Securities and Exchange Commission Historical Society
Interview with David Ratner
Conducted on August 6, 2002, by Matthew O'Toole and Richard Phillips

MO: My name is Matthew O'Toole from the SEC Historical Society, and I'm here with Dick Phillips on August 6, 2002, at 2:30 p.m. to interview David Ratner, the former executive assistant to the SEC Chairman. David, welcome.

DR: Thank you, Matt.

MO: What was your position at the SEC?

DR: Well, I had what I would consider to be the best position at the SEC--executive assistant to the Chairman--which gives you an opportunity to be involved in everything that's going on at the Commission, and also an opportunity to meet all of the people there.

RP: During what years did you serve as the executive assistant?

DR: I was there from about September of 1966 through July of 1968, which was a very exciting time.

MO: Why did you go to work at the SEC at that time, David?

DR: Well, it's an interesting story. After law school I'd worked in Wall Street for about eight years, then started teaching at Cornell Law School in 1964, and was working on an article about voting rights in large corporations, which I eventually published in 1970. I was wondering whether I could get some information from the SEC about large holdings in publicly held corporations.

The only people I'd worked with at the SEC when I was in Wall Street doing registration statements were some examiners and branch chiefs and maybe an assistant director or two. So I got out the CCH [Commerce Clearing House] directory of the SEC to see if I knew anybody there in higher places. I found under ``executive assistant to the Chairman,'' the name Leonard M. Leiman. I thought, ``I knew Lenny Leiman in law school. I'll write to him and see if he has this information.'' So I sent him a letter. This was early in 1966. He wrote me back a very nice letter saying that the Commission was about to get a new computer, and that they hoped that they would be able to put this information together sometime soon, but at the moment they didn't have anything that would be of help to me.

So I went ahead with my work, thought nothing more about it. Then sometime later that year, a couple of months later, Lenny Leiman called me, said he had been executive assistant to Chairman Cohen for two years and wanted to go back to his law firm in New York. The Chairman was looking for a successor and had decided he would like to have somebody from academia as his executive assistant. So he asked whether I was interested, and I thought, ``Well, that certainly sounds like a great opportunity.''

RP: Had you been teaching securities in law school?

DR: I had been teaching securities. I started off in 1964, using the only book that was then available, the Jennings and Marsh. But because of my experience in Wall Street, I thought it was a great subject, and this was an opportunity to jump right into the middle of it. So it was really solely because I chanced to have made that inquiry to Lenny Leiman that this came about. Otherwise, I'm sure he'd never have thought of me. He'd have gone to somebody else, and I'd never have had the opportunity.

So I came down and interviewed the Chairman, then heard nothing from him for several weeks. I called Lenny to see what was happening, and he said, ``Well, yes, the Chairman's thinking of things, but it's still alive.'' Eventually the Chairman decided he wanted me to come down. So I came down and started work in late August or early September of 1966, which, as it turned out, was not only a very exciting time to be at the Commission, but also I was very fortunate, in that the Commission had just moved into its new quarters on North Capital Street, having abandoned the little rabbit warren over on Second Street where they'd been working for the previous fifteen or twenty years.

RP: Oh, in the World War I temporary.

DR: The World War I temporary. The new building was delightful. Naturally the Chairman had taken the best office for himself, which was right on the center of the eighth floor, the top floor. I had the office next to his, with a balcony outside overlooking Union Station and the Capitol. It was really very nice, and I set about settling in and finding out what it was like to be executive assistant.

MO: So what was it like working with Chairman Manny Cohen?

DR: Well, it was very exciting. It was never dull. It was never easy. He was a very demanding person, a very dynamic person. I came to him at a time when he had just fully recovered from a heart attack that he'd had early in his Chairmanship, which started in 1964. So he was really trying to make up for lost time and trying to cram four years of achievement into two years of activity.

He was absolutely brilliant. Not only was he a brilliant lawyer in the sense of making complicated legal arguments, but he knew everything about the SEC. He knew a great deal about securities law, and he had a good understanding of politics and how things work in Washington. He was just a very dynamic, exciting person to work for. I wrote a tribute to him after he, unfortunately, died in 1977, which I entitled ``Manny Cohen, the Bureaucrat as Entrepreneur.'' Even though he'd worked at the SEC for maybe twenty-five years at that time, he was not a bureaucrat. He was the chief executive officer of the Securities and Exchange Commission, which to him was in competition with other agencies to do the best possible job in regulating the fields in which it was engaged, to undertake new things, to embark on new initiatives. It was really exciting in that sense. Now, he was difficult to work for, because, as I say, he was very smart, had very strong opinions on things, and he did not always accept suggestions in the most welcoming manner. Since most of the people at the Commission at the time, the senior officers, had been there for many years, and I was really the only person who had just come to the SEC, I figured he certainly didn't need me to tell him how the SEC worked. He knew all about that. So I conceived it as my role to suggest new ideas, new approaches, and things that maybe hadn't been thought of. It sort of turned into a routine and a pattern. I'd come up with some idea, and he would say, ``Dave, you spent too much time at that ivory tower up in Cornell. You don't understand. You'll never understand.'' I was sort of crestfallen when he said these things. But then I'd walk into the Commission meeting a few days later, and there was Manny talking to his fellow Commissioners and saying, ``You know, fellows, I had a idea,'' and I would hear my own idea coming out, maybe in some modified and improved form.

But then I realized, Manny was listening all the time. He accepted all these things, and if he thought they had merit, he'd present them, as his own, of course. But that was okay. He was the Chairman. I was just there to provide him with ideas and also to serve as his liaison to other Commissioners and to the staff, as needed.

MO: You mentioned that Manny was on the staff for many years, and then he was a Commissioner and then Chairman, obviously a very unusual route to become Chairman of the SEC, to actually be working for the SEC for so many years. How did that affect your job, and how do you think it affected Manny when he became Chairman?

DR: Well, as I say, it affected me in the sense that, unlike a new Chairman coming in and getting an assistant who knew the Commission thoroughly to explain it to him, it was actually the opposite. He knew the Commission much better than I ever would. He knew where all the bodies were buried, who could do good work, who couldn't. So there was nothing for me to do in that field. What I could do was to suggest new things, and that's what I tried to do.

MO: And who were the other Commissioners?

DR: Well, it was an interesting Commission. The senior Commissioner at that time was Barney Woodside, who actually was the most senior man at the SEC. In fact, he predated the SEC. The SEC only started in 1934. But Barney Woodside had started in the Federal Trade Commission's Office of Securities in 1933, when the 1933 Act was passed. So he went back, really, all the way to before the SEC. He had worked with Manny for many years in the Division of Corporation Finance, as director when Manny was chief counsel, and then Manny succeeded him as director when Barney came on the Commission.

Manny not only respected Barney Woodside. He sort of loved and worshipped him. And Barney Woodside was a wonderful man. I remember thinking at the time, after talking with him a few times, whenever you were talking to him, you were talking to the real Barney Woodside. He was incapable of any sham or pretense. He said what he believed. He was very cautious and conservative, and he gave Manny fits sometimes, because it was hard to persuade him to go along with something new. But he was also a great source of strength to Manny, and Manny would often go off and just discuss something with Barney and get some sage advice on what to do. So Barney Woodside was a great tower of strength.

RP: Were there a lot of discussions between the Chairman and the Commission outside of the meeting?

DR: Well, Manny would get together with Barney a lot. He didn't get together that much with the other Commissioners to talk. He'd send me to them to tell them what he wanted them to do. But with Barney he was a close friend.

RP: Now, those kinds of consultations between Commissioners, can they be held under the Sunshine Act?

DR: You know, one interesting thing to me. I could walk into Commission meetings whenever I wanted, and if things slowed down, I'd go in there. I noticed one day there weren't any members of the public there. So I said to Orval Dubois, who was the secretary of the Commission, ''Isn't anybody interested in these meetings? Don't they come to them?'' He said, 'Oh, they're not open to the public.'' I said, ''What? Meetings of the U.S. Securities and Exchange Commission are not open to the public?'' ''Oh, no, no. We don't invite the public.''

I remember I was surprised at the time that these meetings of this government agency were not open to the public. Of course, years later, I forget when it was, the Sunshine Act was passed, and these meetings became open to the public.

RP: Doesn't the Sunshine Act also prohibit conversations between two or more Commissioners outside of the Commission meetings?

DR: Right, it does. But, of course, at that time even the discussions among themselves, informal meetings, weren't subject to any restrictions. But they held a lot of meetings. I remember we were preparing some document about how the Commission works. We drafted it, and we put in, ''The Commission meets on average three times a week.'' The copy circulated to Barney Woodside came back, and scrawled before the''three'' was the word ''thirty.'' In his view the Commission was meeting all the time; Manny was keeping them in constant activity.

The other three Commissioners were all appointed in 1964, the year that Manny became Chairman. One was Hugh Owens, the former securities commissioner from Oklahoma. Very pleasant man. I'm not sure he came up with any important ideas while I was there. Another one was Hamer Budge, a former congressman from Idaho, a conservative Republican who was one of the Republican appointees, who subsequently became Chairman after Manny. He had an interesting approach. He was sort of opposed to government, particularly government regulation. He felt the government was too big. It was a good perspective, because the orientation of most of the people at the Commission was to Wall Street and the large firms. Hamer Budge was much more concerned with the small broker-dealer back in Boise, Idaho.

RP: He was a western congressman, as you know.

DR: Yes. And whether they were being treated fairly, and I think it was an important perspective. He used to complain that the Commission would take some small broker-dealer, and if he did something wrong, they'd just throw the book at him and put him out of business. He'd say, ''Merrill Lynch does something wrong, why don't you put them out of business? Shouldn't you do the same thing to the big firms you do to the small firms?'' It was a different perspective, and I think it was one that was quite worthwhile.

MO: And how did Manny Cohen respond to Commissioner Budge's points of view?

DR: He'd generally be very polite and tolerant. Budge had made good points. I don't think Manny was as troubled by him as he was by other Commissioners, because Budge basically didn't want to do too much. He was just sort of a commentator on the process. Frank Wheat, also appointed in 1964, had come from a big corporate law firm in Los Angeles, Gibson, Dunn & Crutcher. Frank was a wonderful person, very dignified and very intelligent and really interested, conscientious, really wanted to do things in the absolutely appropriate way. In some ways, he was, though, the opposite of Manny, who was dynamic and shooting off ideas all the time. Frank was much more thoughtful and liked to consider things very carefully. But I think he made very important contributions to the Commission. Manny, I think, tended to be somewhat suspicious of him, maybe partly because of his background in a corporate law firm. Manny felt maybe he wasn't as committed to the regulatory side of things as he might be.

That was the five at the time I came there. Barney Woodside retired from the Commission in 1967, and Dick Smith, another corporate lawyer from the Davis Polk firm in New York, was appointed to replace him. Smith really got on Manny's nerves. He thought that he had an active role to play in the Commission, which didn't accord with Manny's view at all. I recall Manny saying to me on more than one occasion when Dick Smith had raised something, ''You go and tell Dick Smith this is my Commission, and his job is to go along with what I'm doing here. I don't want him interfering in this stuff.''

Well, Dick got sort of disgruntled and dissatisfied with this, and since he'd done disclosure work in practice, he became sort of a super branch chief. The Commission at that time had to pass on the acceleration of all registration statements, and if he found something interesting or questionable in a registration statement, he'd call up three or four members of Corporation Finance to come and go over it with him. I'd walk into his office, and there he'd be with three members of the Corporation Finance staff going over the details of a registration statement, which wasn't a very constructive use of his time, but at least gave him something to do since Manny wouldn't let him in on any of the important decisions.

RP: During your tenure, David, did the Commission review registration statements as a matter of course?

DR: Not as a matter of course. They would review them if there was some issue that the staff raised. Or when they came up for approval, if any member of the Commission had a question about them, they could review them.

MO: So that all registration statements that needed an acceleration order came up to the Commission, is that correct?

DR: You know, I'm not sure whether all of them were. I don't think the staff had to bring everything to the Commission. But I think there had to be an order of the Commission . . .

RP: Accelerated.

DR: . . . in each case, and I don't remember when those delegation rules came in. But at some point they delegated all that stuff to the staff, because it really was silly to have the full Commission passing on each of those statements.

RP: That was during your tenure that this occurred?

DR: You know, I'm not sure when it occurred.

MO: And with the crush of registration statements that began to be filed during this period and with the strength of the economy at the time, was there tension between the industry and the Commission over how quickly the staff and the Commission were reviewing the registration statements?

DR: I don't think it was that much of a problem. The staff--Manny had had a good deal to do with this--had always tried to set it up in such a way they could respond quickly when they were satisfied that there was full disclosure. What they would do if there was some registrant who they thought was not completely aboveboard, they could give them a lot of trouble and hold them up for months, or years even, and just not let the registration statements become effective.

Actually, in my securities casebook, which I did later, I included some egregious examples, where the Commission held things up for years because they just didn't think it was a good-smelling deal. But generally they tried to accommodate the needs of what they considered the legitimate underwriters.

MO: Who were the heads of the divisions and the offices?

DR: Well, in the Chairman's office, in addition to myself, there were two legal assistants, Jeff Bauman and Dick Teberg, who was subsequently replaced by Jerry Grossman. They did the reviewing of agenda items for the Chairman and also worked on some of his speeches and other statements. We were sort of a team working together.

Corporation Finance, at that time, was headed by a man named Ed Worthy, a very courtly gentleman from Virginia. But the real power in that department was his associate director, Bob Bagley, a very conservative southerner who sort of ran the division. They'd both been there many years.

The Division of Trading and Markets, which has since been split into Enforcement and Market Regulation, was headed by Irv Pollack, who was an absolutely wonderful guy, just the perfect public servant. I was terribly impressed with him. He was very honest, very efficient, very dedicated. He just ran a wonderful shop. He had great loyalty from his staff. He had an assistant director, Gene Rotberg, who was in charge of the market regulation issues which were coming up at that time, who was one of the brightest people I ever knew. It was always fun to listen to Gene Rotberg getting into a discussion with Manny Cohen and each of them trying to outsmart the other. Gene had a lot to do with many of the Commission initiatives in trying to deal with some of the problems in the structure of the markets.

Corporate Regulation, which is what Investment Management was then called, dealt with investment companies and also bankruptcy things, was headed by Sol Freedman, who had been there for many, many years and also took a very conservative approach to the way things are done. I remember one time I couldn't understand why the division did things a certain way, and I said, ``Sol, why do you do it that way?'' He said, ``We've always done it that way,'' and that was often the rationale.

The General Counsel's Office was headed by Phil Loomis, who was another absolutely brilliant person. He had a knack of being able to draft legislation or anything, by just dictating it. It was an amazing gift. He dictated things, the secretary would write them up, and they came out absolutely perfect. He was sort of unhealthy looking, and his hands shook, and he was always smoking cigarettes and trembling. But out of his mind would come this absolutely beautiful flow of ideas. Manny relied on him very heavily for drafting or organization. I think he was in general charge of the mutual fund study and a lot of other things going on at the time.

The chief accountant, Andy Barr, an old Scotsman was a real pillar of rectitude, and he really had an idea the accounting profession was an honored profession and had to have the highest standards. In light of what's going on currently, it's interesting to recall that at that time the accounting profession was trying to get into the business of consulting. They wanted the accounting firms to be able to do consulting as well as auditing. I remember Andy Barr standing in Manny's office saying, ''Mr. Chairman, this is wrong. You shouldn't allow them to do this. This is going to cause great trouble.'' You know, old Andy may have been right.

RP: David, I get the impression, listening to you, that the division heads at that time were old-timers, with many, many years of experience, in contrast to the division heads that now occupy those positions at the Commission. Is that fair?

DR: That's right. As a matter of fact, I think many of the people who were there at the time had come in during the Depression, and they knew the value of having a steady job. They weren't about to leave. There weren't great opportunities at that time in private practice. I mean, now the Commission has turned into a revolving door. It's terribly difficult to keep people. At that time it was difficult to get rid of them. They were going to stay there forever. As I say, that's one reason I saw my role as coming in and making some fresh suggestions. The old-timers would drive Manny to distraction, because he'd come from that background, but he'd always been innovative. When they didn't do things, he'd say, ''Go down and ask Bob Bagley where's that report I asked for.'' I'd go down to see Bob Bagley, and I'd say, ''Bob, the Chairman wants to know where that report is.'' And Bagley would say, ''We're working on it. We're working on it.'' If they didn't want to do it, they weren't going to do it. Manny knew that, and it frustrated the hell out of him. But they were his old friends; that was another part of it. He was very loyal to them, even at the same time he was frustrated with them.

And there were some others. Harry Pollack, Irv's brother, was the personnel director, very nice man, wonderful person. Frank Donaty, the controller, was sort of crusty, but very, very competent. One of my favorites was Bill Becker, who was styled the chief management analyst. His job was to try to improve the Commission's management systems. At that time there was a movement just started in the government with the wonderful initials, PPBS--the Program Planning Budgeting System. Each agency was supposed to restate its goals every year, and start from zero-base budgeting. It didn't completely apply to the SEC. But it certainly was a useful way for forcing divisions to say, ''Well, why are we doing it this way? Is there a better way of doing it?''

Bill was always trying to improve the situation. He had a wonderful sense of humor. I remember one situation. The regional offices were divided in such a way that most of them covered whole states. But the state of Louisiana was divided. All of Louisiana east of the Atchafalaya River was under the Atlanta regional office, and all of Louisiana west of the Atchafalaya River was under the Fort Worth office. Apparently the reason for this was that Bill Green, the longtime director of the Atlanta regional office, liked to go to New Orleans. So he arranged that New Orleans, being east of the Atchafalaya River, would be in his territory. So Bill Becker came up with the idea we'd start a securities firm called Atchafalaya Securities, which would be operated from a boat anchored in the middle of the Atchafalaya River, which would be outside the jurisdiction of both regional offices. We never did get it going, however.

MO: What significant things were going on at the SEC and in the securities industry while you were there?

DR: I would say the biggest thing going on at the Commission when I first got there was the completion of the mutual fund report, which was a Commission report. The Commission had received the report of the Wharton School study of mutual funds in 1962, and then supplementary material in the Special Study, which was completed in 1964, with a lot of recommendations in it. Manny felt there was a lot of pressure on the Commission to come up with some recommendations to implement these reports. It was a challenge to the Commission, and, as I said, he was very entrepreneurial. This was going to be the

Commission's big initiative. They would come out with this report and push through legislation.

RP: Do you recall what the size of the fund industry at the time was?

DR: You know, I don't recall the numbers. I know it was nowhere near the size it is . . .

RP: About 50 or 60 billion, wasn't it?

DR: Is that what it was? Fifty or sixty?

MO: Yes, and isn't it interesting that the report was entitled *Public Policy Implications of Investment Company Growth*?

DR: It is. It's fascinating, because it was sort of based on the idea that the industry had grown so huge, I mean, sixty billion, which is about the size of one big fund today, and the growth had caused these problems. Well, actually, there really wasn't that much wrong with the mutual fund industry. Considering the size of it, the opportunities for abuse in the mutual fund industry, my impression, over the years, going all the way back to 1940 and up to the present, this has been one of the cleanest, best-running, most innovative industries in the country, and all regulated out of one small division in the SEC, unlike the banking industry, which has three federal agencies and fifty state agencies crawling all over it and has been full of problems.

Well, the Commission really couldn't find anything too much wrong with the mutual funds. So they focused on profits. The people running the funds were making too much money. The three sources of profit in the mutual fund business are the management fee charged for running the fund, the sales charges on the sale of fund shares, and the commissions on fund portfolio transactions. Each of these had arguably some problems which this report attempted to address. The management fees were generally based on a percentage of net assets, typically half of 1 percent per year. Of course, what happened was, as the funds grew in size, the fees became very large. Because of the unique structure of mutual funds, which I won't go into in detail, with their independent boards of directors, the Commission sort of fastened on the idea that these directors had an obligation to go around looking for better deals on management fees, which wasn't quite the way the mutual fund industry works. So one of the things was to do something about this high level of fees.

In the sales load area, the problem was that Section 22(d) of the Investment Company Act permitted fund sponsors to fix the sales load or markup the dealers would charge on fund shares, and nobody could charge less. At least that's the way the law was interpreted. The funds had by and large fixed the sales load at 82 percent of the money being put into the fund. Again, this was a noncompetitive situation. The argument was it could be brought down to the benefit of the public.

On the commission rates, what had happened was the portfolio transactions were mostly handled through the New York Stock Exchange. The Exchange had fixed minimum commissions, and these fixed minimum commissions were so much per hundred shares, so even if a transaction involved 10,000 shares or 100,000 shares, the commission was a multiple of the commission on a hundred shares. Of course, this produced just huge amounts of money, and the mutual fund industry was very imaginative in figuring out ways to dole that money out to different broker-dealers who provided them with various services.

The report came out in December of 1966, and Manny was in constant motion trying to get the other Commissioners on board. He knew that the report would have to be unanimous if he was to have any chance of doing anything. So he had to persuade all of the other four to go along. On the management fees, they came up with this rather vague standard that the fees should be reasonable. Nobody knew quite what it meant, but nobody could argue the fees shouldn't be reasonable. On the sales loads, my impression, when I looked at it, was the whole report had been written as an argument for getting rid of this price-fixing provision, and arguing that sales loads should be competitive, but I understand, although I didn't directly hear this, that Barney Woodside just didn't feel he could go along with that. He didn't know what the impact would be on the industry.

The industry said, ``Mutual fund shares are sold, not bought. If sales people don't have the incentive to go out and push them because of high sales loads, they're not going to sell mutual funds. This industry's not going to go anywhere.'' I think Barney was concerned that maybe they were right, and he didn't want to be responsible for destroying this industry. So eventually the report came out with all this text leading up to getting rid of fixed sales loads, and then it says, ``Therefore, we recommend that there be a cap on sales loads of 5 percent.'' Where did this 5 percent come from? Well, it didn't really come from anywhere. People asked me afterwards, after Dick Smith had got on the Commission, where the 5 percent came from. I said, ``Well, the SEC has five Commissioners, and each of them has five letters in his last name, and so five seems to be a pretty appropriate number.'' So the report came out with a recommendation of a 5-percent cap on sales loads. But that was merely a throwaway by Manny to get the report issued, because as soon as the report came out and the legislation was introduced, he switched to a proposal that the NASD do a study of sales loads and come out with a recommendation. The NASD took several years doing that, and eventually came out with a proposal that sales loads should not exceed 82 percent, which was, of course, the figure that it had been initially.

The issue of commission rates on portfolio transactions really wasn't handled in this report. It was sort of left to negotiations with the New York Stock Exchange over the whole question of fixed commission rates and volume discounts, which was really starting up at that time and went on for the next seven years, culminating in the elimination of fixed rates in May of 1975.

MO: Do you know roughly what the commission rate was fixed at?

DR: Yes, it was about 1 percent.

MO: One percent.

DR: Yes, and the Commission did order its first cut, a volume discount, I think, in May of 1968.

RP: What happened with the commission rates during your tenure?

DR: During my time at the SEC, the Commission was putting more pressure on the New York Stock Exchange, exposing the give-ups and other ways of distributing all this money, and just making the Exchange's position untenable. Manny was also very good at getting the Antitrust Division of the Department of Justice involved, and they, of course, raised the question, ``Well, why do you have to fix commission rates at all?'' So the SEC could then be put in the position of being the only ones who could protect the stock exchange from the Antitrust Division coming in and suing them for price-fixing. Manny was very clever in positioning himself on this.

When I got back for my second time in Washington, that was still the center of attention. It was a really big issue. The first Buttonwood Tree Agreement, which founded the New York Stock Exchange in 1792 is essentially a one-sentence agreement that said, ``We, the members, agree to trade with each other, and we will charge at least a quarter of 1 percent on all trades with outside people.'' I mean, price-fixing went back almost two hundred years, and that was the core of the exchange.

RP: What were some of the other significant things that happened during your tenure?

DR: Well let me go on with the mutual fund issue for a moment. After the report came out, the legislative battle began, and this was Manny nagging people at his best. I mean, he nagged them incessantly. He was nagging the White House to include the mutual fund bill in the President's State of the Union message. It didn't get into the State of the Union message, but it did get a mention in the President's consumer message. Manny kept going over to see congressmen, ostensibly to provide them with information they'd requested, but really to lobby them on this thing. This was a bill which, as far as I could see, had no real support, no public outcry. It wasn't really a very good bill. I think the only reason that a bill eventually passed in 1970 was these members of Congress got so tired of Manny Cohen coming after them, they said, ``Can we give this little man something so he'll go away and stop bothering us?''

Actually, I think the thing that accomplished the most was the hearings. The hearings on the bill raised public awareness about two things. On the sales loads, it raised public awareness that there was no need to pay 82 percent, because there were some other funds which were sold without a load, and you could get those. Once people learned about mutual funds, and that they were good, and you could get them without paying the 82 percent, that system gradually began to crumble, and over a period of maybe a decade after that time, a lot of the big fund managers just dropped their sales loads and started distributing on a no-load basis, like Fidelity and Vanguard and others. So, much more than the actual legislation, the hearings provoked this public awareness.

The other thing it provoked a public awareness of was something Manny and the Commission did not intend. Manny wanted to get some economists in there to talk about the high management fees. He got Paul Samuelson from MIT to testify in the House and Henry Wallich from Yale to testify in the Senate. At this time, people were beginning to work on the so-called random walk hypothesis or, as it came to be known, the efficient market theory. Essentially what the economists were saying is, ``regardless of what you say about these management fees, management really isn't worth anything, because we've done research which shows that you can do just as well by throwing darts at the stock tables and picking the stocks on which the darts land.'' Wallich actually testified to this effort before the Senate Subcommittee. Senator McIntyre, who was sort of in the pocket of the banks, was always trying to cause trouble for the mutual fund people, so he decided to have a little fun with this. At the next meeting of the Senate Securities Subcommittee, he came in and reported that he had in fact gone and bought a *New York Times* and some darts and had thrown them at the stock tables, and the stocks that they hit had wound up outperforming the average mutual fund over this period.

Well, I think the SEC was almost as outraged as the industry was by this, because the SEC view was: ``This is a solemn profession. These are professionals. They're held to high standards,'' while the economists were saying, ``All they're doing is just playing games.'' What this led to, of course, was one of the great phenomena of mutual funds, the index fund. The index fund has been enormously successful, because it provides you with diversification, which is really what you get a mutual fund for, at very, very low cost.

One other amusing incident; during the fight over sales loads, I was sitting in the audience of the House hearing when Paul Samuelson testified that competition was the way to go. Behind me were sitting two old mutual fund executives, and one of them leaned over to the other as Samuelson talked about free competition and said, ``That man belongs in Moscow.'' [Laughs] It was so funny.

Anyway, the other big legislative matter that was going on was takeover bids. Senator Williams of New Jersey had introduced a bill to regulate hostile takeovers. This was not an SEC initiative, because the bill was really designed to protect corporate managements from being taken over, rather than protect shareholders. So the SEC's concern was to improve their position in this legislation, which, of course, was submitted to the SEC for its views. The SEC attempted to use the provisions in the bill on corporate repurchases to increase its own power to regulate corporate repurchases, which was a source of some possibilities of manipulation. The Commission had brought an action against Georgia-

Pacific a couple of years before on that, and they wanted to get a provision in there giving the SEC broad powers to regulate repurchases by corporations of their own shares.

They got some language in, and one day I was called over to a meeting in the office of Congressman Hastings Keith of Massachusetts, who was the ranking Republican on the subcommittee. He introduced me to a lobbyist from Sears, Roebuck who was there, who in effect had said, ''No. No. No way. We don't want the SEC regulating corporate repurchases unless it's to prevent fraud.'' So the language was changed to make it only an anti-fraud provision.

The takeover bid bill was signed the day I left the SEC in July of 1968. I don't think it really accomplished too much. Most of the action really took place under state law, particularly Delaware law, in these takeover battles. Two provisions of the bill were particularly interesting to me. One provision, Section 13(d), required reports by every person or entity that held more than 5 percent of the stock of one of these large companies, which, of course, was the information I'd been looking for when I wrote to the SEC in the first place. So they finally got authority for it the day I left.

The other provision I'm particularly fond of is Section 14(f) of the 1934 Act, which I actually suggested. I'd been working on the question of friendly buyouts, where holders of a controlling block of stock would sell the stock to a new holder, and all the directors would be replaced without any vote of shareholders. I felt this sort of violated basic rules of corporate democracy, and I suggested a provision to be added to require that these be put to a vote of shareholders. Manny referred it to Phil Loomis, who said he didn't think the Commission really could support that sort of substantive requirement, but that a provision requiring disclosure of the same type as if there were an election of directors would be appropriate, and that was indeed put into the law.

RP: And that was the origin of the Section 14 information statement?

DR: No. The information statement was in a 1964 amendment. That's 14(c). But this is an analogy to 14(c), which says, in effect, even if you don't have an election of directors, you've still got to provide the same information when you replace them. Section 14(c) said if you don't solicit proxies because you have a majority of the shares, you still have to provide shareholders the same information. So it really sort of expanded on that idea.

RP: It really was an extension of 14(c).

DR: Yes, an extension of 14(c).

MO: On that note, let's pause for a moment.

[End Tape 1, Side A]

[Begin Tape 1, Side B]

MO: What were some of the other significant things that were going on at the SEC and the securities industry at this time.

DR: One very important development in the disclosure area that started at this time was the idea of integrating the disclosure requirements of the '33 and '34 Acts. Milton Cohen, who directed the Special Study, had gone off to teach at Harvard for a year, and having nothing to do there, he just had time to create mischief. So he wrote an article in the *Harvard Law Review* called ''Truth in Securities Revisited,'' in which he made the very sensible point that it was sort of a historical accident that the '33 Act and '34 Act had two different schemes of disclosure, and if you were designing a rational system, you'd put the two together. He persuaded people at the American Law Institute that this was a sufficiently important idea that they should undertake a study of how they could change the law to accomplish this result.

Well, sometime in 1967 a delegation came to call on Manny, consisting of Milton Cohen, Ray Garrett, who was a big figure in the American Law Institute and, of course, who later became Chairman of the Commission in 1973, and Louis Loss, a professor at Harvard Law School who was the author of the major treatise on securities law. Manny invited Dick Phillips and me to sit in at the meeting at which they announced that they were going to ask the American Law Institute to start drafting a new code, which would integrate the disclosure requirements of the two acts. After they left, Manny expressed his concern. ''If this thing gets into legislation and goes to Congress, who knows what'll come out? If it's not a time of major public upset, they might weaken all the protections.''

Dick and I suggested to him, ''Well, you know, Manny, the Commission could do a lot of what they want by rule-making and just use the rules and forms to integrate the disclosure requirements of the two acts.'' He said, ''Well, that might be a good idea.'' We added, ''The person to do this would be Frank Wheat,'' who had expressed a lot of interest in this thing in the past. Well, this sent Manny off into muttering, ''Frank Wheat. That phony liberal,'' etc., etc., etc. So we left Manny. A few days later he called us back, and there he was, sitting with Bob Bagley. I told you he was the very conservative associate director of Corporation Finance.

Manny said, ''Well, fellows, I've been thinking about your idea, and I've asked Bob Bagley to do a study of this and to recommend changes in our disclosure requirements.'' So we waited till Bagley left and then said, ''Manny, you know, Bob Bagley is not the solution. He's a big part of the problem. Frank Wheat's the guy to do it.'' So Manny sputtered and expostulated some more. But, when I walked into a Commission meeting about a week later, there was Manny talking to his colleagues and saying, ''Well, I've had this visit from these guys who are going to do this legislation, and I'm really troubled about it. I think we can do this in the Commission and do a better job, and I've asked Frank Wheat to head this study, and he's graciously consented.'' So he did.

Dick Phillips worked closely with Frank on the study. They did a wonderful job. They came out with good recommendations, which were enacted over a period of about ten years, culminating with the adoption of the integrated disclosure requirements in 1982, Regulation S-K, which really did the job.

In the meantime, the ALI [American Law Institute] went on with its plan to redo the securities laws, and the project just got way out of hand. Louis Loss decided that he would rewrite *all* the federal securities laws, and the thing just turned into a monster project. The ALI spent nine years doing it. They finally came and ceremonially presented this giant volume to leaders of Congress in 1978, and nobody would even introduce it. People in Congress looked at it and said, ``Oh, my God, this would tie us up for years. There's no public interest in this thing whatever.'' So as it turned out, the Wheat report, and the Commission's rules that were enacted pursuant to it, basically solved the problem.

A lot of stuff, of course, was going on in the securities industry at this time. The institutionalization of the market, the process by which most of the people holding stock and trading in the markets were large institutions, particularly mutual funds and pension funds, created pressures on trading practices, commission rates and so forth, and Manny decided the Commission needed to do a study of the institutionalization of the markets. He got Congress to authorize such a study. I think it was in May of 1968, so that the study actually started, I think, basically after Manny had left the Commission and Budge had become Chairman.

Because the people in the industry had been burned by the Special Study, which was headed by lawyers and uncovered a lot of very dubious practices, Manny had to guarantee it was going to be an economic study conducted by economists. And it was an economic study, headed by two economists, Don Farrar and Sy Smidt. I think they finally came out with their report in 1971. Totally worthless. It consisted of giant masses of figures, no organization to it, almost impossible to make head or tail of anything in it. It was an economic study and, as such, it didn't do any good.

While we are on the subject of institutions, there was another interesting event that occurred while I was there. Insurance companies were trying to get into the mutual fund business by selling ``variables annuities,'' which differed from traditional annuities in that the amount of the annuity depended on the performance of the stock portfolio in which it was invested. When these variable annuities first appeared in the 1950s, the SEC took the position that they were securities and had to be registered under the >33 and >40 Acts, and the Supreme Court, in a 5-4 decision in 1959, upheld the SEC position, with three separate opinions that went off in three different directions. The insurance companies then went back and designed a new type of variable annuity, involving a guaranteed minimum that made it look more like a traditional annuity. The SEC said it was still a security, and the issue came back to the Supreme Court in 1967, in the *United Benefit* case.

Normally, when the US is a party to a case in the Supreme Court, the Solicitor General argues the case for the government. However, when the SEC was the government party, the practice had been for the Solicitor General to let someone from the SEC argue the case, figuring that they knew more about the technicalities of the securities laws. But in this case, the word came down from the Justice Department that the Solicitor General, who at the time was Thurgood Marshall, was going to argue the case. Marshall is of course best known for his work on civil rights, but he also had an interest in securities law. He had written a number of important securities opinions when he was a judge on the Second Circuit, and subsequently wrote several more after he was appointed to the Supreme Court.

Well, the lawyers at the SEC were horrified. Marshall wasn't familiar with the securities laws, he would mess up the argument, and the insurance companies would be able to escape SEC regulation. But the SEC had nothing to say about it. When the day came for the argument, I went over to the Supreme Court with some of the other SEC people to hear it. Marshall did make a couple of mistakes, confusing the >33 Act and the >40 Act, but he basically stayed away from the technicalities. He kept waving the company's sales brochure in the air, saying to the Justices, ``If you want to see what these people were selling, look at the brochure!'' And of course the brochure was filled with stuff about how purchasers were going to benefit from the rise in the stock market. When the Supreme Court issued its opinion six weeks later, it was a unanimous decision in favor of the SEC position, written by Justice Harlan, who had written the dissent in the earlier case. And he based his decision in large part on the theory that it was appropriate to judge the offering as what the promoters represented it to be. Thurgood Marshall, in spite of--or perhaps because of--his unfamiliarity with the details of securities law, focused on the key issue and persuaded the court. Maybe it's sometimes better not to be too expert in your field.

What was also happening about this time in 1968 was the development of a really serious problem in the securities industry, the back-office problem. Volume was increasing enormously. At that time, the method of clearing and settling transactions was to transport hundred-share certificates in briefcases and wheelbarrows around Wall Street from one firm to another. Volume was increasing to 10 or 15 million shares a day, and this was really beginning to create problems. Firms were losing track of their inventories of stock.

Today, regularly every day, the NYSE [New York Stock Exchange] and Nasdaq between them trade 3 to 4 billion shares of stock. If you can imagine transporting hundred-share certificates around Wall Street covering 3 billion shares of stock, you can imagine what would happen. Well, unfortunately, when this problem really hit was after Manny had been let go. When Nixon was elected in 1968, Manny sort of lobbied a bit that he was really a nonpartisan person and that Nixon could continue him in office comfortably. Nixon had campaigned against heavy-handed government regulation, and as far as he was concerned, Manny was about the heaviest hand around, and he was out by, I think, March of '69. Nixon appointed Hamer Budge in his place as Chairman.

That turned into a real disaster for the Commission, because Hamer Budge, as I said, really didn't believe in big government or regulation, and he wouldn't ask for larger budgets or more assistance for the Commission. He was suspicious of the staff. I remember, I'd left the Commission by this time, and meeting and getting letters and talking to friends at the Commission, I learned that morale had just collapsed. People were terribly discouraged. The Commission went into a funk, which lasted the next couple of years while things were really going to hell on Wall Street.

The paperwork crisis, which was a product of too much volume, was succeeded by a sharp decline in prices and volume, which put financial pressure on the firms. Several of the largest firms went out of business. The stock exchange and the other firms were desperately going around trying to prevent Wall Street from collapsing completely. It was undoubtedly the biggest danger to hit Wall Street since the collapse in 1929 and the Great Depression. I mean, the scandals that are going on today are nothing compared to what was happening in Wall Street in 1969 and '70.

MO: What significant things were going on in the United States and in other parts of the federal government while you were at the SEC?

DR: Well, of course, the big thing that was going on in 1966 to 1968 was the Vietnam War. I sometimes had the feeling we at the SEC were dealing with securities issues as though they were the be-all and end-all, while the country was falling apart. There were riots in the streets. The country was a real mess. I particularly recall my last year there in the spring of 1968, when you had the assassinations of Martin Luther King and Robert Kennedy. The day after the assassination of Martin Luther King, I went out on the balcony of my office--actually it was the other side of the building, facing west--and looked and could see the smoke rising from Fourteenth Street in Washington where the mobs had rioted and were burning all the buildings. The Commission, of course, and other government offices closed early. I joined the gridlock of traffic trying to get out of the city. It was really a very frightening experience.

What we were doing at the SEC was off in a corner. What was really going on was that the country was going through an enormous crisis, and that crisis really lasted from the assassination of John Kennedy in 1963 to the resignation of Richard Nixon in 1974, a period of eleven years. I don't think the country has gone through any comparable turmoil since the Civil War. So that was sort of the backdrop against which we were playing these little parts at the SEC.

MO: How do you think it affected the SEC's work at the time?

DR: Well, of course, it eventually affected the SEC because Lyndon Johnson decided not to run again, and Richard Nixon was elected. He appointed Hamer Budge, and that had a great impact. The Vietnam War didn't really have a direct effect on the SEC's operations.

RP: Do you think it had an effect on funding?

DR: It probably did. Just as the SEC was sent to Philadelphia during World War II because it was considered a totally nonessential agency, Lyndon Johnson had many other things to worry about other than high sales loads on mutual funds. So the SEC just wasn't very important in the scheme of things. But I think the thing that impacted the most was the fact that Hamer Budge didn't ask for money. Manny would have bugged them until he'd gotten some money out of them.

MO: And these sorts of issues led you to leave the SEC then?

DR: Oh, no. That had nothing to do with my leaving the SEC. I had gone there for a fixed term. The limit on my leave of absence from Cornell was two years. I had to go back or lose my faculty position there. I'd thought of the idea, if I like Washington, I'll stay. But I find I like to take a long-term perspective on things, which one can do in teaching. In Washington, just as in Wall Street, everything is, ''What happened ten minutes ago?'' It was fun and exciting to do for a period of time, but I wasn't going to stay in an administrative position forever. So I left as scheduled in July of 1968 to go back to my teaching at Cornell.

MO: After your teaching at Cornell, what other sorts of positions did you have then in Washington?

RP: Yes, in July Manny was gone, was he not?

DR: No. Manny didn't leave until March of 1969. Mike Eisenberg came in and succeeded me as executive assistant for the last eight or nine months.

RP: That's correct. That's correct.

DR: Yes. Well, two interesting things happened. First, right after I left the SEC, the first thing my family and I did was to take a holiday in Europe. On our way we stopped to visit my best friend from law school, Ed Coughlin, who had gone several years before to work for Bernie Cornfeld's mutual fund operation in Geneva, which, of course, had been a target of SEC proceedings for years and years.

The first night we got to Geneva, Ed installed us in an apartment owned by one of the IOS [Investors Overseas Services] executives who was out of town at the time, and took me to a party at a chateau. I think it was rented by Jimmy Roosevelt, the son of FDR, who was one of the people on the board of IOS at the time, Investors Overseas Services. Well, this party was something. I mean, they were really flying high. This mansion, just the food, and Bernie Cornfeld with his two pet ocelots. Jimmy Roosevelt, Pat Brown, the former governor of California, and Eric Mende, the former chancellor of West Germany, were all on the board. I mean, this thing was really incredible.

Ed took me around, introduced me to everyone, ``This is my old friend, Dave Ratner. He works for Manny Cohen at the SEC.'' Well, they'd cough up their canapés or whatever they were eating [demonstrates], and Pat Brown harangued me endlessly [demonstrates] about how ``The SEC has no jurisdiction over us. We're doing business abroad. They have no business coming after us.'' It was a wild evening. A few years later, of course, IOS collapsed in flames. It was taken over and looted by Robert Vesco and all sorts of other horrible things happened. But it was wild while it lasted.
So, as I say, I went back to Cornell, started teaching in the fall of '68, and then a few months later Budge replaced Manny as Chairman of the Commission, and the industry began to fall apart. By the end of 1970, Congress realized something had to be done. I mean, this was really a serious crisis. Both houses of Congress authorized studies to determine what had happened and what should be done. I actually was invited to go and interview with both of them. The Senate study was headed by Senator Harrison Williams of New Jersey, who subsequently came to a sad end in the Abscam scandal. The House study was headed by John Moss of California, who was chairman of a subcommittee of the Commerce Committee. I interviewed both of them, and it sounded like another very interesting project. As a matter of fact, my entrée to the Senate study was a guy named Steve Paradise, who had worked at the SEC and then had gone to work for Williams as

his man on securities. Steve was a very political, manipulative person, who could really work out deals.

It looked like a good time to go and do something in Congress, because it looked as though the SEC was totally out of the picture. Budge wasn't going to do anything. He really was incapable of taking any strong action. So I considered the offers from both of them. I decided the House would probably have better hearings, but the Senate would do the deals and write the bills, which is what had happened on the takeover bids. So I went with the Senate committee, and I was absolutely right. The House held wonderful hearings, but they couldn't pass anything. The deals were made in the Senate, and that was the legislation that eventually passed.

RP: That legislation was what?

DR: That was the Securities Acts Amendments of 1975. It sort of dealt with a range of supervisory things. But, again, as I'm going to say, the important thing was not the legislation that resulted from the study, but the effect of the hearings themselves.

So in late '71, I headed down to Washington again. But in the meantime, something unexpected happened. Hamer Budge resigned as SEC Chairman and was replaced by William J. Casey, a tax lawyer from New York who subsequently went on to even greater notoriety as the head of the CIA. Casey came in, and it was like a whirlwind. He was in some ways like Manny. He was very aggressive and dynamic.

Casey had quite an impact on the Commission. I think he had some good impacts and some bad impacts. He really shook things up. He brought in a lot of new people, many of whom were very talented and were from the private sector, and they did do a good job of rethinking a lot of the things the Commission had done before. Casey was a venture capitalist, and his idea was that the SEC should require people to disclose the same kind of stuff as venture capitalists need, which made sense. He was always big at pushing projections of earnings. ''That's what people want to know, not what you earned last year. They want to know what you're going to earn next year.''

But the effect, as far as we were concerned on the Senate study, was that the SEC was suddenly front and center. Casey was just like Manny in the sense that *he* wanted to be the center of attention, and he wanted the SEC to control developments. So we were constantly battling with Casey. Of course, the two houses of Congress were controlled by Democrats, and Casey was a Republican. So you add the partisan conflict to the general turf battle.

Well, working on that study, and I stayed there for a little over a year and a half, was also a very interesting experience, with also many frustrations and times when I just wanted to leave and pack it up and go back home. Working with Steve Paradise was difficult. Working in the political milieu was difficult. But we did manage to put a very good staff together.

Each senator on the subcommittee got to make one appointment. Senator Stevenson of Illinois appointed a very good young Chicago lawyer named Al Harris. I didn't get along very well with him, but he was very capable. Senator Packwood from Oregon, appointed a guy named Ken Stephens, who did a wonderful job of analyzing the breakdown in the back office and what needed to be done in that area. One of my former students from Cornell, Tom Newkirk, called me at one point and said he was tired of his job in New York. Could he come down and work on the study? By that time we'd sort of run out of political appointments. So he came, and, after working on that study, went to the SEC, where he is still is associate director of the Division of Enforcement.

My favorite appointment story, though, was when Steve Paradise walked in one day during the summer of '72 and said that we had to hire the son of the mayor of Bayonne, New Jersey, for the summer. He said, ``I told the senator we're going to be a laughingstock if we hire the mayor's son for this study. But the Senator said, >No, you've got to do it.' He's coming in next week. Find something for him to do.'' What the hell were we going to do? In the meantime, Senator McIntyre, who I had mentioned in connection with mutual funds, had an interest in oil and gas drilling programs and wanted us to study those. Since they really had nothing to do with the subject of our study, I thought, ``Well, we'll get this kid from Bayonne, New Jersey, in and have him do the work on the oil and gas drilling programs.''

So in came Harold Fitzpatrick, the son of the mayor of Bayonne, New Jersey. It turned out he couldn't stay the whole summer with us, because he'd just completed his first year at Harvard Law School and was invited back to join the *Harvard Law Review*. So I said, ``Well, okay. We've got a sort of short-term project here you can help us with. Do you know anything about oil and gas drilling programs?'' He said, ``Well, last summer I worked in the oil investment department at Chase Manhattan Bank, and I worked on all these oil drilling deals.'' I said, ``Harold, it sounds wonderful. Perfect.'' He knew everything about these things. So, at the end of our interview, he said, ``Well, now, if I get into any problem on this, who's the expert on Capitol Hill on oil and gas drilling programs?'' I said, ``Harold, you're the expert on oil and gas drilling programs.'' I learned a lesson from that. If we had scoured the country looking for a person to do a study of oil and gas drilling programs, we could not have done better than the son of the mayor of Bayonne, New Jersey.

Well, what did we do in that study? We focused obviously on the operational problems, because that was the crucial thing. What you had at that time was the banking industry, which handled the transfer agent functions and depository functions, and the securities industry, which handled the actual transfer of certificates, and they were just pointing fingers at each other and blaming the other one for the mess. So they came up with a committee call BASIC, Banking and Securities Industry Committee, to try to work these problems out, which operated very slowly. As a matter of fact, some people said BASIC stood for Bureaucratic Attempt to Stifle Innovation and Change.

Actually, Ken Stephens's report, which came out in the first installment of our report in February of 1972, was absolutely the best thing done on clearing and settlement, and it really laid out what the problems were. People got to work. They set up Depository Trust Company as a New York bank, to hold all the certificates in a vault in downtown New York, and there they've sat ever since. It solved the problem. It was easy to solve in a practical sense. It was just difficult to solve politically.

The other big issue which, of course, was heating up was the complex of issues around commission rates. The SEC had already started to put pressure on the stock exchange for volume discounts and competitive rates on large transactions. We added to the pressure. We held hearings, and the House held hearings on all the distortions introduced in the markets, and how transactions were being sent to out-of-the-way exchanges solely for the purpose of giving up part of the commission to different groups of broker-dealers. It was impairing the efficiency of the markets.

We also focused on how to develop some things which still hasn't been developed, the so-called central market system, combining all these different markets. We focused on the self-regulatory system and suggested changes in the SEC's oversight functions over those, and the application of the antitrust laws. Of the three most important things that happened in 1975, the least important one was the passage of legislation, which did change the SEC's role in a number of ways and rationalized a number of inconsistencies.

The main thing was the pressure that was brought to bear on the New York Stock Exchange, which eliminated fixed commissions on May 1, 1975. I think there were a lot of people in the industry who really thought the markets wouldn't open for business that day. Fixed-commission rates were so ingrained in it. I think it was Fred Siesel who did a calendar of May 1, 1975, and all the weird things that would happen when they opened for business. But, of course, what happened was that the commission rate, the commission cost per transaction, went way down, and the number of transactions went way up, so that the securities firms make much more money now than they ever did on the fixed commissions. It was obvious once it was done that it was the right thing to do.

Ironically, private litigation against the New York Stock Exchange, alleging that their price-fixing was a violation of the antitrust laws, finally reached the Supreme Court in 1975. The Supreme Court, after fixed commission rates had been abolished, held that the stock exchange was not subject to the antitrust laws in the fixing of commission rates, because the Commission, as evidenced by its actions, had been taking care of the problem . . .

RP: That was the doctrine of primary jurisdiction.

DR: I'd say, yes, it was--yes, it was. But it sort of wrote a fitting end. Had the issue still been pending, I think the Supreme Court decision might have been different. But since the problem was eliminated, they could be gracious and say, ''Well, you know, you're not subject to the antitrust laws.''

Now, what was happening at the SEC during this period? As I said, Hamer Budge really caused a sad decline. Bill Casey revitalized the Commission, brought in a lot of new ideas. But he was somewhat ethically challenged, I would say. He operated on the margins and thought he could get away with anything. But he was very clever. The extent of his cleverness became obvious when he left in 1973 to head the Central Intelligence Agency. Nixon appointed Brad Cook from Chicago in his place, and within two months Cook was in the middle of a scandal--accused of having changed an SEC report to eliminate references to Robert Vesco's contributions to the Nixon reelection campaign. Cook was forced to resign in disgrace.

Nixon, attempting to salvage the SEC's reputation, appointed Ray Garrett as Chairman and Al Sommer as a member of the Commission in 1973, joining Irv Pollack, Phil Loomis, and John Evans, who'd come from the staff of the Senate Banking Committee. I've always thought that that Commission from '73 to '75 was maybe one of the best assemblages of people ever to run the SEC. There were five people of great integrity, intelligence, really dedicated. You couldn't ask for better people to run the Commission.

My work at the SEC and my work with the Senate Committee also led to my being asked to do casebooks on securities regulation and institutional investors, which I did. I got a great pleasure from doing these casebooks, but the book I got the most pleasure from is *Securities Regulations in a Nutshell*. I really enjoy making things clear and easily understandable to people. When I was at the Commission, I was always trying to get people to express things clearly. I remember rewriting one whole release that came out of the Division of Corporation Finance, where they had done an investigation, and were announcing the results of this investigation, all written in a turgid way that made it completely unintelligible to anybody reading it. So I really enjoy making things understandable to people.

I also wound up doing a number of CLE [Continuing Legal Education] programs, including one that I was asked to organize in 1973 at Haverford, Pennsylvania. Dick, you were on the fourth week of that, I think, dealing with investment companies. A four-week program on federal securities law. Nobody ever tried that before or again. It was much too long, but, anyway, we did it. As luck would have it, the first week of the program was on disclosure, and two of the people I had on the panel were Ray Garrett and Al Sommer. It was while they were at Haverford participating in this program that their appointments as Chairman and a member of the Securities and Exchange Commission were announced. That was great timing.

The highlight of the second week, which was on enforcement and fraud, was a panel with Stan Sporkin, who by this time had become head of the Division of Enforcement, and Art Mathews, a wonderful lawyer who sadly died young, who had already left the

Commission and gone to Wilmer, Cutler & Pickering, where Manny Cohen was. They were discussing the rights of respondents in SEC enforcement proceedings. Art was restating what a lot of lawyers in private practice said, that the SEC didn't always give due process to people who were the subjects of these proceedings. He was going on about the necessity of due process, and Stan Sporkin was sinking lower in his seat and looking grumpier and grumpier as this went on. Finally he couldn't stand it any longer. He said, ''Art! You keep talking about due process this and due process that. Due process is for *innocent* people. We're dealing with crooks.'' The people in the audience were shocked; their jaws literally dropped. They couldn't believe that Stan Sporkin had said this. As I went out of the room after the session, one of the students in the course came up to me. He said, ''Professor Ratner, let me show you something.'' He took me into the men's room. There in crayon on the wall above the urinal, somebody had written, ''Sporkin has spoken.'' [Laughter] It was a great summary. Anyway, I had a lot of fun with all of this stuff, and it was a delightful part of my life.

MO: Thank you, David. Any other memories or thoughts that you'd like to share with us as we part?

DR: Well, I think I've covered pretty much everything. As I say, the problems of today are certainly serious ones. There probably are ways in which the SEC might have been more aggressive. It's pretty difficult, though. The SEC supposedly has power to regulate all these things, and Congress says it expects the SEC take firm action. But unless the political will is there, it's very hard to do it. The Congress will just call the SEC in. So you really have to wait for a scandal. Then you usually do the wrong thing.

Just one last story, one interesting episode on the relationship between the SEC and Congress. Because the SEC is an independent agency, Congress feels that it really has jurisdiction over it. While I was there, Manny was called to testify before the Senate Committee on Small Business, because there were always complaints from small business organizations that the SEC rules made it very difficult for them to raise money. The Chairman of the committee was Senator Montoya of New Mexico, and the ranking Republican was Senator Javits of New York. Manny was there ready to testify on what the SEC was doing to make the burdens easier.

Javits said to Montoya, ``Mr. Chairman, I have to leave for another meeting. Would you permit me to make a statement first?'' Montoya said, ``Certainly, Senator Javits, you can make a statement.'' Well, Javits proceeded to give a five-minute statement tearing the SEC up and down for its bureaucratic rules and its stifling of small business, saying ``Mr. Cohen, you've got to reform your agency and do something about this.'' Then he finished and said, ``May I be excused, Mr. Chairman?'' Montoya said, ``Certainly.'' Javits came down off the dais, came up to the witness table, shook Manny's hand, said, ``Good to see you, Manny.''

Then, I realized that the relationship between people and agencies in government is not always what it appears to be. Having the opportunity to be there on the inside just gave me a great, great insight. It was a wonderful experience.

MO: Well, on that note, this interview is completed, and the Society thanks you, David Ratner and Dick Phillips, for an enlightening and entertaining interview. Thank you.

DR: Thank you.

[End of interview]

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