Securities and Exchange Commission Historical Society
Interview with Donald Strauber
Conducted on January 26, 2011, by Kenneth Durr

KD: Interview with Donald Strauber, January 26th, 2011, in New York City by Kenneth Durr. Let's start with your educational background. Where did you go to college?

DS: I went to the University of Pennsylvania, class of 1957.

KD: And planned to go into law school?

DS: I did always plan to go to law school. I went to the Harvard Law School, and I graduated in 1960.

KD: Did you specialize in corporate law when you were in law school?

DS: No. When I was in law school, I was persuaded that I wanted to be a trust and estates lawyer [laughter]. In part, it was because my property instructor first year was A. James Casner, who was a remarkably dynamic individual and who made the field seem incredibly fascinating. I also thought it was a field that one could really master and you could learn all aspects of substantive law and tax law and really make a contribution to your clients. It was fascinating. So I took Professor Casner's third year seminar in advanced estate planning, and I was all set to do that but I never did.

KD: Why not?

DS: After law school, I had a clerkship. I clerked for Judge William Herlands in the federal court of New York, the Southern District, and found that utterly fascinating and realized at that point I wanted to become a litigator, and that's what I did.

KD: Tell me a little bit about Judge Herlands' court. He had been around in New York since the thirties or twenties?

DS: Well, probably not that far back. Judge Herlands was a wonderful individual. He had been in private practice, and then he had been commissioner of investigation in New York, I think that was the title, and that's how he became known. And from there, he got a position on the U.S. District court. He was a wonderful man to work for. He was very intelligent, very straight, very interested only in doing the right thing, knowing what the law was, finding the facts. He gave his clerks a fair amount of responsibility, while at the same time he was deeply involved in each of the cases. And it was a wonderful year working for him.

KD: Now did you go into Cravath after that?

DS: Not directly. I had a stopover in the United States Coast Guard, six months. I was in the Reserves. It was six months activity duty training. And from there, I went to Cravath.

KD: Now that must've been a pretty good draw as far as a law firm. Cravath would've been the great white shoe firm at that time.

DS: Cravath was, and is, a wonderful law firm. After clerking for Judge Herlands, the recruiting system was far different than it is today. My understanding of the system was when you were looking for a job, you literally arrived at a law firm, and you went to the reception desk with your resume and said that you were there looking for employment. They would have a system that went into effect immediately; you'd be interviewed and everything else. And that's what I did. I went to Cravath, I went to two or three other very good New York law firms. I liked them all.

But it was obvious to me that, in choosing a law firm, Cravath was the only place to go. Part of it was Cravath's general reputation, and part of it was that I was, in a sense, so unsophisticated that I arrived on this interview on a day when the office was closed. It was like Lincoln's Birthday or Washington's Birthday in the days when firms were closed then. Of course, Cravath didn't really close but it was sort of closed. I was immediately sent to see Tom Barr and Judge Bromley and Sam Butler. And Barr and Bromley – both of whom have now passed – were two of the all-time best litigators in the country and very engaging people.

And Sam Butler, who was a corporate lawyer, is one of the most personable individuals you'll ever meet. And so I spent an afternoon talking to the three of them. By the time I was done, I really didn't want to go anywhere else. And, fortunately, within a day or

two, I had an offer from them. So it was a very informal procedure then and worked out very well.

KD: Not the kind of thing that would be allowed to happen these days.

DS: I don't think it would happen today. The system is so bureaucratized, it's hard to imagine somebody arriving at the desk and handing a resume to a receptionist.

KD: How long was it after that that you came upon Mr. Coates?

DS: Having been in the Coast Guard, I arrived at Cravath in the winter of 1962. *Texas Gulf Sulphur* case would have started several years after that. I'm not sure precisely. I would think a year or two after that.

KD: So you had some time. Did you work on other securities cases or corporate law cases during this period?

DS: I did. Again, Cravath does not and did not require litigators to specialize beyond being a litigator. I think that eventually changed there with the IBM litigation where people were put on those cases and had to work just on those cases. By the time I got there, you were in the litigation department, but you were a generalist. And so I did a variety of things. I remember one group of cases I had that I enjoyed very much were a group of cases for

Westinghouse Electric, which made dry cleaning machines which people could buy and set up stores.

It was a coin-op dry cleaning store. Someone who was a doctor or a dentist or whatever who wanted another business could set up a store. The idea was that these stores were to be unattended. So the owner would go there in the evening and he would take the coins out of the machine, and maybe you would leave some more soap, or sweep the floors or whatever. And that had worked well for years with washing machines, but the dry cleaning machine is a much more sophisticated piece of equipment, and so that business did not work well. Machines had problems, they broke down. A woman would bring her husband's suits, his good blue suit, and put it in the machine, put the coins in. The machine wouldn't stop. It would go all day, and she got hysterical. [Laughter].

KD: So you were cleaning up this mess.

DS: It was not a good experience. So we had a lot of cases, and I did a lot of work on those. Those are the ones I remember the most for giving me experience where I was allowed, on my own, to write briefs, to at least argue motions and whatever in the court.

KD: So then was Texas Gulf the first securities-related case that you took?

DS: I don't recall. It's the first case that I remember. That doesn't mean it's the first one that I had.

KD: Were you aware of this case? Was it ongoing before you got involved with Coates?

DS: No. All of the defendants in the case were served at about the same time. Francis Coates selected Cravath and Albert Connelly, senior litigation lawyer, to work on it. Mr. Connelly asked me to work with him, so that would've been at the very outset of the case.

KD: Okay. Give me a little background on the case, and the fact that you were concerned with the press conference and after, and there was another group concerned with the previous events.

DS: The case arose out of a wonderful discovery of copper and other minerals by the Texas Gulf Sulphur Company in Canada. The charges in the case were several sorts. I think the charges against a lot of the insiders at the company, the officers and high-ranking employees, related to their buying stock of Texas Gulf Sulphur, or exercising options or even, I think, accepting the grant of options before information about this great find had become public.

Francis Coates was in a different position. Coates, a wonderful old man. He was a senior partner of what was then called Baker, Botts, Shepherd & Coates, a major Texas law firm. He was on the board of Texas Gulf Sulphur. There was a board meeting of Texas Gulf Sulphur, I believe it was on April 15. Coates came to New York for that meeting.

Just prior to that, he read in the newspaper that there had been reports of a major find, but that the company had, in effect, downplayed them in the sense of saying something was going on there, they weren't yet sure what they had.

KD: They did a press release.

DS: They did a press release on the 12th of April, and he knew about that. He came to New York on the 15th, and he went to the offices of Texas Gulf Sulphur. I believe he was told on the 15th that the company had now reached the conclusion that this find was very significant. He was told that there would be a press release the next day. Now I'm a little confused. I don't recall whether the board meeting was on the 15th or the board meeting was early on the 16th, but he came up for that meeting. He knew on the 15th that there was something major going on.

Coates had made it a practice of buying shares of Texas Gulf Sulphur for a trust that he had for his grandchildren. He would accumulate the stocks, relatively small amounts, over time for them. When he was there on the 15th, he said to himself, "I haven't bought any stock for a while. It's too bad. I'd really like to do that, but I can't do that now because I now know something that the public doesn't know." So he didn't buy the stock. But he did plan in his own mind that after the information became public, he would then buy some more shares.

The next morning, he then went to the company, either to the board meeting if it wasn't on the 15th, but he certainly went to the press conference. And at 10:00 in the morning, Texas Gulf Sulphur had a press conference. And at the press conference, they announced this wonderful find in Timmins, Ontario. Press conference started at 10, it was over by 10:15, the reporters left to, presumably, phone in the stories.

When they left to phone in the stories, Coates also left and he went to a pay phone and called his broker, who happened to be his son-in-law, to order 2,000 shares of Texas Gulf Sulphur stock. He ordered 2,000 shares of the stock at about 10:20 in the morning. His son-in-law executed the orders. His son-in-law also, at that point, contacted his own clients and bought some more stock. That was about 10:20 in the morning.

The state of public knowledge around this is really very interesting. So we're at 10:20 in the morning; the reporters leave. Dow Jones says that from the time a story is called in to them, it takes them about two to three minutes to put the story on the broad tape. The reporter who was there from Dow Jones said he left the room; he called it in. The story went on the broad tape at 10:54. So something's missing here.

We could never get to the bottom of those thirty-four minutes. We interviewed Dow Jones. I'm sure we deposed them. We interviewed the reporter. "Yes, I was there; I left, I went to the –" whatever. There's no indication of the reporter or anybody from Dow Jones buying the stock or any wrongdoing or anything like that.

KD: Did you find the person that took the call at Dow Jones?

DS: I think so, I think so. And the call was later. The call was not at 10:20. My guess was – this is pure absolute speculation – is that the reporter who was there was not a regular financial reporter; he was substituting for someone else. Perhaps he didn't understand the significance of what happened or what he was going to do, and he stopped to have coffee [laughter]. I don't know. He said no, so I don't know what caused it. But it didn't go over the broad tape till 10:54, and that was obviously a serious problem for Mr. Coates.

KD: So about thirty minutes there made all the difference.

DS: Yes, that's right. It was more in terms of it being public. Coates, at the time he did this, believed that he had done the right thing. I don't think he did any legal research or anything on April 15th, but his knowledge as a securities lawyer was you don't buy stock until after the public announcement. He waited until after the public announcement.

I don't think Coates knew that there were other mediums through which that information had gotten out. There is a newspaper called *The Northern Miner* in Ontario. *The Northern Miner* in the days before April 16 had conducted interviews at the company. And while they didn't have the company's official statement that this is what we found, they had enough information so that *The Northern Miner* wrote a story in which they said this is a fabulous discovery.

That story was on the newsstands by 8:00 in the morning on April 16th, but it was on the newsstands in Ontario. It did reach the newsstands in New York that morning, but I think a little bit later. But we do know that people in Ontario, even in 1964, had telephones. There were calls from brokerage houses there in New York. So *The Northern Miner* story was out and in New York before the market opened.

KD: So the stock probably would've started running up as soon as the market opened.

DS: I think it started moving. But in any event, that's the chronology of what Coates did. The SEC's position was that an insider cannot buy at the moment of the press conference, that there has to be an adequate amount of time for that information to be disseminated, to work its way through the market.

The law at the time certainly didn't say that. It's hard sitting here in 2011 to realize how undeveloped the law of insider trading was in the mid-1960s. The only decision that I'm aware of that bore on this was an SEC administrative decision, *In Re: Cady, Roberts*. And when you read *Cady, Roberts*, your conclusion was you can't buy before the press conference. And I think there's language in there that comes pretty close to saying that.

So while I'm not suggesting that Mr. Coates read *Cady, Roberts* on the morning of the 16th, I'm sure he didn't, I mean that was the knowledge that sophisticated practitioners had at the time. Legal scholars might've had a different view, law professors might've

wondered what the proper moment was. But, certainly, the thinking at the Bar at the time was that's it, that's the moment.

Now Lamont did something similar, Thomas Lamont. He, apparently, waited until after the press conference and then he called Morgan to place orders for certain accounts and to advise Morgan. But he did not call Morgan until later. He called about 10:40 or 10:45. Why he waited that extra time, I have no idea but his call was at a later time.

The case was tried without a jury before Judge Dudley Bonsal. After the trial, Judge Bonsal wrote an opinion. And in the opinion, he basically found that both Coates and Lamont had not violated the securities laws, that the bewitching moment was the public announcement.

KD: And this was a 10b-5 case, right?

DS: It's a 10b-5 case. That's right. He also found that Coates had no intent to deceive, that he believed that what he was doing was correct. And that's where we were at the district court. The case then went to the court of appeals.

KD: The SEC took it to the court of appeals?

DS: Yes. Went to the court of appeals. The court of appeals heard argument at least once, and then they had an en banc after that. What I don't recall is whether there was a second

argument before the en banc court. I don't think so. I think it was argued once, three judges, and then they decided to convene an en banc. But the decision was an en banc decision. In the interim, between the district court opinion and the second circuit opinion, Thomas Lamont passed away. So the case was, therefore, dismissed as to him.

As to Coates, they found that Coates bought too early, that there had to be time to disseminate. And the second circuit found that Coates was negligent in buying too early. They didn't find scienter, but they found that he was negligent. And then the second circuit said something that I didn't remember until I went back and looked at the opinion yesterday, which really surprises me. They said that in buying at 10:20, Coates was negligent because he should've known that the opinion could not have been on the broad tape by 10:20 because it was a long press release. And had the reporter called it in at 10:15, it would've taken the reporter ten or fifteen minutes to dictate the press release. Which, frankly, with all due respect to the second circuit, totally misses the point.

The reporter was not going to dictate a fifteen-minute press release; he was going to say, "Gigantic find in Timmins, Ontario. Put it on the tape." That wouldn't have taken fifteen minutes. But I read that and said, "My goodness, how did they reach that conclusion?" But in any event, that was part of their conclusion was that Coates should've known that it couldn't be on the broad tape. Not only was it not on the broad tape, mysteriously, but that it couldn't have been on the broad tape. Therefore, Coates couldn't have been negligent in not knowing that it took Dow Jones thirty minutes to get it on the broad tape, but second circuit said he had to know, should have known, they

could not have had it on the broad tape because it would've taken fifteen minutes to dictate the press release.

KD: Let's back up and talk about the process a little bit here. Tell me about the folks at the SEC that you were arguing against.

DS: The SEC team had about two or three people on it. The only one I remember, probably because he was my age, was Donald Feuerstein. He was one of the junior people in that case, but he was the one that I interrelated with the most, but they had others whose names appear on the brief who had a more significant role in trying the case.

Donald Feuerstein went on to become general counsel of Salomon Brothers. I think he had that position after he left the SEC and was general counsel for many years. I've lost track of him. I don't know what he's doing now, but he would certainly be another person for you to talk to.

KD: Were you aware of the fact that the SEC was really, essentially, crafting a theory of insider trading in order to conduct the case?

DS: I think they were thinking about this while they were doing it because at times, perhaps in interrogatories, we would try to find out if 10:20 was a bad time to buy, what would be a good time to buy. And as I recall during the litigation, they would not be pinned down.

They talked about something broad about information to disseminate the information to become public. We never were able to pin them down.

The one time they were pinned down, at the end of the case when Coates lost in the second circuit, there was no remedy at that point because the case had only been tried on the issue of liability. The issue of if liability went to the remedy was just hanging in abeyance. From Coates' point of view, we really didn't want to go any further with expensive litigation at that point. There wasn't a lot involved there; it was 2,000 shares of stock. And so we negotiated with the SEC.

I'm vague on this. I sort of think that I did a lot of this negotiating with Don Feuerstein, but I could be wrong and I don't want to elbow somebody else out of the way. I'm sure Mr. Connelly was very much involved, but I just sort of remember being down there and talking with him. We had to come up with something.

What we came up with was that it would go to the damages that Coates would pay. He bought 2,000 shares, and we now have a second circuit finding that was incorrect, wrong. Settlement was $26,250. Of that, 16,575 represented the difference between the price paid by Coates for 2,000 shares of stock on April 16 and the price at which 2,000 shares could have been purchased on April 17. So the SEC there is saying twenty-four hours, I think. That's what they seem to be saying. And then the same thing, there's another 9,000 for the stock that Coates' son-in-law, Fred Haemisegger, bought on behalf of his customers.

But you can see that the number of shares involved here were not significant. This was not a big thing to anybody. Coates, of course, was always just so unhappy that he had walked into this. This was very embarrassing for him.

KD: Was the SEC claiming scienter, that he was attempting to defraud someone? You'd think they would've had to do that.

DS: That's a good question. I don't recall. I expect so, yes. They were arguing that he bought at a time when we either knew or should've known that this information was not yet public.

KD: Did the district court decision come as a surprise or was that pretty much expected? It was after the press conference.

DS: I don't think we were shocked. I think we were very comfortable with the idea that the rule was after the press conference, you could buy. And that even if that was not the rule, that you had to prove scienter. And, certainly, no one who saw Coates on the stand or knew Coates would think there was any way in the world that this old gentleman would violate law to buy a few shares of stock for his grandchildren, nor Thomas Lamont, same thing. So if anything, I think the feeling was we'll win because these people were right. And even if they weren't right, it was just an ordinary error that anybody could fall into.

KD: So I take it you were surprised then when the matter went to the appellate court.

DS: I wasn't surprised that they appealed. Logically, they would. I was surprised that the appellate court came out against us. I was.

KD: Was Feuerstein still there during the appellate process?

DS: I think so.

KD: I know Dave Ferber, who'd been around for years and years, was one of the leaders on the SEC side.

DS: Yes. On the brief in the supreme court, Ferber, Frank Kennamer, Donald Feuerstein, Harvey Rowan. But Ferber, I'm sure I saw him in court; I never talked to him. I scarcely talked to Kennamer. For me, it was Feuerstein.

KD: You had talked about the fact that this really set precedent in some respect. This is a district or a second circuit case, appellate case, so that's pretty important as far as setting precedent. Previously, there was just an SEC decision. Was there a sense that that's why the SEC was doing this in order to create this kind of landmark?

DS: I think so. I can't speak for the SEC, but I would assume that it was a paucity of law in this area. The issue of insider trading is a really very important issue, fairness in the

markets. You don't want insiders making a buck unfairly because they know something the public doesn't know. I think from the SEC's perspective, you would want a doctrine that said if you have inside information, thou shall not trade.

All that's complicated a bit by the fact that companies always have inside information for a variety of very good reasons they can't make public, either because to make it public prematurely would mislead the public or because it would deprive the company of the benefit of their confidentiality.

Ironically, for example, you're dealing with two sets of laws. You've got the securities laws that say, you can't buy stock if you're an insider without making things public, and you've got local law, I presume in Canada, which says you can go in and buy all the land you want without telling the seller that you think there's copper under that land.

KD: Which, in fact, is something that they did.

DS: I'm sure they did. I don't know, but I'm sure they were buying land from the moment they had an inkling that there might be something good [laughter]. They would keep it quiet, they'd buy up the land. So you have this tension between the two. But I think the way the tension is resolved is companies can keep information private, but their insiders simply can't trade during that time.

KD: Now given that there was very little precedent for this, what kind of resources did you have when you were putting the case together?

DS: By resources, what do you mean?

KD: What could you refer to when you're drawing up the brief or whatever, framing legal arguments?

DS: It was law. There's always law by analogy. Go back and look at the briefs. I also brought Mr. Coates' trial memo and then his post-trial memo. The trial memo was thirty-nine pages long, forty pages. So there were things from which you could draw. I mean, there wasn't anything that really gave you the answer. But like all things in the development of the common law, there were occasions which, by analogy, you could extract principles from.

I just happened to turn to a page, page eighteen, a quote from *Cady, Roberts*. "The insider might convey his information to the Stock Exchange which, in turn, could publicize it via the tape, or he might hold a press conference or utilize some other means at his disposal in order to make public the information."

The article then goes on to say, "An insider, having taken reasonable steps to publicize material information prior to entering into a stock transaction, would nevertheless be held

civilly liable under Rule 10b-5." That's where it all came from. That was the moment, and you were very happy with that.

KD: The fact that although Coates, for example, took reasonable steps, he was still held liable.

DS: That's right. That was surprising.

KD: Was there an understanding in the profession at that time among securities lawyers and people in the industry that this was the case, or did it take a while to sink in?

DS: You mean after Texas Gulf is over?

KD: Yes.

DS: I think it sunk in rapidly. I think after that, people realized that buying on inside information, which meant information that had not had a chance to sort of be disseminated out to the public, was a risky thing to do. And I think in the years after that, the SEC enforced that with some vigor and there probably were even some criminal cases after that. There was the whole development of the law, *Chiarella* and other cases, involving who was an insider. In *Texas Gulf Sulphur*, the insiders were in the company. But the insider might also be a printer or someone else.

The law developed rapidly after that. And I think as the years went on, the concept that thou shall not trade inside information really became embedded. That's why I'm very surprised that today we're getting a lot of SEC investigations into insider trading, people who knew very well and have known very well for decades that what they're doing is something you're not permitted to do.

KD: In this case, it sounds as if there was a reluctance to draw a bright line and say, "This is exactly the point at which you're not violating securities laws, and this is the exact point at which you are."

DS: I think so. And, indeed, it may be hard to draw a bright line because what if there aren't many people at the press conference? This particular press conference was well attended. But what if you had a press conference with some local newspaper? Are you free then in twenty-four? I could see why the SEC would want some flexibility.

KD: Okay. This must've given you, certainly within the firm, a pretty good reputation for working in this area. Did you take on other cases related to securities and securities' law?

DS: I did after that. You're right. When you start working, you sort of become an instant expert, and I did after that. I think there was an attempted takeover of the Bulova Watch Company that I did work on. And there was Crane against Westinghouse Air Brake which involved Thomas Mellon Evans and an effort by him to take over Westinghouse

Air Brake at that time. Crane, which was sort of a sleepy manufacturer of bathroom plumbing equipment, became very aggressive in terms of what they were trying to do. I worked on that with John Barnum, who is a partner at Cravath. So, yes, there were a number of things that I did.

KD: I guess the sense was that American Standard was on the other side, and they were inflating the share value. Does that ring a bell?

DS: That was a case that was in the district court, then went to the second circuit because I remember working on the briefs. And I know that Sullivan & Cromwell was involved in that case, one of the other parties, probably for American Standard, but I don't recall the issues.

KD: Was the SEC on the other side of any other cases that you took on after this point?

DS: No, I don't think so.

KD: So that was the one and only.

DS: That's right.

KD: We were talking earlier and you mentioned that you had worked in securities and eventually sort of worked your way out of it in the 1970s. When you were working on

these sorts of cases, was there an attempt to determine an orthodoxy, this is how the SEC views things right now and so this is how we want to argue? I want to get a sense of whether there was sort of an unspoken assumption about how securities laws would be enforced.

DS: No, I really didn't think of it in that global way. I think maybe because as a litigator, I concentrated on cases that I had or that came to me. My role at Cravath was not as a corporate advisor. And I think the kind of question you're asking is one where people who were in the business of advising companies, no doubt, would have had thoughts. I really didn't.

KD: Okay. You were working on the nuts and bolts.

DS: That's right.

KD: Okay. Now you were working as a generalist at this point. When did folks start to specialize in the big New York firms, and you started to see specialists in securities?

DS: I can't really speak to that because it will vary enormously from firm to firm. When I was at Cravath, people were generalists. And while you're a generalist, you tend to start working in one area more than another. That was always true at Cravath except for the IBM litigation which required a lot of people for a lot of time. I left Cravath in 1970, so

it's been a long time. I really can't speak to what their system is now, although I do think they tend to be generalists in the litigation department.

At Chadbourne, our litigators also tend to be generalists, with the exception of people who do tobacco litigation. Defending a tobacco company requires a lot of people and a lot of time, a lot of concentration and, of course, putting aside people who do work in intellectual property or something like that, which is rather special.

But our people tend to be generalists, and I – probably because I've been doing this for so long – tend to be a generalist even though it seems as if every decade I'm a specialist in some other field, so I've had years. I've been a tobacco lawyer; I've had ten or fifteen years when I sort of was being an alcohol defense lawyer. I'm still thought of as being an alcohol defense lawyer, although at this point it takes about 5 percent of my time. So it varies. I, personally, have enjoyed that because it's just interesting to work in different fields and learn about different things because every time you work in a field, you learn a different industry. So I had a number of years here at Chadbourne where my specialty was government contracts litigation.

I worked on the issue of the award of the contract on the main engine on the space shuttle, which was the major aerospace contract of the late seventies. We represented Rockwell International, which won the award for the main engines on the shuttle. The challenger was Pratt & Whitney, owned by United Aircraft, which sued Rockwell. And so I became an aerospace lawyer, which is fascinating because I know so little about

engineering, but I would sit for hours and hours and hours and try to learn enough to be able to talk about it, talk to engineers about it. And it's just a wonderful experience to go through the years doing that. So I've enjoyed being more of a generalist. But styles change in the law. I think the style, as we get around the last ten, fifteen years, the style has been more specialization.

I think it relates in part to years earlier, there would be more of a tendency for large law firms to have clients that came to them for everything. And so if the client knew you and liked you, they wouldn't care what the specific case was about. They knew you were a good litigator that they could rely on, and so they'd bring it to you. Now there's more of a tendency for clients to shop around or for law firms to pursue business. You want to be able to say to a client, "Oh, I've had three cases just like that one." And, hopefully, "I won them all." So I think firms now sort of say, "Well, you've got to sell yourself as a specialist. You can't just be 'I do anything well.'" Nobody believes that.

Or if they believe it, they say, "Well, you may do it well, but it's going to take you a hundred hours to get up to speed, and that's going to cost me $100,000. So the styles have changed.

KD: Less personal-relationship based as well?

DS: Yes. Less so now, frequently.

KD: It looks like you did a good bit of work for Rockwell.

DS: I did. That's a very good example. I worked on the space shuttle main engine for Rockwell, which was a major undertaking for years, brought against Rockwell which was the rights of common shareholders in the event of a merger, and that other Collins' case here in the second circuit that also involved the mergers. Sure, I worked for them in a variety of fields. I also defended them in a case involving the manufacturer of the undercarriages for the New York City subways that went on for years.

So, yes, their feeling, which at the time was that I can be relied on to do good work for them, and if they had problems, they brought them to me. And sure, it takes a while to learn something if the field is new. But not that long. The context of what you have to do in litigation, the amount of learning it takes to get up to speed is really remarkably little. If you found a lawyer who specialized in government contracts' work, when you look at the reported cases, most government contracts' work involves contracts for the shipment of a gross of toilet paper. It doesn't involve whose rocket engine is better than somebody else's rocket engine. So you have to learn that anyway, and there aren't a lot of lawyers who were really up to speed on rocketry. So I liked the old system better, frankly, but maybe it comes with age.

KD: Was the *Texas Gulf Sulphur* case kind of the landmark of your early career, or is it just simply a case that became important in retrospect?

DS: I'm thinking of my years at Cravath, really, is what we're talking about, eight or nine years. The *Texas Gulf Sulphur* case was the most notable case that I worked on and the most interesting because of the importance of the case and because of how small our team was. One of the problems when you're young in a big firm is you're part of a team of twenty. And if you're number eighteen on the team, you don't know very much about what's going on. You may talk to number seventeen and number nineteen, but number four is totally out of your reach. So *Texas Gulf Sulphur*, in all of those ways, everything came together.

KD: How many were on your team?

DS: On *Texas Gulf Sulphur*, two. Mr. Connelly and me.

KD: Did he handle the broad strategy?

DS: He was an active participant. He handled the broad strategy, certainly. And anything that was written, and all our briefs in that case were important the way the case evolved, I would do a draft of the brief, and he would edit it or comment on it. And depending on how much he liked it or didn't like it, he would get involved or not get involved.

As I recall, it was a Friday. I had given him a draft. It was probably the cert petition to the U.S. Supreme Court. You don't mind getting comments from people. You don't mind if you give it to a senior partner, he marks it up and whatever. That's what he does.

You take it back and you're done with him. He called me and he said, "I've ready your brief, and I don't think it's persuasive." I said, "Any idea how you'd like to see it?" "No. I just don't like it."

I do remember going home and saying to my wife, "What am I going to do now?" You spend weeks on something; you're mentally locked into it. It's very hard to unravel it [laughter]. I'm sure I eventually did, but I remember that being a low point in my brief writing.

KD: Well, the Supreme Court wasn't persuaded either.

DS: Whatever I turned out didn't persuade them. Maybe if I'd left it the way it was the first time [laughter], it would've been better but I doubt it.

KD: There's one more story that I can't let you go without telling. Before we started, you were discussing the break while you were in the federal courthouse.

DS: Oh, yes. It was really just a light moment, indicative of something in American society, I guess. In the district court, we were in the old federal courthouse and each floor had two courtrooms. They were opposite one another and there was a wide corridor in the center. At one of the breaks during the day, we were all outside chatting and I was in a little group that included Thomas Lamont, who was a member of the Lamont family, Morgan

Guaranty, and just the perfect gentleman of the American upper crust. Across from us was a trial of alleged mafia leaders.

In the course of the break, one of them came out and he looked like he had been prepared by central casting to look like a mafia leader. He was a nice looking man. He was short, a little chubby, probably Italian, and he wore a light suit, a dark shirt and a light tie. He came up to Thomas Lamont for some reason and said to him something like, "Are you in this courtroom across the way?" And Lamont said, "Yes." And he said, "What you doing there?" He said, "I'm on trial." Lamont's sort of being a little standoffish. And he said, "Trial for what?" And Lamont said, "Securities fraud." And this guy said, "Yeah, me too," and walked away. So it was a lovely light moment that's always remained in my mind.

KD: Something that probably never happened to Thomas Lamont before or after.

DS: Probably not.

KD: Well, is there anything else that we should talk about having to do with Texas Gulf or any of your other work in the years after?

DS: No, I don't think so. I think it was a terribly important case for the securities laws. To the extent that anybody today gets involved in the sort of insider trading you read about in the newspapers, there should not have been any doubt in their minds that what they're

doing was simply wrong. They've had thirty or forty years since the *Texas Gulf Sulphur* case has come out and, obviously, many more cases since then.

KD: All right, terrific. Thank you very much.

DS: You're welcome.

[End of Interview]