down to
Brazil to bring back some of these ex-patriates who had -- it
was Eddie Gilbert and Burrel, Lowell Burrel, and he was going
to go and bring them back himself. But this, I mean this
fellow was so bigger than life that you would not, you would
absolutely not believe him.

Got a call one day from him and, Yeah. I said,
Eddie, what's up? And he had the biggest broker here in town
he says. Stan, he says, I got a Section 5 case against, what was it, I forget who the biggest broker was in town, but it was awful, I don't think it's any longer in existence, but in any event Sharon K. Ritchie was its compliance officer, used to be with the Commission. In any event he says I got the Section 5. I said Section 5 against that firm? That's impossible. They're a good firm. No.

He says, no, I got it. He says go to the Commission now and get authority and bring the case.

I said, Ed, -- you know, talk about Harvey Pitt wants real time enforcement, this was real time enforcement -- I said, Ed, tell me what do you have? He says, Well, I got a confession. I said, What do you mean you got a confession? And he puts on Sharon K. Ritchie who confesses that they violated Section 5. Not only did they violate but they were going to -- they consented to an injunction on the phone. And I didn't know what the hell to do with it.

I mean I never had anything like this. And of course I wrote it down, took it to the Commission. We filed a case and he made it that way. This is the way this guy operated. The other thing he did which I thought was marvelous is I was in interrogation with him. And he starts
out with this witness and he says to him -- I think you remember this, Irv -- he says, Now, on such and such a day you did so and so. On this day you did that. On such a day you sold the stock. On such and such a day you paid that guy off.

And the guy, the witness turns to his lawyer. He says, They've tapped my lines. He was certain that there was wiretapping going on because Jagermann after two questions could know the exact scheme that was taking place and he knew exactly what was happening and he would tell the guy exactly what the person did. And to this day I remember him telling, the guy turning to his lawyer says they violated the law, they're engaged in the wiretapping. And that was the amazing kind of person.

But those are the kinds of people we have.

Now, we've got a few minutes left. And I want to ask each of you because I think this is very important, what's the legacy, what can we learn from your days at the Commission, each of you, that can help the Commission today in carrying out its program?

Ted, you want to start and we'll get Tom and then we'll.

MR. ALTMAN: I think overall if you can create an
atmosphere of integrity and you could run it through each of
your specific enforcement and regulatory programs it overrides
the specific program. The atmosphere is much more important
than the mechanics.

MR. SPORKIN: Tom, what do you think?

MR. RAE: I agree with what Ted had said. I think
morale, esprit de corps is very important. And this agency
has gotten a lot of criticism lately in some areas because
where were they when all these things happened? I think you
can't let criticism stop you. You do your best job, you've
got a charter now and do it. But I think just the
determination that we had in the early '60s, we were going to
move things around and change things and we did it.

MR. SPORKIN: Tom, in your day you and Irv when you
ran the division, and I must tell you it was the best run
division I've ever been affiliated with, the blend was so
terrific between the two of you, but what you also did which I
think is important is you established a meritocracy in the
division that people got ahead based upon their work effort.
Is that important?

MR. RAE: Yeah.

MR. SPORKIN: How did you do that?
MR. RAE: We were awfully lucky. Like we hired a
gentleman named Art Matthews once who was one of the most
brilliant securities attorneys I've ever met, became
nationally prominent. He came in, he'd been in a bridge
accident, had a six weeks growth and had a metal sticking
through his cheeks. He looked like hell. But during the
interview there was something unique about that individual.
He's the only guy I know that used to read advance sheets in
the cab like Irv does. Nathan Frankow. We just had so many
bright people.

But you're right, didn't make any difference who
you were, your school didn't mean -- I'm University of
Wyoming. Generally I couldn't get an interview at Wall Street
if I tried. But I think I succeeded at the Commission because
they didn't care where I went to law school. It depended on
the work I did and the dedication.

MR. SPORKIN: Ted, what do you think? What's the
legacy, what is it from your work they can learn?

MR. SONDE: Well, I think I agree with what Ted
said and also what Tom said. I mean I think of Art Matthews
went to Albany Law School. Dave Ferber went to Albany Law
School. It was a meritocracy. And I think the greatest thing
that we gave to the agency --

MR. SPORKIN: Or the Chairman. The Chairman went

to --

MR. SONDE: The Chairman went to -- I mean Harvey

used, when Harvey was fresh out of law school, he went to St. John's. And for years he used to be ashamed of that. He used
to feel like he couldn't compete. It was never ashamed of it
in an active sense, he was proud of it but he was always
treated like he was a second class citizen because he hadn't
gone to the right law school.

I think that the real lessons are the morale and

professionalism of the staff, the merits that Tom describes of

people rising on merit based on, frankly, their integrity and

their courage and their ability to do things. And, frankly, I

think we have to push back on the profession, the professional

firms, the accounting firms, the law firms, I think the

institutions that, you know, we're reading about and shocked

that we're reading about this. And for those of us who have

been there we're not shocked by it except that it keeps

happening again and again.

MR. ROWE: I think I'd echo everything that's been

said here. It's really the staff and their courage and
integrity. And I think they have to stand up and sometimes it's tremendous pressure.

I remember, going back to National Student Marketing Ted and I were talking earlier that the young lawyer that was in charge of investigating that case came to me one day and he said the lawyers knew everything that was going on, what am I going to do? I said you're going to continue to investigate the case and then you report back with your recommendation.

And he did it. And we took the case to Ted and we took the case to the Commission and we stood up to two major law firms and a major accounting firm and one of the biggest crooks that I ever ran into. But that's a different story.

MR. SPORKIN: David?

MR. SILVER: I would agree with everything that's said but come back to the slightly earlier theme that I tried to develop and that is the Commission must properly integrate all of the information at its disposal and particularly through enforcement into its regulatory program. There were two brief shining moments when this tried to happen or the attempt was made, one when the Special Study recommended the creation of an office of program planning under Walter Werner.
And the second was when Irv was division director sitting on top of regulation and enforcement.

The Division of Enforcement from the trading division essentially gave rise to a great, great enforcement effort. But I don't think the Commission has ever properly utilized the enforcement results into their regulatory program.

MR. SPORKIN: What happened to the Walter Werner group?

MR. SILVER: Walter Werner group came a cropper because Walter was not -- wonderful man but was not capable of winning any bureaucratic struggles within the Commission because he was perceived by the operating division directors to be treading on their toes. And also his energies became dissipated when the Commission kept on assigning the problems du jour to his group rather than the function they were supposed to take part in.

MR. SPORKIN: Irv, what do you say?

MR. POLLACK: Well, I agree with the comments made. I think that speaking from an enforcement point of view you should be aggressive, of course have absolutely impeccability and integrity but also be fair and reasonable in what you do.
And your programs should focus on those people who give access to the market. I notice today they're called gatekeepers.

The Commission cannot alone do the job. It must instill in the people it regulates out there, and in its self-regulatory organizations, an understanding that good regulation is good for business and that people who engage in self compliance and self discipline will get a benefit from that not only in the quality of their business but in the reaction of the Commission toward the issues and problems that arise in any large organization.

I think the most important thing was the fact that we sued, Stanley, probably every firm out there of size. And yet after we sued them, we had their respect so that they would call in advance and advise us whether they had a perception problem or an actual problem and we would then adjust whatever our remedies were to help them engage in getting compliance from all their people within their operations.

And with the growth that's taken place since the years that we were responsible, it's even more important. This agency with its limited resources, even with the great
increase it may get now under the Sarbanes legislation, cannot
do it alone. It must depend on those people out there to
create the culture that should emanate from the leaders of
your companies, the leaders of the capital markets in
recognizing that they have a responsibility to investors and
to society to do the job correctly.

MR. SPORKIN: Well, folks, that's the end of the
first panel. At exactly 3:30 we're going to start. This is
the warmup. Now we're going to go to the main bout at 3:30.
We'll bring in the heavyweights now.

(Whereupon, at 3:20 Panel One recessed to reconvene
at 3:30 for Panel Two.)
MR. SPORKIN: These are all I guess ex-enforcement people except Alan Rosenblat. He was left over from the other panel and he's here now to join us.

Well, let us, what we have here is we've got Ted Levine and, Ted?

MR. LEVINE: Let me suggest why don't we start by people making any comments that they would like to make in light of the first panel's discussion where they either agree or disagree or have some comments that they'd like to make.

MR. SPORKIN: That's a good idea.

MR. LEVINE: And let's start with Wally Timmeny.

MR. SPORKIN: And, Wally, why don't you introduce yourself so the audience can know who they're talking about.

Wally Timmeny was a former Deputy Director of the Division of Enforcement.

Alan Rosenblat was with the Division of Investment Management.

Ted Sonde was in every division in the Commission, too many to name.

Dave Doherty was also the Associate Director of
Enforcement.

Ben Greenspoon was the head of the trial unit and I guess associate director.

And Ted Levine was an Associate Director of Enforcement during the relevant period.

And, of course, Irv was the first Director.

But go ahead, Wally. I'm sorry, I just wanted to make sure that everybody knows who's here.

MR. TIMMENY: What I wanted to do by way of providing a bridge between this panel and the first panel was to go back to a point that was being made about the formation of the Enforcement Division.

There was a lot of discussion on the first panel about Chairman Cary wanting to have an enforcement program in the Division of Trading and Markets or the Division of Trading and Exchanges. And that was all very true.

But the Division of Enforcement was founded if you will by Chairman Casey. And Chairman Casey's goal in creating the Division of Enforcement was from my perspective to remove Irv Pollack from the regulatory function in the Division of Trading and Markets. One of, you know, history is a matter of perspective but I was a young kid down in the Division of
Investment Management working on a project that Jack Dudley had assigned. He sent us out to do an examination of a fund complex. He was really interested in turnover, the amount of portfolio turnover in the fund. And he sent a guy named Dan Schatz and yours truly out there to look into turnover.

And as we were looking into turnover we stumbled onto something called a give-up basically. It was a matter of the fund assigning its brokerage to a certain broker/dealer who in turn would split a part of that brokerage with another broker/dealer and the second broker/dealer would sort of take instructions from the fund manager as to where to send the money. All of this demonstrating that fixed rates were a farce, that there was a lot of slush in the commission structure. And the money managers and whatnot were taking advantage of it.

When we came back with this information about how we had discovered these give-ups going around to a whole string of firms and ending up in a firm called Dishe Easton in New York we brought that up to Irv and made a point about how the give-ups were working, he took that and I think it was very much the formation for what he did in the fixed rate hearings. And he really worked hard on that and toppled the
whole fixed rate structure in essence.

And as part of that effort when he was undertaking
that effort I think it was Chairman Casey's view that there
was too much of an enforcement flavor in this regulatory
process and that someone else other than Irv Pollack ought to
be setting the regulatory tone with respect to these very
important market issues.

And that's how from my perspective the Enforcement
Division was formed. It was formed not to create a wonderful,
effective enforcement unit, rather it was the law of
unintended consequences in the sense that Irv was pulled out
of regulatory stuff and put in charge of enforcement in the
hope that he'd no longer be involved in the regulatory side.
In fact he was in any event, but even more so I think because
of the cases that we brought and the way we used the cases to
set regulatory policy.

MR. SPORKIN: But Wally, I'm not quarreling with
what may have been an objective but I do think historically
what happened was the Wells Commission that was set up to look
at enforcement. And I think that was a recommendation that
came out of the Wells Committee.

MR. SONDE: Wells came out of the National Student
Marketing case because they were offended that we had sued them without giving them notice.

MR. SPORKIN: Yeah, I know but I think that one of the recommendations out of it was to set up the Enforcement Division, as it was also to give Wells submissions.

MR. SONDE: My perception is the same as Wally's. And Frank --

MR. SPORKIN: Well, what do you think, Irv?

MR. POLLACK: I can tell you what Casey said.

MR. SPORKIN: Yeah.

MR. POLLACK: And it's in the report that Dan Hawke put together.

MR. SPORKIN: Right.

MR. POLLACK: On his last few days of leaving the Commission I had a conversation with him. And we had an excellent relationship the two of us and respected each other and he was very candid. And he said, you know, I worried that when I left the Commission you would undo the regulatory policies that I thought ought to exist.

And I said to him, Well, I understand that, Bill, but you're not going to be able to stop it.

And he then said to me, I now think you're right
but there's no way I can undo the program that we set in place.

MR. SPORKIN: Right.

MR. POLLACK: So that there's no question that he felt that he wanted some other person in the regulatory side.

MR. SPORKIN: All I was saying was I think the division, the concept of the division came out of the Wells Committee.

MR. POLLACK: It may have.

MR. SPORKIN: Does anybody else?

MR. POLLACK: There's always a number of reasons why people will do things.

MR. SPORKIN: What was it? What was it, Ted?

MR. LEVINE: You're right. It was one of the recommendations of the committee.

MR. SPORKIN: Yeah.

MR. LEVINE: But that's okay because --

MR. SPORKIN: Who was on the committee? It was Demmler, Wells.

MR. LEVINE: Wells, Demmler and Manny Cohen.

MR. SPORKIN: Yeah.

MR. LEVINE: But the committee was at the behest of
the Chairman so what did you expect?

    MR. SPORKIN: Well, I think --

    MR. POLLACK: Let's move on though because I think that's pretty much the most we can do in that area.

    MR. LEVINE: Irv, with respect, I have a slightly different perspective and in transition maybe into the later years. And I was at the Commission from in '69 to '83 which would cover this entire period. And two things that struck me as I thought about this program. One is, and I mentioned this at lunch, there were three distinct periods I will call the golden years which I would say was like '70 to '77, then a transitional period which was really Harold Williams' chairmanship, and then there was like a return to deregulation when John Shad came in.

    And two things that I think were really important in that context. One, in the golden years up to when Powell became on the Supreme Court we had an incredible favorable Supreme Court relative to the SEC. Both the 2nd Circuit, you know Timbers was the former general counsel, you had a -- it was a very well received agency. You got whatever you wanted. It was the most expansive view of the securities laws. And that made life easier.
You contrast the Capital Gains where injunction was a mild prophylactic to Enron when it was a drastic remedy and it would reflect the attitudinal change which impacted the enforcement program.

Second of all, the period you just talked about the enforcement program was not well known on Main Street. It was an unknown program of a small agency. But once the Foreign Payment program set in and it put it on the face of the map it changed the attitude of everyone about enforcement. It became more difficult because it became a more intrusive program than it had been which was essentially a regulatory program.

And lastly, and people can disagree with this, it was a simple program with no remedies except for the use of creative relief in the early '70s. And once we started overlaying both a more punitive program which happened when Shad came in and more drastic remedies the courts became a lot less receptive to the agency's mission as one of protecting the public. It became much more difficult.

So we had all these debates about preponderance of evidence against clear and convincing. All the debates of whether you send an injunction or not. We flipped to the administrative remedies.
And what I noticed in looking at this no implied
right of action the courts changed their view of us in a
manner which I think hurt the program but made it more
challenging and more creative. And so I think the program,
and I'll finish on this thing, a remedial program which was
the one that Irv talked about in the earlier panel, and
Stanley, where you try to accomplish and move industry
standards was a lot easier in both the court's and the public
eye to sell than a more punitive program which, by the way, I
think the public perceives the current enforcement program as.
And I think that happens to be today something that people
like but I think is a more difficult program to run in the
long run if it's perceived to be punitive rather than
remedial.

MR. SPORKIN: Let me, well, in line with what you
people are talking about the word that Irv and I came up with
we almost had a bipolar concept here, there were highs and
lows. Is that, David, is that your view of it? Wally, David,
is that your -- do you remember the highs and the lows?

MR. DOHERTY: I remember the highs. I don't
remember any really significant lows. I think that in any
aggressive enforcement program where you're out there on the
cutting edge you're going to get knocked down every now and then and not have a good reception with the courts. But I think overall the program really had a good rising impact to it.

MR. SPORKIN: How about you, Wally, do you remember the highs and the lows?

MR. TIMMENY: I'm hard pressed to think of lows.

MR. SPORKIN: Well, I have one here when they turned off the spigot on going after lawyers. I don't know if you remember, was that, you were here then or?

MR. TIMMENY: Yes. Yes. And I also, I also recall. But we had what I would call budget difficulties, you know, toward the end there, late '70s. There was really an effort to cut back on the budget and so forth.

MR. SPORKIN: Right.

MR. TIMMENY: And there was a period when it was not low, it was sort of funny when I think back on it. When in the early it was 1970 or so when Judge Budge was the chairman and he decreed that we would not take transcripts of testimony, that we would go out with a yellow pad and interview the witnesses. As a matter of fact, we wouldn't even go from the home office, we should call somebody in the
regional office who would do the interview but make sure that
person used a yellow pad and not a transcript because --

MR. DOHERTY: And there actually were some
restrictions on making long distance telephone calls as well.

MR. TIMMENY: But I didn't, I never took that -- I
don't think that stopped us. I mean as a matter of fact we
worked around it. And actually we took that with a sense of
humor.

MR. SPORKIN: But don't you remember, don't you
remember we had a quota system that for every, every major
firm we hit -- I mean every minor firm we had to bring a case
against a major firm?

MR. TIMMENY: Well, no, that, that was a big --

MR. SPORKIN: You don't remember that? Don't you
remember that, Irv? Yeah, you guys remember that. That's
telling tales out of school. But go ahead.

MR. TIMMENY: But that was the big, I think a big
if I can call it transition because when the enforcement
programs were in the various divisions they did bring cases.
But they weren't really tackling the giants in any one
industry. When we put the enforce -- when the enforcement
program was all put together in one division I think the
hallmark of the enforcement program at that point was that we would tackle anything. And that's when we brought the case, we brought the Lockheeds, the Exxons, the Northrups.

MR. SPORKIN: Right. Right.

MR. TIMMENY: Every case was a big case.

MR. SPORKIN: Right.

MR. TIMMENY: And there was no hesitation to bring it.

MR. SPORKIN: Right.

MR. TIMMENY: You know, we'd sit with Stanley at the Commission for days on end arguing about the cases. And Stanley had this I would call an iron behind because he would sit in that chair for hours and hours and hours and argue with the Commission as to why we should bring the case.

But there was never any hesitation to tackle the major, the big cases. And that was different from before.

MR. DOHERTY: And I think that one of the big differences as the home office enforcement program kicked into gear was that we in effect had the equivalent of a reserve squad. Unlike the regional offices who had to handle all the matters in their region and were always stretched thin we had the luxury of looking for problems that were arising.
And what we would try to do is tackle it in a programmatic way and instead of just reacting to each matter that came up on its own as we saw problems arising, we would try to get out ahead of it, we would throw a lot of resources onto it with the objective of getting at it quickly, getting ahead of it, bringing a series of enforcement actions that we would then hope would have a significant impact on the violative conduct. And oftentimes we had a proposed legislative objective as well if we made the right factual record.

MR. SPORKIN: Now, do you recall, folks -- I'm sorry, Ted, did you want to say something?

MR. SONDE: Well, I thought Dave really hit the nail on the head because I remember when I first came from General Counsel's Office to Enforcement which was in '74 and I heard you, Stanley, talk about programs.

MR. SPORKIN: Right.

MR. SONDE: And that was a new word to me. I mean I understood the word but I hadn't heard of it in the years I'd been at the Commission before. And all of a sudden I began to see that someone was looking at the big picture and talking about how do we go after this area and that area. And
you created a series of programs. And, frankly, I was very skeptical at the beginning because I didn't quite see how that was evolving.

And it was that kind of input that I think really created it. And I think, I mean it's exactly what Dave described. And that was the process.

MR. LEVINE: Actually, I would want to, I think the difference between the enforcement program then and the more recent ones was we didn't announce programs like are done now. We clustered a number of cases and then the program developed, for example, insider trading.

Today or in the recent past people announce we're now looking at corporations or we're now looking at broker/dealers. And I think that's a big difference in the way that, and also the difference is the program in the '70s was multi-faceted, you did not know, it wasn't geared to a program. Everyone thought that they were under investigation for everything at every time. And that made everyone more compliant.

MR. SONDE: But I always thought Shad came up with the idea of insider trading as a way to divert us from other things and then stumbled onto the Boeskys and the Mike
Millkens and the others. And I always thought that that was
an attempt to get away from Stanley's notion of program.

MR. SPORKIN: The other thing that they did, as you
recall, what we'll hear, because Ben was in both our division
and General Counsel, but did you fellows feel like I felt, and
Irv, I guess you were on the Commission at the time, that
there was an attempt to stifle the division in the sense that
-- and they did it in certain ways, for example they brought
in the General Counsel Reviewing Group? And what was that all
about, Ben? Did you turn traitor when you went up to the
Office of General Counsel?

MR. GREENSPOON: Of course. I knew who was paying
my salary.

(Laughter.)

MR. ROSENBLAT: I remember that very well. Harvey
instituted a program of reviewing every matter that went to
the Commission, not just enforcement actions --

MR. SPORKIN: Right.

MR. ROSENBLAT: -- but regulatory recommendations
as well, rule proposals. And we assigned, we assigned each
memo to a member of the staff. And then the supervisors would
all gather on Monday morning and we would go over each matter.
Now, I must say that we occasionally had some problems with some of the enforcement matters. But in the main the vast majority of the Division of Enforcement's recommendations had no opposition from the General Counsel's Office. The only thing that sometimes bothered me having come from the Division of Investment Management it sometimes bothered me that if there was something egregious but also an Investment Company Act violation the tendency was, oh, let's not confuse people. That's too hard. It's too technical. Why don't we just drop that?

And very often that was done. And probably was a good idea.

MR. GREENSPOON: Stanley, I would like to -- I did not participate in that because at the time that Harvey was the General Counsel I was working for you. But I would like to say something a propos of some of my observations briefly at the time I came to the Commission because you hired me specifically to be in the trial unit. And the impression that I got at that time was that you were going to, you wanted to, you were going to beef this thing up because you were going to do a lot of trial work and that you were going to go after people who might think that the Commission was a toothless
tiger that did a lot of talking but when it came to having the
chips on the table they were gone. And so you were going to
create this trial unit.

And I'm happy to say, I'm happy to be a part of it, frankly. And I think that in terms of contributions to
whatever you had, whatever the programs were the trial unit
was a necessary adjunct to it because without the trial unit
you would not have been able to implement many of the
programs.

MR. SPORKIN: Ben, I think --

MR. GREENSPoon: That's the perspective that I
have.

MR. SPORKIN: Well, the one part that I would add
to that, amend it, is that we were facing when we got -- when
we started to bring our programs, and as Wally said and Dave
said, hit the big people then they of course brought in the
big lawyers. They brought in the Edward Bennett Williams and
Milt Goulds. And we were there trying cases with people maybe
a year or two out of law school and we were getting our clock
cleaned in the courthouse.

And so, therefore, Irv and I discussed this and I
said we got to have a trial unit. And Irv's going to finish
this and he's going to tell you about we almost -- and I said
let me try and do it, Irv. And Irv said you're going to have
a revolution. And we did have a revolution because he thought
that would hurt the people that were there and their spirit.
And we did. We had a very tough time. But I think we, we
overcame it and it worked out pretty well.

Do you remember those days, Irv?

MR. TIMMENY: I always thought it was very
important to remember that when Edward Bennett Williams came
in he owned the Redskins at the time.

MR. SPORKIN: Oh, Jesus.

MR. TIMMENY: Stanley would often begin the meeting
and maybe take up about 98 percent of the meeting by telling
him who should play quarterback. I remember Stanley often
saying that maybe there should be an improvement on guard. Ed
Williams got a lot of advice from Stanley about football.

MR. GREENSPOON: Listen. When I had the Gulf and
Western case with Ed Williams he by that time owned the
Orioles. And I, I gave him a lot of good trades none of which
he did because they won the pennant and the World Series
without my help. But those were the kind of lawyers we were
running up against, guys that owned baseball teams.
MR. DOHERTY: I don't think this panel should complete its discussion of trails without talking about Bob Laprade’s work.

MR. SPORKIN: Oh, Jeez.

MR. DOHERTY: He was the --

MR. SPORKIN: The trial unit.

MR. DOHERTY: -- beginning and end of the trial unit.

Stanley may have forgotten this but I started in the Washington Regional Office and then I thought I would transfer to headquarters. So Stanley said that I should come over because he had this concept of creating a trial unit, and Bob Laprade and I could start the trial unit. And it went on from there. Bob was there from the beginning and he tried cases everywhere.

MR. TIMMENY: Well, let me go back for a second to the review process in the General Counsel’s Office. Again this is a matter of perspective. But my perspective at the time was that I believe Harold Williams was the chairman, and Chairman Williams wanted to hear another voice other than the Enforcement Division voice on all enforcement matters. And it was at his initiative that this review process I think was set
up in the General Counsel's Office.

And if you take that back even another step I think for a number of years through the '70s whenever a chairman came in the Senator Harrison Williams who was over on the Senate side and as the head of our oversight committee would extract a blood oath.

MR. SPORKIN: No, no, it was Proxmire.

MR. TIMMENY: No, Proxmire was on the --

MR. SPORKIN: Yes, Proxmire used to get the promise.

MR. TIMMENY: Well, I thought --

MR. SPORKIN: Williams wanted to see me go. No, no, you've got that wrong.

MR. TIMMENY: Harrison Williams -- No, I don't have it wrong. Let me finish. Times have not changed, guys.

(Laughter.)

MR. TIMMENY: What had happened was that Williams would extract a promise from the chairman, from the candidate for chairman --

MR. SPORKIN: To fire me.

MR. TIMMENY: -- that he would control Stanley.

MR. SPORKIN: Oh, I see. That's right. That's
right.

MR. TIMMENY: Proxmire would extract the promise that Stanley would be given a free hand. So it's back to the process.

MR. SPORKIN: I would not be fired.

MR. LEVINE: Can I add one element to this?

MR. SPORKIN: Let's do. I forgot where you were going.

MR. LEVINE: Getting away from Stanley being hired or fired. And that is if you looked at the relationship of enforcement or regulation in the middle '70s up to the point when Harold Williams came in, which will tie into this review process, enforcement played an inordinate role in the formulation of regulations. And I mention four things: beneficial ownership definitions, tender offer regulations, going private and perks, all of which were regulatory initiatives in the '70s I believe, most of which took place in the middle '70s. And I see people in the audience.

And the enforcement not only because of the cases it brought but also it had a strong voice in the direction of the regulatory initiatives coming out of that which were negotiated both at the Commission and at the staff level and
enforcement played an exceedingly strong role.

One of the things that Harold Williams wanted and
the Commission wanted was to take enforcement back out of
having such a large influence in that scheme. And one of the
ways of doing it, particularly when the new general counsel
came in after Harvey left in '78, was to have the general
counsel play that role rather than enforcement. And I think
that impacted not only the review enforcement cases but also a
lesser role.

And I think today probably the enforcement group
plays a lot different role relative to a regulatory scheme
than it did when we were there at that time.

MR. SPORKIN: Yeah, General Pitt, I mean Chairman
Pitt was always supportive. He would bring me in to try some
of the cases. So I don't think -- I think it came after,
sometime after him which we won't finger where it went.

But in any event and it wasn't the general counsel,
it was the fact that the Commission was trying to rein us in
because they found that, and it wasn't Harold Williams, it
actually started before him that they got themselves so
involved in these programs and in criticism and they felt that
they had no control.
Let's take the payments program for example. The payments program we started down in the division finding that after the -- during the Watergate hearings you had companies testifying about making illegal campaign contributions. And as we usually did I would call in, I called in Bob Ryan. And Bob, I said, Bob, go over to Gulf Oil and find out how they made that illegal campaign contribution. And of course he came back and told me that they had the secret slush fund of $10 million and they were making all kinds of contributions. And of course we started to bring cases.

Well, the Commission didn't know where we were going. And so long as they didn't -- and you didn't know where we were going but we were going. And we would --

PANELIST: The Commission didn't want to go there.

MR. SPORKIN: Yeah, they didn't want us to go there.

So we went on and on and on until -- and, you know, you talk about today's atmosphere with corruption, well, we had corruption that was beyond belief. There were 650 companies were making these illicit contributions. And they were not only campaign contributions but they were bribes being paid in overseas matters. And then when people would
say, well, that's overseas, you know you don't have to worry
about it, we found that they were bribing milk producers here
in the United States. We found all kinds of perks. You talk
about perks now.

But we got a little too far when they started, when
someone brought a case against Playboy, Hefner because he was
expensing the towels of his mansion I thought even we were
going a little too far that they had to disclose what he was
doing in the confines of his bedroom and why he needed so many
towels. But and --

MR. SONDE: Who investigated that?

MR. SPORKIN: Oh, well, the point was that one day
Alan Levenson and I were down in, we were down in Texas and we
got a call that we had to come home right away. Ray Garrett
was the chairman then. And Ray said, look, Stan and Alan, --
I'm glad Alan took some of the blame, why I don't know,
because he's just a good guy -- but the chairman said, you two
guys, and I guess Irv was involved too, he said you guys go
out and fix this problem, I don't want to see, you know, too
many more cases.

And that showed the creativity and that's how you
got the volunteer program which seems to have been dusted off
now and is now being used a little bit by -- but not now, it can't be used now because of the atmosphere, there's no volunteers anymore.

MR. SONDE: It's called cooperation.

MR. SPORKIN: You get shot at now if you volunteer.

But that started the volunteer program where Alan had a, you know, Alan and I sat down and to Alan's great credit we came up with this program and it worked. And so we got, what did we bring, we brought, we got about 650 volunteers that came in under that program.

MR. POLLACK: Well, the importance of all the things you're discussing show how important it was for enforcement to really be the moving force. For despite the Commission's reluctance to go for legislation your intimate relationship with Senator Proxmire resulted in the Foreign Corrupt Practices Act.

MR. SPORKIN: That's right.

MR. POLLACK: So you see that, and I mentioned in the earlier panel, you see it again today in the Sarbanes legislation. The enforcement or the lack of enforcement is an impetus toward getting policy moving in the proper direction.

I'd like to get back to what you mentioned though,
Ted, on the pendulum swinging as it did so that the courts did not support the agency, you're absolutely right, in the manner that it had before. What I'm wondering about was it because you think it was punitive actions alone or was it just a change in the composition in the Supreme Court and in the lower courts that caused a more conservative attitude with respect to enforcement and regulation? Because you had, as I look back on it, a movement toward deregulation, the same thing that happened in the late '80s and '90s and then followed up with the scandals and corruption that we've had recently.

So it may have been a combination of the both.

MR. SPORKIN: Well but, Irv, I think it was more of a very conservative court getting in. Reading --

MR. LEVINE: Douglas left and Powell joined in '75. And that, from the Supreme Court level that changed a lot. Timbers left. Timbers was a big supporter of the Commission on the 2nd Circuit. Kaufman, the chief judge, was a big supporter and used to write about the Commission as a special.

MR. SPORKIN: Well, we never hurt, we never got hurt too bad in the 2nd Circuit, yeah.

MR. SONDE: I don't think you can overlook the fact
that when I came to the Commission it was right after Kennedy
had been assassinated. A number of us came in the '60s. And
we were taught, I was taught that you ought to come and help
the government, that you ought to work -- it was a matter of
pride to make a contribution to the government.

Over the period of time that Ted's talking about
the attitude towards the government, it doesn't matter whether
you talk about Republicans or Democrats, civil servants were
the bashing boys that it was no longer -- they were lazy, they
were corrupt, there was fraud, there was this, there was that.
There was never anything here like that but in fact that was
the tone.

And I think part of that started to influence the
way in which the Commission was received in the courts and I
think also it was the change. But I think that that, that had
a real impact on the way in which we were perceived in the
government for 20 years whether you go back to Carter, who ran
against it, or Nixon. You know, the great thing I think,
Stanley, that happened is Hamer Budge was here before Nixon
took office so that he could at least in some way protect,
frankly, --

MR. SPORKIN: Right.
MR. SONDE: -- you and Irv and some of us from the political process that I think would have --

MR. SPORKIN: Well, you know, one thing that we ought to talk about for a minute is, this was raised by Dave Silver in the last, the one thing that Irv and I insisted upon was that we didn't want this to be an ad hoc, case by case program, and that we did want to see permanent change which was brought about by certain things that were done.

And let's look at some of these things that we believe the enforcement program was responsible for. Talk about corporate governance, David. We are now going through a new phase of corporate governance. But don't you think that the Foreign Corrupt Practices Act brought the federal government into corporate governance at an early stage?

MR. DOHERTY: I don't think there's any question about it. Certainly in our programmatic approach we always try not only to catch the people that are engaged in the violations but long term we want to try to get the problem fixed. And what we saw in those cases was a lack of integrity in the books and records of the firm and that bore on the integrity of the management of the firm. And sometimes it bore on the quality of the earnings.
And so with the background we put together in those cases we were able to get the Foreign Corrupt Practices Act passed and that really did get you right into the corporate governance area. There were mandates to maintain internal procedures and controls and the like.

MR. SPORKIN: Irv and Ted, takeover legislation, is my recollection correct that it was we in the division that were instrumental in bringing that about? Because as I recall we had tremendous opposition among the lawyers in the bar. Do you have any recollection on that, Ted?

MR. LEVINE: Well, I think you're right but --

MR. SPORKIN: The 5 percent rule and if you make an offer you've got to treat everybody fairly?

MR. LEVINE: Regulation 14(d) is what you're referring to came out of the --


MR. LEVINE: Yeah, the Williams Act. But that also and also the SEC v. Beckton Dickinson and the Wellman case in defining tender offer, the defining beneficial owner which was a much more expansive definition than ever before all came out of abuse in the enforcement program by and large. I mean and it was joined with the other divisions and that led to either
legislation or regulatory reactions.

So I think there was a great role. And enforcement was used as the laboratory to identify problems which the regulatory scheme would then use to fix. That's the way I remember the system. And we used to use that, the approach.

Going private is another perfect example. I mean when Al gave that speech, I think it was in '74, nonetheless we had all these problems with going private cases and that led to the growing private regulatory scheme, I think it was 13e-3, whatever it is I don't remember now. So I think you had all that.

But the interesting thing on governance is that the Commission itself was schizophrenic.

MR. SPORKIN: Right.

MR. LEVINE: In 1978 the Commission, as I recall, proposed that you had to have internal controls discussed in your annual reports. And there were 900 letters received in opposition and it was dropped, if you recall that.

And also there were speeches about what we give today as given, there were speeches by commissioners saying we shouldn't disclose the difference between independent and non-independent directors because it could put a negative
connotation on non-independent directors. So I think it wasn't a picture where we had a unanimous support at the Commission for governance change. It was so we used cases and I think the public persuasion to get it done. That's my recollection.

MR. SPORKIN: Irv, what is your recollection on that?

MR. POLLACK: Well, I think it's right. It reaffirms what the first panel and this panel have been saying that when you go up against the establishment and you try to change basic operations that have been going on purportedly among your reputable industry, as people will assert, it's very difficult to do that.

So how to you counteract that? You counteract that by making investigations and showing that the practices are not as honorable as they are described. And I think that you again see that in its most aggressive form in the recent period that we've had.

Once the disclosures and the enforcement show tremendous corruption in terms of your so-called reputable industry, even if it is only a small part of it, creates an atmosphere out there that is terribly detrimental to the
confidence that people put in the marketplace. Remember, for
many years our enforcement, regulatory and disclosure program
was considered the best in the world. People all over the
world were envying it. Nobody could attack our rules on
financial statements because purportedly the rest of the world
did not have as good an oversight on accounting things.

And just in a few years with a few scandals that
were notorious in their extent and in the corruption and in
the misconduct by CEOs and in the auditing and the
professional areas and by the investment analysts and in the
self-regulatory schemes that were there, for example, the
NASD's failure to control the over-the-counter market, all of
those things resulted in what never would have happened
before. And now it's the legislation that has swung the
pendulum the other way.

Back to something that you said. It was a
reluctance to do things because everybody said you're
interfering with states' rights, you're interfering with the
states' settling of the ethical standards or the regulatory
standards for directors. Now you can read the results of the
Enron disaster in an article by the Vice Chancellor in
Delaware who writes a very comprehensive and excellent
analysis saying that the states now have to reexamine the
respect that they previously gave to so-called independent
directors. Now that's a revolutionary statement. And he goes
through and shows in example after example how just saying
that you rely on independent directors may have been a
misapplication because people are not that independent as
events have shown.

MR. SPORKIN: Ted, let me, let me, I'm going to
give you a question then you can ask it.

Let me point out one of the things we did was not
only did we assist the Commission but we created certain
nomenclature. Greenmail, Ted, I always thought that that came
about during a meeting that either Wally and you and I or Ed
Hurley had and that we came up with the name greenmail. Is
that your recollection?

MR. LEVINE: Yes, it is my recollection because how
can I disagree with you. But I don't remember who was there.

MR. SPORKIN: Yeah, that's in the dictionary now.

Wally, do you remember that at all? No?

MR. LEVINE: The one thing I wanted to -- because
it did happen that way -- but the one thing I want to say
about Irv, Irv, in the Foreign Corrupt Practices Act before
the Commission drove legislation. Here in the Sarbanes-Oxley
I don't think the Commission drove that. I think Congress
drove it and forced the Commission now to adopt a lot.

And I think that's a big difference where the
determination of legislation where we were doing this was
really coming from the staff of the Commission actually or the
Commission. Now it's being foisted upon the SEC more. And if
you see these timetables that in six months they've got to
adopt this, four months this, whether they liked it or not I
can't tell but I didn't think they controlled the destiny of
the agency quite frankly in that regulatory battle.

MR. SPORKIN: Ted.

PANELIST: They did not.

MR. SPORKIN: On the Corrupt Practices Act it was
Congress coming to us. The Commission didn't want to do
anything on that.

MR. LEVINE: Well, no, the staff did.

MR. SPORKIN: What? Oh, the staff wanted to do
something. Yeah, the staff. Of course we wrote it. It was
Sandy Burton that did the controls and the internal controls
and I did the --

MR. LEVINE: Right.
MR. SPORKIN: -- books and records. But the Commission was against that. They said we didn't need it, and we did need it.

But let's go on a little bit.

MR. TIMMENY: One point before you go on, Stanley. On this corporate governance issue there's no question we were involved in a payments program, we were interested in corporate governance. If you remember the key word we used over and over again was stewardship. We went to the Commission on each and every case and said the issue here is the stewardship of the offices and directors for the use of the assets of the shareholders. And we came at that over and over again.

And it was our goal to try to do something about corporate governance. Now, we had to use the tools that were available to us which would be the disclosure mechanism because obviously the SEC did not regulate the activities of officers and directors as would the states. So but the direction throughout that program was corporate governance. We were definitely aimed at trying to see to it that the persons who were charged with stewardship for the assets of the company disclosed how they were using those assets. We
were more focused on that than we were on the so-called corruption, if you will.

The fact that the prince of someplace got a payment or the premier of Japan was involved in something was only part of our focus. Our key focus was how was the money being managed by, you know, on behalf of the shareholders by the officers and directors? So it was definitely a corporate governance direction and it definitely came from the Division of Enforcement.

MR. SPORKIN: Let me ask you on insider trading, Ted, and I see Paul Gonson is in the room, misappropriate theory how did that come about? Was that, that was mostly general counsel or was that? How did that come about, Paul, do you remember?

MR. GONSON: Well, Ted will remember as well too it was that --

MR. SPORKIN: You want to come up and just get on the microphone here. You're going to have trouble.

MR. TIMMENY: You're a guest speaker.

MR. SPORKIN: Because I think that's one of the most important, that was one of the most important legal accomplishments that we've ever had in the insider trading,
MR. GONSON: I'm just now paraphrasing Ted Levine who is here of course to speak for himself, but I think it was the combination back in the late '60s and the '70s of the rise in takeovers and also the rise in options. So you were having situations where one company is going to take over another company and by use of options you could leverage enormously. So put down a little bit of money you could really make a huge bundle if you had inside information on a takeover.

And the theory that was in existence then which was officers and directors owed a duty to their own shareholders not to disadvantage them didn't apply. You were now talking about securities not of your own company but securities of another company, the company about to be taken over. So there developed another theory which was a theory, first it was called, you may recall some of us used the phrase market access or market information as distinguished from inside information. The Supreme Court rejected that distinction and said no, there's just one theory.

But eventually the theory developed that if you were defrauding the source of the information as distinguished from people in the market that also is a violation. That's
how this developed.

MR. SPORKIN: Well, did that come about was it your creation as General Counsel? Or I guess what you're saying it came out of one of our cases that we developed but you had to go and defend it in the Court of Appeals and we had to come up with -- Does anybody know where the first wording of the misappropriation theory?

MR. LEVINE: It came out of Chiarella. It came out of Chiarella. After the Supreme Court decision in Chiarella the program was a great loss. And we did two things, we adopted 14a-3, a rule to deal with tender offers, insider trading tender offers, and we started developing or looking for an alternative theory. The exact case I don't remember but there were a series of cases in that time period where we had to come up with alternative theories.

You were gone.

MR. SPORKIN: Oh, no, misappropriation was, that was during my time.

MR. ROSENBLAT: Well, of course we lost, as most people here know we lost the Chiarella case.

MR. LEVINE: Right.

MR. ROSENBLAT: Although the Chief Justice pointed
out that it was because we had raised it too late. And he
said that if we had brought that up earlier then it might
succeed.

MR. GONSON: I have a little umbrage at the word
"we."

MR. ROSENBLAT: "We" being the Commission.

MR. GONSON: The SEC brought a civil action against
Mr. Chierella and he settled that action and he paid over some
$30,000 in trading profits. There was an Assistant U.S.
Attorney in the Southern District of New York who read about
the settlement in the newspaper and without advising I
believe, I don't think Stanley knew about this until it was up
in the Court of Appeals, without advising the SEC went ahead
and indicted Mr. Chiarella for the action that the SEC had
settled. And he was convicted and the 2nd Circuit affirmed
the conviction.

And then it went up to the Supreme Court. So the
theory on which the case had been presented by the Assistant
U.S. Attorney to the jury was a theory which wasn't a
misappropriation theory it was sort of the classical theory
but it didn't fit. And because it didn't fit the Supreme
Court said that Mr. Chiarella owed no duty to the people in
the market, he was a stranger to them. He wasn't a fiduciary of theirs, he wasn't an officer and director of the companies he was trading in.

And then the government said, well, what about this other theory, the misappropriation theory? And the Supreme Court said that in criminal law as distinguished from civil law you can only affirm a criminal conviction based on the theory presented to the jury otherwise it would be sort of like a directed verdict which you can't have in criminal law.

If this had been a civil case then the Supreme Court could have considered that alternative theory because the rule on appeals in civil cases is you can affirm on any basis, even the basis not relied on in the district court.

So the peculiarity of this is the criminal case meant the court couldn't reach it. But there were in four opinions of the justices some indication that this might be an acceptable theory in the next case. And it was really the Enforcement Division that was starting to twist those things.

MR. SPORKIN: Thanks, Paul.

MR. ROSENBLAT: Unfortunately even though the Commission was not the moving force behind the case, the Commission ended up – I think Ralph Ferrara argued the case on
behalf of the Commission and pressed the misappropriation
theory at that point.

MR. SPORKIN: Well, let's talk about another rule, Rule 15c2-11. Does anybody have some, any idea what happened there?

PANELIST: Who knows what it is basically?

MR. SPORKIN: You don't know 15c2-11?

MR. POLLACK: Well, I can tell you what it is.

MR. SPORKIN: Yeah. Irv, do you remember what happened there?

MR. POLLACK: We tried to put the responsibility in the over-the-counter market for market makers to examine the financials of a company before they started trading in its stock so that there would be some control. And that arose again because we had brought enforcement cases.

MR. SPORKIN: Right.

MR. POLLACK: And the desire was not to have to bring enforcement cases. If they were trading all that stuff that didn't amount to anything and just trading numbers, to put some responsibility on them. So that was the start back then.

MR. LEVINE: Well, the problem though, the problem
we encountered is that people went into the market and started
making markets in these cases and they weren't responsible,
there was no way of breaking a cycle.

   MR. SPORKIN: Right. Right.

   MR. LEVINE: And I think we used the suspension
actually and the 15c2-11 as a device to get at these two
problems which put a burden on the market maker and also to
break the cycle.

   MR. SPORKIN: What happened was that the market
makers were trading what they call by the numbers. They
didn't want to know what the company was about. They had no
idea.

   We found stocks starting at a few pennies a share
going up to $100 a share. And we asked the market maker,
didn't know that the place had no business, had nothing they
were doing, it was a complete shell. And so we put in the
concept of know your security.

   In other words, one of the great concepts in the
securities area is the "know your" rules. You've got to know
your customer and you've got to know your security and many,
and other things like that. And that was a concept and it's
still again one of the really important rules.
These all came about as a result of enforcement work. Not only did we bring the case but we worked with the regulatory divisions in developing the remedy.

Let's talk about strategies. One of the things that the public doesn't see is they do not see that when the division was taking action that there was some thought that went into those actions that they were taking.

PANELIST: For good reasons.

MR. SPORKIN: Well, the access theory, it's now got a new name called gatekeeper. David, what do you know about access theory?

MR. DOHERTY: Well, the access theory is really one that's designed to give you the most bang for your enforcement buck. The theory is that when people want to get to the market they can't get to the market without going through certain access points or securing the necessary advice of other professionals.

So if an issuer who has got an improper agenda wants to get to the public market he needs professionals. He needs financial services or he needs a broker/dealer or an underwriter. He needs a lawyer and he needs an accountant. And so the theory is that since these people are either the
gatekeepers or the points of access to the market these are
the places that we would look at very carefully and hold this
category of professional to a very high level of
accountability for their conduct and thereby control the flow
into the marketplace.

MR. SPORKIN: In other words there was a program
designed to go after the entities that were responsible for
the people getting access to the marketplace and that they
could control their people. And as a result of that, Irv,
that's what you developed in connection with the whole
compliance system where every broker/dealer has to have a
compliance program.

MR. POLLACK: That's correct.

MR. LEVINE: Stanley, it didn't develop the way you
just described it though.

MR. SPORKIN: It didn't?

MR. LEVINE: No. It developed because you used to
ask the question "Why did this happen?" And really the way
access theory developed was when you asked the question "Why
did it happen?" you looked beyond simply the entity, let's say
the corporation, and you started saying, well, how could this
possibly happen? I remember the conversation. Where were the
accountants?

MR. SPORKIN: That came a little later.

MR. POLLACK: That was a little later though.

Stanley did this on purpose really.

MR. LEVINE: Well, I don't know which agency was that? Was this the SEC or some other?

MR. SONDE: No, but, Ted, I think it came out in part because Stanley was asking as Irv was how could this happen in a place like Merrill Lynch or First Boston? Where was the compliance program? Where was the supervisors? Where were -- where was the system in place that would have and should have prevented this? And in effect saying, and I think that's where the legislation came out that basically said you have to have, and if you want credit you have to have in effect a compliance program for the brokerage industry at least that said it's in place. And once you had that in place you in effect had a defense to an enforcement action.

I don't think it's ever been successfully utilized but it was that that basically put the compliance program in place.

MR. SPORKIN: Well, actually, Irv, I think it was.

We didn't have the manpower to police everybody in my
recollection.

MR. POLLACK: Right.

MR. SPORKIN: So we had --

MR. POLLACK: Just the Commission.

MR. SPORKIN: We had to conscript the private sector. And we wanted to in effect transfer the obligation from the Commission to the private sector. We couldn't bring every case. But in the cases we brought we made sure that those firms would take steps to prevent it from happening again. And that's why you had the whole compliance system. Is that right?

MR. POLLACK: Right.

MR. SPORKIN: Well, you don't want to say anything else?

MR. DOHERTY: Stanley, we really used the same concept in a lot of cases, including the foreign payment cases, where we would do enough investigation to have a basic case but know that we had not done the full investigation that was required. So we would then bring a quick enforcement action and as part of the resolution we would require that the defendant issuer, public company, appoint a special counsel who would be required to undertake, in effect continue the
investigation internally with a certain degree of independence so that he or she could do their job and then they would prepare a report and submit it to the Commission.

So that was another example of putting responsibility off onto the subject of investigation and freeing up our resources to do other things.

MR. POLLACK: The basic theory of the securities laws going all the way back was that the Commission was supposed to be in the background with the shotgun, as Justice Douglas said, and that the industry was supposed to through self-regulation and self discipline in the firms or compliance, as we used to call it, make the system work properly.

Today the growth in the industry is exponentially greater than it was during our time. This Commission with all the resources it has is not going to be able to go out and put a supervisor or a policeman in every institution or every business out there that contributes to the marketplace or operates in the marketplace. And so the programs have to be designed to impose on the people who are out there having the direct access to the markets or the direct access to investors to have programs in place that protect the investors and
society from mispractices. And, therefore, you are now
getting an increasing regulatory imposition on what companies
have to do.

For example, take just the certification process
that now is in place under the Sarbanes Act. It’s not just
the certification of the documents, it's a whole litany of
things that have to be done in order to give a basis for the
CEO or the chief financial officer to put his name on a
certification that the financials are correct, regardless of
GAAP, and that they fairly disclose the company’s finances and
its operations and disclosures.

So the whole emphasis is again to get the
disclosures out there, as Justice Brandeis said, the greatest
thing you can have in any field is sunlight on what's going
on. And you see it in some of the disclosures that are coming
out in the present context. For example, look at the impact
that the disclosure on the pension given to one of the leading
members of the management community which showed how bad these
things were getting in terms of the greed that was reflected
there. The disclosure did more than any enforcement case you
could bring.

And I think that our background shows that
enforcement is important in sort of being the backstop and
getting people's attention that they must obey these things
and it's in their self interest to do it otherwise there will
be serious consequences that will have personal consequences
as well as economic impact.

MR. SPORKIN: What would you say, Wally, that you
would advise a broker/dealer client about knowing -- Well, let
me go two steps. If you were now at the Commission how would
you take this compliance concept that we started to the next
step? How should the current Commission be using that
concept? Do you think they've exhausted the use of it by now?

MR. TIMMENY: No, not at all.

But let me go back to my understanding of what
we're talking about in terms of access theory and so forth. I
saw the access theory as a tactic that was employed within a
strategy. The strategy, for example, we had an interest in
municipal bond cases. Dave and I had, you remember at one
time I had come to Irv and Stanley and I said, you know, I
read something in the "Wall Street Journal" about these
municipal securities dealers in the south who are all called
"bond daddies" and they're selling these defunct or these
bankrupt issues, bond issues and charging whopping mark-ups.
I said, you know, this would be something interesting to look at.

So they said, yeah, go look at it. So I went down and I visited a couple of these places and I came back and I said, you know, these shops are really boiler rooms. I'm sure you guys had seen them but I had never seen it. I had ready about what boiler rooms are like but I had never seen them. These shops are boiler rooms, we should do something about it.

So they said go to it. So Dave and I went to work on that and we, eventually we brought I would say maybe ten cases against companies and we enjoined 50 individuals and whatnot. And our strategy was to bring enough cases to demonstrate that there was a need for regulation in the municipal securities area.

Now, as part of that strategy we brought the cases and then brought that to the attention of the Hill and market reg. and worked out this legislative program. But within the strategy there was a tactic, we also wanted to stamp out the problem as we were going along, and the tactic was to use the access theory. We first went after the dealers who were charging the excessive mark-ups because they provided access. Then we moved over to the underwriters. And then
finally we moved over to the lawyers. And that's where their screaming really started because we were trying to bring the lawyers in and have them responsible for the disclosure in the offering statements and for the opinions that they were rendering that these bond deals were real deals as opposed to shams.

So I saw, I saw the access theory if you will where you put pressure on professionals as a tactic. The overall strategy was to get legislation to regulate the area. But within that strategy we had the access theory and we went, you know, we put the pressure on the various access points.

MR. DOHERTY: To give you just a little color and background on that, when we went down to actually litigate some of these cases and we went down to file our action, in federal court in Memphis against some of these bond daddies and as is customary I stopped into the U.S. Attorney's Office as a courtesy to let him read the complaint before I filed it. And the complaint really was a classic boiler room, outrageous, just classic, with mark-ups over contemporaneous costs in these bonds in the vicinity of 25, 50 and 100 percent.

And he read the complaint and he said to me, "Well,
I don't think you've got much of a case. You know I don't see
that this is much different than a used car salesman. You
sell your product for what you can get, so I don’t think
you're going to have much luck in there.”

Fortunately the judge saw it differently. We tried
the case and won. We did end up going to Congress because at
that point dealers who dealt exclusively in municipal bonds
were exempt from registration as broker/dealers with the SEC.
And we'd never dealt with municipal bond dealers before. And
so we ended up getting legislation. The exemption was removed
and the problem went away.

MR. SPORKIN: Now, one thing, Irv, that we, that
our problem was that we didn't have all the nice toys that the
current enforcement group has. We couldn't go and get bans on
officers, directors. We had trouble, you know, getting fines
or getting money back. Ted, did that stop us? What did we do
about it? Did we just say, ah, we can't do it so we'll go
home?

MR. DOHERTY: I have a case right here where we did
it in 1975.

MR. SPORKIN: Tell me about the case, David.

MR. DOHERTY: It was SEC v. Techniculture, Inc.
MR. SPORKIN: And what happened.

MR. DOHERTY: This was a shell promoter who violated over and over --

MR. SPORKIN: Right.

MR. DOHERTY: -- again and we went out and we got an injunction against him. And the judge also enjoined him from assuming a position as or continuing as an officer or director of any public company unless he said so.

MR. SPORKIN: What do you think of that? Did you know about that?

MR. LEVINE: In the interest of full disclosure -- Stanley, the use of, to me the greatest tool in the modern enforcement arsenal was the consent without which the program would either back when we were there or today could not function as a practical matter. And the consent gave you the ability and actually as part of that or to develop different ways of getting remedies that you could not specifically look to the statute to get.

And if you settled 80 percent of your cases at all times or 90 percent, which we did, you were able to meld the theories of what we wanted to do and put it into practice in the consent because once you had the violation and you were
trying to be remedial the consent gave you that, whether it's
back in Vesco or Parvin Dorman or Westgate it just gave you
the -- it was only the creative mind that could come up with
the relief, whether it was disgorgement or things like that.

So I, to me the greatest thing we had was the
consent and still is today.

MR. GREENSPOON: Well, that's of course what made
the remaining 10 percent of the cases that we had to try so
awful.

(Laughter)

MR. LEVINE: Well, you only tried the bad cases.

MR. GREENSPOON: Well, of course we had to try the
bad cases.

I think what we did our won/lost record was sort of
like the Orioles today.

MR. POLLACK: What we did was we used the power of
the courts to extend the statutory grants of power. First
cases we did we said the court can appoint a receiver. SEC
may not have that authority but the court could do it.

The next step was once you had a good case the
court could order restitution. And we emphasized that once
the SEC was in there and got a decree it wasn't the SEC's
decree anymore it was the court's decree. And so you, Your
Honor, can use the decree not only to stop these scoundrels
but to give the money back.

    MR. SPORKIN: And disgorgement the same way.
    MR. POLLACK: Disgorgement the same way. And so
that approach was used. It gets back to what you said much
earlier in this program though, we had a reception in the
courts that I think in the late '80s and certainly in the '90s
reversed itself and the courts did not understand or at least
appreciate the program's policy and the policy of the statute
to protect the public. And so they looked at this more like
it was some negligence case out there where two private
parties were performing.

    I think you've got to improve the culture out there
so that the people who really control the industry, the
leaders of the industry create that culture for the people
below them.

    MR. SPORKIN: So we were able to accomplish many of
the things that the Commission today is able to accomplish
although they are doing it with specific authority. We did it
through the consent decree. Is that your point, Ted?

    MR. LEVINE: Yeah. Yes, except for two things
which I actually think hurt the program.

MR. SPORKIN: What's that?

MR. LEVINE: One is civil penalty.

MR. SPORKIN: Yeah.

MR. LEVINE: Because you get disclosure but we didn't have the civil penalty.

MR. SPORKIN: Right. Right.

MR. LEVINE: And two, I think the C and D can be used, can be helpful but cannot be. In other words, I think it goes both ways.

MR. SPORKIN: We used that do, didn't we? Weren't there C and D's?

MR. LEVINE: No.

MR. SPORKIN: Oh, sure we did.

PANELIST: The 21a report.

MR. LEVINE: Used 15c-4.

MR. SPORKIN: No, we brought out C and D's, I'm telling you. We had by consent. By consent.

MR. LEVINE: No, no, even with the consent we didn't.

MR. SPORKIN: Yes, we did. We did it with consent.

MR. LEVINE: I learned never to disagree with the
MR. SPORKIN: I'm telling you.

MR. LEVINE: That's one thing we never did. Art Matthews recommended it.

MR. SPORKIN: Dan, did we do it?

MR. HAWKE: What you would say is you would say that the firm had to agree not to violate the securities laws again. But it didn't say cease and desist.

MR. SPORKIN: Well, I'll have to --

MR. POLLACK: What the person in the audience Dan Hawke said was that they would include something like that in the decree but didn't say cease and desist.

MR. SPORKIN: I remember, I remember we used the words if they would cease and desist. But I'll have to go and look at it.

MR. TIMMENY: But you know not all of the progress that we made in terms of ancillary relief was through consent. For example, there was a case that we brought years ago where we litigated a very important corporate governance issue. That was Canadian Javelin.

If you remember Canadian Javelin was a Canadian company and we said that their filings with the SEC were
improper, inadequate and so forth. And we actually litigated it in the Southern District of New York a provision where we requested the court to appoint a special review person and a person who would specially prepare the filings of the company, require the board of Canadian Javelin to instruct this special review person to do this work and to have this power.

And that was actually litigated and opposed. And I argued the motion in front of Judge McMahon. Mike Eisenberg if you recall was the person that we had appointed for that work. And the other side opposed it vigorously and the judge ordered it. And there was an example of corporate governance in the very early stages in the litigated context not in the consent context where we imposed something that was very important in terms of the filing process and it stood.

MR. DOHERTY: Actually the *Techniculture* case was litigated as well and that guy ended up in jail for contempt.

MR. LEVINE: There's a quote from *Management Dynamics* which was a 2nd Circuit case litigated, which I think makes Irv's point, if I could read it where Judge Kaufman I believe said, "The SEC appears not as an ordinary litigant but as a statutory guardian charged with safeguarding the public interest enforcing the security laws and, therefore, we would
treat their request for ancillary relief differently than the private litigant."

And I think that sums up really the attitude, and this is 1975, of the 2nd Circuit and makes the point as to how we were able to get the relief that someone else might not get.

MR. SPORKIN: Yeah. One of the things that the Commission has recently done which I think it's one of the greatest acts of enforcement that I can recall was the recertification. I mean that was brilliant. It defused this whole situation. It made current, it brought everything current. And it was done through use of the provision 21a.

Now, to go back to the old days we used to use that 21a provision in many different ways. Ted, do you want to start out with it?

MR. LEVINE: Yeah. Well, 21a was used actually on the governance side as a way of identifying conduct that we found in cases where the Commission wanted to speak to a general practice but not bring an enforcement matter.

Sterling Homex I believe was the first case which was a case that we brought which we sued the company, we sued the underwriters, we sued the accountants. And we used 21a to
address the conduct of the directors, they should have known about the fraudulent financials in connection with the offering.

But it then went on in a number of cases, Gould, National Student Marketing, there were a whole series of 21a reports culminating I believe with a 21a report written by then Commissioner Loomis, if I'm not mistaken, where there was actually some discussion, and someone can correct me, where Phil Loomis as Commissioner discussed the use of 21a because there was some opposition at the Commission and he actually wrote as part of it. And maybe -- everyone is looking, maybe I dreamt this, but I think there was some contention maybe around Roberta Karmel, it may have been around the time period where there was some question about it.

But the Commission used it to develop, to go to Irv's point essentially: here's practices we found which are not appropriate and this is a way of improving conduct. And the Commission used it. And I guess more recently in the Salomon Brothers scandal it was used once again in terms of discussing the responsibilities of supervisors.

MR. SPORKIN: The legal issue was that Commissioner Karmel raised was can you -- is it fair to have a 21a report
that's non-consensual. And the point there was she thought that the party who was going to get a blast of bad publicity ought to have the right to make a response. Now -- or have a right to say why it should be issued.

But we used, as I recall we were pretty creative, we used 21a quite a bit, did we not?

MR. LEVINE: Yes.

MR. SPORKIN: And, Irv, you used it in the market structure, did you not in hearings?

MR. POLLACK: Yep.

MR. TIMMENY: 21a was an outlet that was very important for the program. If you remember the New York City report was a 21a report.

MR. SPORKIN: Right.

MR. TIMMENY: And we brought that because there was, because as you recall there were serious political overtones at the time that affected the investigation. We were conducting an investigation into the sale of municipal securities by New York City. And there were a lot of practices that had gone on that we came up with during the investigation that were serious and had to be treated.

But there was also a concern that if we brought an
enforcement action it would appear to be directed at the Democratic administration of the City of New York which was then in power. So a 21a report was utilized at that point just to put out a report without any, without a lot of editorial comment about who did right and who did wrong and just lay it out there with all the problems as a mechanism, again, to try to advance reform through legislation. It was all part of this whole municipal bond effort that we had taken.

And I thought it was important because I don't know that we would ever have gotten an enforcement case through with respect to the actions of the various politicians and so forth at the time, whereas the 21a report gave us a vehicle to get out there and discuss these issues in great detail and to alert the public to the issues and bring about a cure.

MR. SONDE: I think, Stan, what Wally is talking about, and I don't remember a National Student Marketing report headed as such. But I remember with Peat Marwick we did a report which was essentially a 2e proceeding where we got out the practices and tried to reform things by using the speaking vehicle. And 21a was used for that.

I don't remember though, Stanley, I mean I think we
have to give the current Commission credit for using 21a in
which they did in a way which frankly, at least to my memory,
I don't think has ever been done before.

MR. SPORKIN: Oh, I think it's terrific.

MR. SONDE: And that is to require affirmatively
the CEOs and the CFOs to certify, something that I don't think
had ever been done before.

MR. SPORKIN: No, but I think that 21a is one of
the most incredible provisions that any agency can have. I
think there are still other avenues that you can use 21a.

MR. SONDE: Oh, absolutely. But I don't think it
had been used --

MR. SPORKIN: And I'm not going to tell it now
because I want to use it for some of my clients. But that's
all right. I will surprise them.

But the point was that 21a has so many
ramifications, and again to the great credit of the -- sure
they can compel someone to make a statement. And before the
certificate concept if you recall the Commission went to
WorldCom and said we want a report in 24 hours. And what
happened? The 21a says you can do it. It give the Commission
powers to investigate. It gives the Commission powers to
require statements. It gives the Commission powers to publish information. Terrific.

But one of the things what I think that reflects back to our time and to the present Commission is the fact of scrubbing through those provisions to utilize every crumb that you can utilize. And we had to use them because we didn't have all the nice toys.

But let me give you another area. And, Irv, you probably remember this as well as anybody, the concept of public versus private proceedings. Now, no enforcer in his or her right mind would recommend a private proceeding. But we did and we did it in a way that advanced the program. Do you remember that in the back office cases?

MR. POLLACK: Yes. What happened there was industry lost control of its records. And it was a national disaster. And the remedy that we wanted was to get them back in control of their records. So, for example, in the one case, the Lehman case that I recall, Stanley called them in and said you better go out there and hire 50 accountants and get your books and records in shape otherwise we're going to suspend you.

MR. LEVINE: They failed, they couldn't reconcile
so they failed to deliver because of the volume. And a number
of firms got out of sync.

MR. POLLACK: It was a circular thing because it
affected every firm in the industry.

MR. DOHERTY: Everyone was running around the
street at the end of the day delivering stock certificates.

MR. POLLACK: Yeah.

MR. DOHERTY: But the average daily volume on the
New York Stock Exchange in 1970 was about 10 or 11 million
shares a day.

MR. POLLACK: Well, the reason they lost control in
those days they didn't have a centralized clearing settling
system. Everybody settled with every other broker/dealer he
dealt with on the street. The only one that had a program, a
centralized one, was the Pacific Coast Stock Exchange. We
induced the other exchanges to adopt the Pacific Coast Stock
Exchange system to get control over their own settlements.
And that was the ultimate solution.

But we had to solve the problem in the interim.

And in the interim we used the process that I just described.

You know, if you look back to the history of the
Commission from its start the statute only provided for a stop
order proceeding in the registration process. But the staff back then were ingenious and they instituted what was called the letter of comment that exists today, in which the staff would send a comment to the filer and say here's what we think is wrong in your filing and we will give you an opportunity to correct it.

And I think using that kind of approach and imagination whether it's 21(a) or it's 15c2-11 or 10b-5 or some other provision was what made the Commission's programs so effective over the years.

MR. SPORKIN: On that public versus private, Irv, what happened was when we brought -- we had to actually rack our brains. I recall this. And because we had to do something to the firm but we couldn't disturb the whole industry. I mean we were afraid of the public, there'd be a run on the bank and that would have been catastrophic.

And so in those days very few cases were brought against New York Stock Exchange member firms. And so what we did we used to literally look at the law. And it occurred to me it says that the proceedings I think it says may be public, which indicates it may be private. And the theory was, Irv and I, or the strategy was that we said what we'll do is we
need something to shake Lehman Brothers up and so we'll institute a proceeding. But what we will do is we will make it a private proceeding so the public won't know right away what's going on.

Hopefully we can force them by use of the proceeding to come in and settle it. And that way they would go out and hire 150 accountants, I think it was, Irv, because they didn't have people, bring it into compliance. And then what we would do is then we would announce the proceeding and announce the sanction which was a nothing sanction because they had done everything.

And so we used that, we must have used that in at least 10 to 15 cases against major brokerage firms. But that's what you have to do with these statutes. The statutes, that was one of the reasons in the Sarbanes-Oxley bill there are so many provisions in that law that can be used. Now, yeah, it's good to have, obviously it's important that the Congress, you know, gave a message. But you look at 12a under the '34 Act and the Commission has full authority over accountants, over what statement, what the financial statements should contain. Forget about GAAP, they don't have to rely on GAAP, they can set up their own system. It's there
in the law. It's never been used.

Now, I'm not being critical that the Commission hasn't used it but what I'm saying is it's never been used to deal with this. There are a lot of other provisions in the law.

For example, we used to use, and you fellows can join in on this, but suspensions of trading as an effective tool until we got hit a little bit on that one. But --

(Laughter.)

MR. SONDE: Stanley, I read you were going to private proceedings in Sarbanes-Oxley because all the proceedings that this new accounting board has been after.

MR. SPORKIN: Yeah, but that was not, that was not ours.

MR. LEVINE: Stanley, we used to bring successive suspensions for maybe a year or two.

MR. SPORKIN: Call them rollovers, yeah.

MR. DOHERTY: But, Stanley, I think there is a really important point in what you and Irv were just saying about the paperwork crisis papers and that is that we tried to fix the problem.

MR. SPORKIN: Right.
MR. DOHERTY: There was a large group of firms on the street that were just flat out out of compliance. Their books and records were out of whack, their net capital was out of ratio and a lot of other things were wrong. They had lost control.

The easiest thing would have been for us to rush in and enjoin or sue half a dozen New York Stock Exchange member firms. But that wouldn't have fixed the problem. The overriding objective of virtually all the enforcement actions that were brought was not just to sue the person but to fix the problem. And that's what was done there.

MR. SPORKIN: And David now runs the program for the New York Stock Exchange so I'm sure he's using many of these strategies.

But go back to suspension of trading. I don't -- And stop order proceedings. I noticed that the Commission now is using stop order proceedings which they hadn't used before.

Now, why would you use a stop order proceeding when you can go get an injunction? It depends upon the facts and circumstances. It may well be that a stop order might be more appropriate than going into a court.

Suspension of trading, up until recently the
Commission hadn't use that too much. You think it's too
little used or you think it's used just right? Ted, what do
you think on suspensions?

MR. LEVINE: I think the Commission's using it now

MR. SPORKIN: More than they did before.

MR. LEVINE: -- more than they did. And they're
using it as an appropriate way of stopping. The internet and
some of these other scams has created a lot of securities that
are floating out there that are worthless. And I think the
10-day suspension is a good way of quickly protecting the
public where you have that going on. And I think it can be
used that way.

And also the notice provisions.

MR. SPORKIN: Yeah. And I think that's the way we
ended up using it.

Let me, all right we've got a few minutes left, let
us go and ask these questions and everybody just join in.

What can the Commission get today from the way enforcement was
carried on in your day? Is there anything --

MR. SONDE: Stanley, you skip the most important
part which is really a dedication to Irv.
MR. SPORKIN: What's that?

MR. SONDE: Which is the ethical -- and you, frankly -- the ethical lessons that come out of the enforcement program. And you can't do that with this fellow sitting next you.

MR. SPORKIN: No. The only reason, the only reason I skipped that was because we discussed it in the last hour about the ethical, you know, the problems we had. I think Irv gave a speech to that. Yeah.

Want to give another one on ethical problems?

MR. POLLACK: Well, I think it's important not only for the Commission, it's important, it's more important for the Commission --

MR. SONDE: But the point, the point is that the two of you were --

MR. POLLACK: -- when it is attempting to impose on its regulatory people a high standard of conduct it has to be above that in its own performance.

MR. SONDE: Yeah, but I think you're overlooking the contribution, Irv, that you made when you were appointed to the Commission in the face of a scandal in order to restore the integrity of the Commission to the staff so that the staff
would believe in the integrity of the process after Brad Cook had to resign as chairman. And, you know, I just say that not as something -- I think it's important to understand the process because we've been through those periods.

Stanley himself was involved in a situation where he was basically told by the White House to kill a case and, you know, act appropriately.

MR. SPORKIN: I wasn't told but they told us through an intermediary. Is that Vesco?

MR. SONDE: Yeah.

MR. SPORKIN: Yeah. But go ahead, Irv. I mean we lived through these, we all lived through it.

MR. SONDE: But isn't that part of the history then?

MR. SPORKIN: Well, Irv, I mean, Wally, you lived through one. What was this, what was your scandal? What was that that you lived through?

PANELIST: He hung out on the speakerphone.

MR. SPORKIN: Was that your case?

MR. LEVINE: Stanley, could I come back to one of the things that you identified early which I think is relevant both today and was relevant when we did it is the fairness of
an enforcement program.

MR. SPORKIN: You think that that's what the staff can learn today? I think that's a good point you're making.

MR. LEVINE: Yes, I think it is.

MR. SPORKIN: That's Irv's hallmark.

MR. LEVINE: And it is, actually one of the things in preparing for this, looking back one of the things that I undertook in my efforts I found was the redbook, the Guide to Taking Testimony.

As you recall, in the late '60s there was no structure within the division of what the rights are. And we created in fairness to the respondents a whole what was called the redbook, I think it may still be the redbook, I don't know today, where we put out a whole guide to our staff on how to comport itself relative to conducting investigations. And I think this notion of being fair given the power we had was one of the hallmarks of what I think Irv and Stanley promoted.

And I think a lesson could be learned today or it should continue.

MR. SPORKIN: In other words, here, this is the time that really the staff and the Commission has to use restraint more than ever before because they've been given all
this new power and there's nothing that's going to stop them.

They've got powers now that in this culture it's going to go through and the staff does have to and the Commission does have to use restraint.

MR. GREENSPOON: I'd like to add one thing to that. And I think it's something that permeated the years that I was in enforcement and that is the use of a very uncommon attribute called common sense. And I have found that many, many times a zealous attitude overwhelms common sense.

And I think that one of the greatest things that the Enforcement Division at least demonstrated to me was the use of common sense. I had been in the private practice of law for 20 years before I came here, as you may recall. And I found that by and large for the most part common sense was exercised in great abundance. And I think that one of the greatest legacies that any of us who were there have passed on is the use of common sense in investigations and in treatment of people, conducting the investigation, fitting right in with Ted's views on the so-called redbook.

MR. TIMMENY: We do distinctions in the Enforcement Division. When we were recommending a case to the Commission, cases to the Commission we were not on autopilot. In other
words we did not say that every person who had a brush with
the problem had to be dumped into a case. We tried to bring
cases that made a lot of sense because the people who were
truly involved were included in the cases.

And we tried to bring common sense, as Ben said, to
the range of charges that we brought. That was important
because we had to have credibility. We had to have
credibility with the Commission, we had to have credibility
with the bar when we brought these cases. So there was
definitely an effort to approach a case in a way something
other than automatically trying to bring every single charge
that you could bring or every single person that you could
bring. And that was highlighted especially in the foreign
payments.

MR. DOHERTY: I would just extend that a little
bit. I think that the staff has to feel that they can be
aggressive. There's a lot of work to do and they must feel
that they will be supported if they are aggressive. There
must be balance with fairness. And it's much easier, frankly,
to be aggressive than it is to be fair. It takes a certain
amount of experience and security in yourself or your managers
to make a decision not to sue someone just because it doesn't
need to be done. It's easier and safer to be aggressive.

MR. SONDE: I remember, Stanley, exactly what Dave's talking about. I remember a case that was not a case. You had brought a case against a number of the institutions and senior people and then there was a young kid who had gone to the finest schools who had basically learned to launder money. And instead of suing this kid you brought him into your office and you had a face to face conversation with him but basically you told him we were going to give a pass. And you told him all of the blessings he had gotten and brought a non-case.

And to me that was one of the finest things.

MR. SPORKIN: The day I arrived as a lawyer I felt good about it, Irv, at the time that I had recommended the suit of a lawyer who was a compliance director in a firm and that when I looked at the facts I learned that he had told his boss not to do something. And we had an aggressive staff that insisted that we name him because he didn't do enough, he had to quit. And I thought that was asking too much to require him to quite a job.

So after the Commission had authorized the action and we were about to bring it I told Irv I was going to go
back to the Commission and say that my conscience would not permit me to sue this person. Irv said go ahead. And we dropped that person from the lawsuit.

That's when you know that you've arrived when you can do something in that vein.

But let me say this, and I guess we've got about a second left, what I am so ecstatic about in this day and age is that first of all there is tremendous support out there for the Commission and the enforcement program. The Enforcement Division has good people -- and I'm being self-serving because my son's there -- but I'm talking about right up to the top and the Cutlers and the Thomsons and all the rest of the people all the way down.

Now, but even more important, not more important but as important is you've got a fantastic Commission now. And I am so proud to see this Commission with the intellect that's there now, it is absolutely incredible. And there ought to be some really great things happening.

I think you saw what happened with the certification how, you know, nobody gives the Chairman of the Commission any credit for what they do but look how that defused this terrible situation out there. You don't hear
people talking anymore about, you know, companies folding or
whatnot. I mean before that day in August everybody thought
the whole, the whole community was going to -- the whole
financial community was collapsing. And that thing really
calmed things. It was a brilliant act. And you're going to
see a lot more brilliant from this Commission. But I do think
what our panel said, Irv, that fairness is still a very
important thing.

What do you think to conclude?

MR. POLLACK: Well, when somebody used to come and
ask whether something is legal to do we used to say that's not
the question you ask. The question isn't is it legal to do
it, but is it fair to do it? That's the standard that you
want to apply. And I think that is why the Enforcement
Division can be aggressive in its programs and yet accomplish
respect from the people it sues. By attempting to get them to
improve their operations it can make it easier for them to
make a good profit in their business and at the same time
serve their customers and society well.

MR. SPORKIN: Well listen, I thank you people that
have stayed with us, you're terrific that have been here. And
we hope you've enjoyed it. I hope enjoyed it as much as I've
enjoyed it.

MR. POLLACK: And the panelists.

MR. SPORKIN: All the panelists, I told them they're going to see the A material here.

MR. POLLACK: Thank you very much.

MR. SPORKIN: Thank you.

(Whereupon, at 5:00 p.m., the Roundtable was concluded.)