

Securities and Exchange Commission Historical Society
Interview with Neal McCoy
Conducted on May 11, 2005 by Michael Rogan

MR: Hello, my name is Mike Rogan and I'm here to interview Neal McCoy on behalf of the SEC Historical Society. Today is May 11, 2005 and I'm conducting this interview in Oxford, Maryland at Neal and Cathy McCoy's home. It's approximately 11:30 in the morning. I'd like to start by asking you how you came to work at the SEC, what your background was prior to joining the staff of the Commission and what brought you to the SEC in the first place.

NM: My background prior to joining the Commission was that I had a minor in Economics in college, graduated from Harvard Law School, and decided that I wanted to spend another year studying Economics at the Cambridge University in England.

When I was a senior in law school, I interviewed the SEC and was very impressed with the gentleman who interviewed me, who had been a Law Clerk for Justice Harlan. Even though I was a member of the California Bar, when I finished studying in England, I decided to go interview the SEC at its headquarters in Washington. Again, I was impressed by the people who spoke with me in Washington, particularly Alan Levenson. I decided to go to work for the SEC thinking that it might be a good place to take advantage both of my legal training and my economics training.

MR: What year was this?

NM: This was 1966.

MR: And where was the Commission located at that time?

NM: I believe it had moved to 500 North Capitol Street and maybe just gotten there the summer before I signed on, but I'm not really sure about that.

MR: Do you remember what Alan Levenson's position was at the time; what Division he was in?

NM: He was the head of the Branch of Administrative Proceedings in the Division of Corporation Finance. At that time, each of the major Divisions, primarily Corporate Finance and Corporate Regulation, had their own investigative unit. There was no Division of Enforcement and Alan was head of Corp Fin's investigative unit.

MR: What was your initial position with the Commission?

NM: Staff Attorney.

MR: In the Division of Corporation Finance with administrative proceedings?

NM: Right.

MR: Do you remember the first thing you worked on or what's the first matter that comes to mind in terms of a representative career experience for you when you were just starting out?

NM: I can't remember the first thing or things that I worked on. I do recall spending a lot of time with Bob Morgenthau's office in the Southern District of New York. He was head of that office at the time.

MR: And still is today?

NM: It's local government today, but then it was the US Attorney. And I spent time in New York working with several assistant US Attorneys on cases that had been referred criminally by the SEC, maybe there were some that weren't, but I spent a lot of time working in the Southern District.

MR: And were these for violations of the Registration requirements or the Anti-Fraud provisions?

NM: Mostly disclosure and fraud violations. To this day it remains difficult to get an Assistant US Attorney to try a '33 Act Section 5 case. I also spent some time over the years as someone who would be sent to be an expert witness on securities laws where a US

Attorney was trying a case. While Section 5 was not very technical, they always wanted a less technical charge of disclosure problems and fraud. There have been some Section 5 cases or '34 Act Disclosure cases but my belief is there still haven't been as many.

MR: So after you joined the staff in Corporation Finance in the Administrative Proceedings Office, tell me a little bit about your career path after that.

NM: I worked in that office for approximately I think two and a half to three years. I then became a Legal Assistant to then Chairman Hamer Budge. And I stayed there I believe until late '69 or early 1970; my memory is a little hazy. I worked with Judge Budge, as he was called, for two years give or take. And then I became Chief Counsel of the Division of Corporation Finance.

MR: You were Legal Assistant and then you had another position with Judge Budge for two more years or was that was one two-year period?

NM: Right.

MR: Maybe you could share what the Legal Assistant to a Commissioner's role was and then whether there were any sort of major issues that you remember from that time with the Chairman that the Commission was particularly focused on in the early '70s.

NM: The primary role of the Legal Assistant is to review the items on the calendar each day and advise your Commissioner of what you think of the Division's recommendation - whether it's good, bad, needs to be strengthened—whatever. I played an additional role; it was my job to interview new employees for the Washington office and the Judge had some concerns that we weren't getting the employees we needed and wanted someone from his staff to interview prospective hires—not necessarily initially but at the point of when whatever Division head decided to hire; it's not like I was screening.

MR: And do you remember any people that you did that initial screening for that went onto long careers with the staff?

NM: No.

MR: And what were the key issues at the Commission in those years? Was that before fixed commissions were under siege?

NM: I think they were under siege at the time. One of the sub-areas of expertise that I developed as a Legal Assistant was the Public Utility Holding Company and there were several important '35 Act cases, basically concerned with in one way or another expanding a regulated utilities business.

MR: And was Frank Wheat on the Commission then? Was that the time of the Wheat Report?

NM: That was the time of the Wheat Report. Dick Smith had some sort of institutional investor study going on as I recall in that general period.

MR: And then after you were in the Chairman's Office, you went to become Chief Counsel of the Division of Corporation Finance where perhaps it would be worth describing what the Chief Counsel's role is in terms of the Division and what major initiatives you were part of when you were in that Office.

NM: Well the role basically was two-fold. One, you were the lawyer for Assistant Directors and other staff lawyers and the Branch Chiefs of the Branches. If they needed a legal determination of some sort, they would bring it to the Chief Counsel's Office. The other thing that the Chief Counsel's Office did was to respond to no action letters, and as I recall we issued something in the range of 7,000 to 8,000 no action letters annually. This was prior to Rule 144, and they were all reviewed by the personnel of the Chief Counsel's Office.

MR: And they were done with seven copies and carbon paper?

NM: That's right. The other thing the Office did was draft the forms and rules. I had two people on my staff; the first was named Charlie Sheppe, S-h-e-p-p-e, I think it was and the second was Roland Cook. This was before the Office of Disclosure Policy, which

now writes rules, was formed. Those two guys for years wrote everything, put it out for comment, and got it issued.

I think probably the biggest change that occurred not too long after I took over as Chief Counsel was the decision to make all no action letters public. Before that they were not public and I think in terms of informing companies and the Securities Bar, the act of making them public was just phenomenal.

MR: And what was the impetus for making them public? What caused that decision to be made?

NM: Alan Levenson, who had been out in the private world for a brief period before he came back as Division Director, felt that the SEC simply had an obligation to try to help out the securities bar and keep the issuers who deal with us as informed as possible about what we were doing. A number of us agreed that it was simply a way to try to better do our job by having those who deal with us be informed.

MR: And you had mentioned something like 7,000 or 8,000 no action letters because this was the time before Rule 144. Can you talk about your role in the adoption of Rule 144 because that was at the time you were in the Chief Counsel's Office.

NM: Yes; Alan and I had spent a lot of time trying to figure out a more effective system than just the no action letter system. And we hit upon the idea that it wouldn't be possible to draft a rule proposal that would (a) keep everyone informed, (b) provide guidance so that we wouldn't have to do such things as every time someone wanted to sell securities submit a no action to the letter to the SEC for it to decide when there had been a change in circumstances.

MR: It's hard to imagine that you had to go to the government to say that you needed to pay college tuition and so you had to sell stock and that was a sufficient change in circumstances.

NM: And the joke in the office was that we were sort of hoisted by our own petard because why would you view death as a change of circumstances?

MR: Was there a lot of controversy at the Commission level with Rule 144 and was that the first, as I think about it, the first of the so-called Safe Harbor rules?

NM: Right.

MR: We now come to use safe harbors in many different contexts in the securities regulations and so the concept of a safe harbor, I think was pretty unique.

NM: There was not any real challenge to the proposition of moving ahead with some type of rule. You had maybe differing views on how many securities could be allowed to be sold and the terms of the ultimate rule, but those were worked out and I think all the Commissioners were solidly on board.

MR: I think it's a testament to the rule. It's thirty to thirty-one years later and the rule still works great and everyone relies on it and the whole securities industry, of all the rules, the one they all know is Rule 144.

NM: That's true. I can't think of another rule that is still relied on that heavily after the period of time that's passed since its passage.

MR: You then were in the Chief Counsel's Office; where did you move next?

NM: I became an Associate Director I think in 1974.

MR: And you were Associate Director, Division of Corporation Finance responsible for Legal and had the Enforcement Division been formed by that time?

NM: Yes; I was responsible for my share of the Assistant Directors and the branches thereunder, which I think was two. I was responsible for liaison with the Enforcement Division and I was responsible for liaison with the state securities administrators and I

remained in charge of the Chief Counsel's Office as a supervisor. I was not—let me be clear about that; I was no longer the Chief Counsel.

MR: Right.

NM: Jack Heneghar was.

MR: But you had oversight for that office?

NM: Jack Heneghar was the guy who really taught me securities law, particularly under the statutes of Corp Fin.

MR: There is a Jack Heneghar story. Do you remember the time that Thomas Hoving from Tiffany's came in to meet with Jack and the staff because Tiffany's wanted to sell shares of Tiffany's stock on the store floor as a Christmas promotion? Mr. Hoving was told that this was a problem under the '33 Act and he flew down from New York to meet with Jack Heneghar, a very crusty old Irishman. We had this New York Brahman and this crusty old Irishman, and Jack was explaining to Mr. Hoving why the securities law wouldn't permit him to sell individual shares of stock on the floor of Tiffany's at Christmas time.

NM: I've heard that over the years.

MR: And at this point, so it's the mid-'70s. You were the Division's liaison with Enforcement. What were the big Enforcement issues at the time that Corp Fin would have been involved in and what was the relationship between Corp Fin and Enforcement as areas of responsibility that had previously been Corp Fin's moved to another Division?

NM: Probably the main one was that the Branch Chief or Assistant Director or for that matter anybody else in the Division was not supposed to refer anything to Enforcement unless it came through me and was approved by me. The other thing is that from time to time I would be able to provide some legal advice to Enforcement attorneys on how to proceed ahead on either something we had sent down or something Enforcement had come up with from elsewhere; but advice dealing with the acts for which Corp Fin had responsibility.

MR: And were you involved then in the foreign payments issues?

NM: I was—Ralph Hocker and I were in the confession booths, I called them.

MR: Ralph was another Associate Director?

NM: Ralph was another Associate Director and it was the two of us. When companies voluntarily came to the Commission, they would come see Hocker and me and confess.

Two guys came from a Texas law firm and lo and behold they discovered a client with a Foreign Corrupt Practices problem. The client harvested grapes across the Rio Grande in Mexico. The donkeys would come out of the mountains with the grapes on their backs; donkeys are very bulky animals and they refused to cross the Rio Grande.

So the company had bribed the bridge toll keeper to let a truck come across from the United States and load the grapes up and then drive back across the Rio Grande and, as they were expected to do, they went back five years to get the amount of the bribes and there had in fact been \$5,000 worth of bribes over the five-year period. So you'd get that kind of thing, although this may have been the most farfetched one I heard. But the things you listened to were all the way from pretty large and substantial bribes to things that were not really really great, but it was interesting. I spent a lot of time sitting in an office listening to people confess their Foreign Corrupt Practices Act offenses.

MR: As a regulatory matter, how was that moved forward? What would happen after a company came in and said they had made a significant foreign payment to a government official? How would the Commission as a whole react to that kind of thing? Who would be involved in and consulted and how would it be decided what the remedy was going to be?

NM: Generally speaking, the conclusion of the people visiting Hocker and me was that some disclosure was going to be necessary and they talked to us about the disclosure they

proposed to make. If they didn't want to disclose or if we were not satisfied that they were telling it quite right we would get Stan Sporkin of the Division of Enforcement and they would by and large take it from there. Or, obviously, Enforcement handled cases that they had discovered through other means than us.

MR: But the voluntary program was administered by Corp Fin?

NM: Corp Fin.

MR: And another big issue that I remember from those years was the disclosure of projections, which now are a routine part of public company disclosure documents and filings. Were you involved in the Commission's policy on projections during this era?

NM: I was, and I frankly was never a strong supporter of the policy.

MR: Which was to prohibit the disclosure?

NM: Which was to prohibit the disclosure. I felt that as regulators we could deal with problems over projecting or inaccurate projections. But it was not a popular suggestion with Ralph Hocker and with the Assistant Directors of Corp Fin. There were five of them as I recall at that time. And they didn't think that from a review comment letter process that they could satisfactorily deal with the issue of projections and my thought

was that probably is right; you can deal with them from a fraud standpoint, but for the Branch Examiner to sit there and try to come up with some comment on a company's projections, I think would have been very work intensive and was probably not the way to go.

I think there probably was a way of handling that but not without probably simply filing and the branches not commenting on projections and leave them be. But at any rate, at that time the long-standing policy was not changed.

MR: Rule 144, projections, foreign payment scandal—what other big initiatives do you remember from the '70s?

NM: Rule 146, which was a private placement rule which no longer is with us; Rule 147, which was the Intrastate Offering; Rule 145, which was the Merger and Acquisition Rule...

MR: Which we still work with today.

NM: Right; I'm trying to think of some of the disclosure issues.

MR: What was the atmosphere in Corp Fin at the time in the the front office, Alan Levenson and yourself and Ralph Hocker?

NM: And Tom Holloway.

MR: How did the Division run? Was Alan a consensus leader? How did he administer the Division with the Deputy Directors, with the Associate Directors?

NM: Alan was very much a consensus leader and his style of leadership was to assemble in his office himself down to the Branch Examiner or Attorney and everybody in between to discuss whatever the particular problem was. And he would go around the room; there would be five or six people in the room and he would get our views and then make a decision. It was his way of dealing with issues that he had to decide.

Again, each of the Associate Directors had their two Assistant Directors pods under them. What got to Alan would come through one of the three of us depending on which Associate Director pod the branch was in. He employed the same approach generally speaking on rule making except he'd probably get all three Associate Directors and Charlie Sheppe, Roland Cook and later Dick Rowe or the Office of Disclosure Policy. But again, he would go around the room and ask, is this the right approach and is this what we want to do? It was time consuming, but it did take advantage of Division experience and expertise.

MR: Another matter that I remember you taking a leadership role on was the effort to relocate the Commission to Buzzard's Point. And I wonder first of all, I think at the time there was some feeling that maybe the Agency wasn't in favor and that. Can you just give us the background on that because I know for quite a while there was a significant effort at the Commission staff to deal with this.

NM: I'm not quite sure how I got drafted, but I got a call from Ray Garrett wanting me to sort of be the point man on the relocation to Buzzard's Point. I remember Ray and I got in his car, he had an assigned chauffeured car, and so we were driving off for the first time to take a look at the proposed site on Buzzard's Point which was in Southeast Washington. We headed down South Capitol Street and then off into some side roads, on—oh I can't remember the name of the entire land stretch, but I remember just run down buildings and a place that was so tawdry and run down that a municipality shouldn't allow it to exist. I mean you just can't imagine and I never will forget Ray Garrett shaking his head and saying, boy, those Wall Street lawyers are going to love this, aren't they?

I was able to deal with GSA and get us out of it. That's the good news; the bad news was that the GSA was mad at us in my opinion and was not going to be helpful finding an alternative location. And so the SEC for a number of years had two locations; its North Capitol Street location and another over around 11th and Massachusetts Avenue; so for years the Commission paid a price.

MR: Neal, how did you go about persuading GSA that Buzzard's Point wasn't the right place for the Commission?

NM: I got one of my comrades – someone from Corp Fin - and we went down to the leading bar in the area one night just to see what sort of crowd it was and who else was operating a business in the vicinity.

MR: Because the staff worked late at night?

NM: The staff worked late at night and the related concern was there weren't cabs down there at night. Whoever came to this bar drove. I sent Ben Milk, who was the Executive Director, down to count taxis and to come up with a report on how many taxis had gone down the road that led to our proposed building in Buzzard's Point. So between the report on a rather seedy nightlife and taxis, I think GSA finally decided to change course.

MR: All right; well let's change the tape over. Neal, as I recall, you also had responsibility for the Proxy Rules, the Shareholder Proposal Rule, and you also dealt with Proxy Contests. Can you talk a little bit about your experience in those two areas?

NM: The Shareholder Proposal Rule was probably the most difficult rule that I ever administered at the SEC and the reason was everybody had political views on whatever

the subject matter of the proposal was. So you were almost never dealing with the rule itself. You obviously were dealing with the rule but you had to make decisions based on what the submitter of the proposal was trying to achieve and whether or not someone thought it was right for him to try to achieve that. I've never dealt with anything where everybody from the staff and the Commissioners had such conflicting views as to whether these proposals ought to go in the Proxy Statements.

Proxy Contests on the other hand were always sort of fun and maybe that's why I later went with Skadden Arps who did not only Proxy Contests but other kinds of contested takeovers. And playing a role of trying to keep the warring parties under control and in compliance with the securities laws I always found to be challenging and interesting.

MR: And did you work at all with the implementation of the Williams Act?

NM: My recollection is that I did not play a role in drafting anything. Well I may have reviewed it but I certainly did have primary responsibility for drafting. But I did play a role in implementation and interpretation after it was adopted.

MR: You know you mention that you ended up leaving the Commission and joining Skadden Arps as a partner in the Washington office. What year was that?

NM: That would have been 1977.

MR: And so you were at the Commission eleven-plus years. Do you have any perspective on how it changed in that decade plus from the late '60s to the end of the '70s?

NM: Some of the things I've touched on; number one it has done a better job of keeping issuers and accountants and their counsel informed about the Commission's thinking and what the Commission expects. The whole rule making and promulgating area has received and still receives a lot more attention from a lot more very talented people. Whatever the Commission issues in that area I think is better thought through and the product that goes out for comment is a very high quality product.

One thing that I think that I'm proud of that hasn't changed that much is that Corp Fin in particular has not tried to take on a regulatory bent. In other words, its mandate is disclosure and I think it's done an excellent job of doing that. My experience with some other divisions or offices which have tried to regulate too much, getting so close to whatever it is that they create is that the regulation is less effective and Corp Fin has done a wonderful job of avoiding that problem.

The whole Merger and Acquisition area—what I just said notwithstanding, with going private and similar types of transactions, I think the Division did a good job of setting very significant guidelines, but ones which are by and large self-executing. I think that

the interference into that area and the creation of more helpful and sophisticated rules is a big achievement during the period that I was there.

MR: And I think that's again—we talked about it—but these rules have lasted for decades and it's a testament to that. As you look back over that eleven years, is there any particular story that you think merits recording for posterity in terms of the things that you did at the Commission?

NM: I think the most scared I've ever been—there was a company called Packo which owned a blueberry patch near May's Landing, New Jersey and Packo was seeking one way or another to acquire a larger New York Stock Exchange company called Crescent Corporation. The staff suspected that some of the financing had come from a well known member of the American mob and we had arranged, and by we I mean Alan Levenson and I, to meet one of the mobsters at midnight in Cherry Hill, New Jersey, outside of Philadelphia.

And so at midnight Alan and I show up in a government car with *Property of United States Government* stenciled on each of the two front doors and we were looking around and we noticed - by and large it was a pretty deserted street at that hour of the night - but there were several cars with people hunkered down in there and appearing to be asleep. And we wondered what have we got ourselves into.

But we did go in and conducted an interview with this guy and were able to learn that the premier of a Caribbean country had been involved in the effort to get mob money. So my recollection is that the result was a Disclosure proceeding for both Crescent and Packo but more importantly they were referred to the appropriate US Attorney for prosecution and in fact the leading figure in the control of Crescent with mob money went to jail. But I never will forget being in Cherry Hill at midnight in a government car wondering what am I doing here.

MR: So SEC practice is not only white shoe; it's also gum shoes?

NM: Exactly.

MR: Well thank you very much.

NM: Well thank you.

MR: That's very interesting.