

Remarks of

PAUL GONSON

upon the presentation to him of the

William O. Douglas Award

by the

Association of Securities and Exchange Commission Alumni, Inc. (ASECA)

at the Association's Annual Dinner

March 3, 2006

The Ronald Reagan Building International Trade Center

Washington, D.C.

Introduction of Paul Gonson

By Richard M. Phillips

Partner, Kirkpatrick & Lockhart Nicholson Graham

It gives me great pleasure to introduce Paul Gonson as this year's recipient of the William O. Douglas Award for 45 years of distinguished service to the development of securities regulation – over 37 years as a member of the Commission's Staff and for the past seven years as my colleague at Kirkpatrick & Lockhart Nicholson Graham. My own relationship with Paul goes way back to 1961, when Paul started in the Commission's Office of General Counsel. Shortly thereafter, Paul became the fourth member of our SEC Staff carpool. He quickly exhibited his passion for securities law. He saw the potential in turning lemons into lemonade and organized the Shirley Highway (now I-395) Institute of Securities. The bumper-to-bumper traffic provided us with extensive opportunity to explore during the morning commute and resolve during the afternoon commute the critical issues confronting the Commission. I also learned early on from that experience that Paul was a person with unusual strength of character and even temperament. He never would waver in his position even though when I was driving and he was in the back seat, I would turn to argue with him eyeball to eyeball.

That quality, among others, has served Paul well during the more than 37 years of service on the Commission's Staff. For the last 20 years he was the Solicitor of the Commission, and also at times was Deputy and Acting General Counsel. During his career as the Commission's chief advocate, Paul was personally responsible for the Commission's participation in hundreds of appellate cases, including over 40 Supreme Court cases. He personally argued over a hundred appeals on behalf of the SEC. During the same period, Paul served, at varying times, as an adjunct professor of Securities Law at Georgetown and American Law Schools.

Paul is also a co-founder and one of the first presidents of the SEC Historical Society. Under his leadership, and with the support of many SEC alumni and others, the Society has grown into a very robust organization documenting and preserving for future generations the course of securities law development.

Paul also authored or co-authored over 30 articles on securities law subjects, including one entitled "*What I Did on My Summer Vacation.*" This article reflected his experience as

leader of a delegation of securities lawyers to the newly capitalist countries of Poland, Hungary and Czechoslovakia soon after they had emerged from years of Communist rule. That visit was the forerunner of a second career for Paul as a much sought after consultant on securities regulatory issues in a variety of other foreign countries such as Vietnam, India, Egypt, Russia, China and Siberia. The last assignment may not have been obtained entirely on his professional qualifications. Paul was born and raised in Buffalo, NY and there were simply very few other securities lawyers who were eligible to handle such an assignment.

For all of these accomplishments, Paul has received a number of honors – the SEC’s highest award for Distinguished Service, the University of Buffalo Law School Distinguished Alumnus Award, the Justice Tom C. Clark Award for the Top Lawyer in Government and the President’s Distinguished Executive Award, presented to Paul personally by the elder President George Bush. But these awards, as impressive as the accomplishments that they represent, do not begin to reflect the full measure of Paul’s contribution to the SEC and the development of federal securities law.

Winston Churchill once said of Franklin Roosevelt that while he had a second-rate intellect, he had a first-rate temperament. All of us who have worked with Paul, however, recognize him for both his intellect and for a temperament that is infused with an extraordinarily heavy dose of wisdom and grace. It is because of these qualities that a steady procession of younger lawyers have streamed into Paul’s office both at the Commission and now at our firm to get the benefit of his views on an issue puzzling them. They did so not only because they knew they would leave the office with valuable new insights and a plethora of supporting authority but because their own thoughts were treated with great respect and deference. Paul would characteristically begin his analysis by saying, “John, that’s an excellent point” or (if it were an especially harebrained idea) “that’s an interesting approach, but you may want to consider....” He then would reshape the approach with remarkable perception that was always gracefully and deferentially offered. The result might well be an approach turned upside down, but John never felt his ideas were rejected or even diminished.

Even more important, Paul’s wisdom and grace allowed him to play an indispensable role of consensus building within the staff. Frequently, he was sought out to reconcile what often were sharply divided and vociferously voiced points of view held by different divisions, offices and strong personalities. All of the contenders would look to Paul as someone who would listen

carefully to each of the arguments with great respect and restate, reshape and reconcile them in a way that made each member of the staff feel that at least the best of ideas were preserved, and most important of all, resulted in a position that he, as the Commission's chief advocate, could effectively defend.

All of us who have worked with and dealt with Paul throughout these years have benefited from his unique blend of intellect and character that fused into a professionalism that has earned Paul a multitude of friends and admirers. An enemy, however, cannot be found. Paul's hobby is tap dancing and he has, in effect, danced through his career at the Commission, and now in private practice, with the effortless elegance of the consummate professional. The General Counsel of a client who could not be here today said it best in an email:

“There just are not that many times in one's career when one sees great intelligence, high integrity, exacting professionalism, calm manner and a dedication to public service combined in one person, but they all came together in Paul.”

Let us all join with Paul's family, who are here tonight, his wife Joan, an accomplished international trade lawyer in her own right, and his son Max, in honoring Paul Gonson as this year's recipient of the William O. Douglas Award.

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Fellow alumni and friends.

I am very proud and pleased to receive the William O. Douglas Award.

And I am grateful to Dick Phillips for his gracious introduction. As you know, Dick is, himself, a winner of the Douglas Award.

Dick and I were young lawyers at the SEC in the early 1960's and shared a carpool for several years. During that time, Dick was writing what was to become the seminal law review article on the Securities Acts Amendments of 1964. His co-author was Morgan Shipman, also in our carpool. Morgan became a law professor. Dick has enormous intellectual firepower, and Morgan was not lacking in that department. The carpool rides were a rolling seminar on the securities laws. I looked forward to and enjoyed those stimulating rides.

Dick was the one who recruited me to Kirkpatrick & Lockhart.

We SEC alumni are a very special breed of folks. Very few government agencies or departments have such a strong and loyal alumni. That is because the SEC was a special place to work, and it still is.

Many of you have told me that your best professional years were the ones you spent at the SEC.

Some of you have said that the time when you were there, that was the most important time for the SEC.

And one or two of you have even mentioned to me that, after you left the SEC, nothing really important happened.

I always enjoy talking with my fellow alums. Sometimes I suspect that our stories of adventures and triumphs at the SEC have gathered a little embellishment over the years. I am reaching that point in life when I am beginning to wonder whether the things I remember best really even happened at all.

Tonight, I want to say a few words about William O. Douglas, in whose name this award is given. I am an admirer of Douglas and am very interested in the early history of the SEC. Several scholars have written that a reason for the preeminence of the SEC among federal agencies is the terrific kickoff it got at the start of its life in the 1930's, with extraordinarily capable chairmen and commissioners and a talented staff.

As distinguished as Douglas' contributions were as a Supreme Court justice, he is best remembered by us for his achievements at the SEC that led to his elevation to the Court. Douglas was at the SEC during its first five years of existence, from 1934 to 1939. At the request of Joseph Kennedy, the agency's first chairman, Douglas, who was a well-known professor at Yale Law School, came to Washington in 1934 to head up the study of corporate reorganization abuses that Congress had directed the SEC to undertake. He was 35 years old.

When Kennedy left the SEC in 1935, James Landis was appointed chairman. Douglas was a member of the Landis Commission for a year and a half, and when Landis returned to the deanship of Harvard Law School, Douglas succeeded him as chairman. Douglas served until his appointment to the Supreme Court in April 1939.

In his first press conference as chairman, Douglas emphasized that the SEC should be "what I call 'the investors' advocate.' We have got broker's advocates; we have got exchange advocates; we have got investment banker advocates; and we are the investors' advocate." One cannot overemphasize the importance of this clear-eyed vision that has guided the Commission to the present day.

Douglas articulated a coherent policy framework for the theory of cooperative self-regulation of the securities industry. While the industry retained the initial responsibility for preventing fraud and unfairness, the SEC had to move aggressively when industry self-discipline failed to maintain high standards. Douglas said, “Government would keep the shotgun, so to speak, behind the door, loaded, well-oiled, cleaned, ready for use but with the hope it would never have to be used.”

Reforming the New York Stock Exchange and laying the groundwork for the NASD are hallmarks of the Douglas chairmanship. Forcefully, but with a minimum of direct government intervention, Douglas transformed the New York Stock Exchange from a private club for the floor members’ business to a public business. Douglas oversaw enactment of legislation in 1938 to regulate the over-the-counter market, leading to the formation of the NASD in 1939. The SEC, which was Douglas’ “shotgun in the closet,” was given broad oversight powers.

William Douglas’ chairmanship ended somewhat sooner than he expected it would. Early in 1939, Douglas sent word to President Roosevelt that he intended to accept the Yale Law School deanship for the academic year beginning September 1939.

But, shortly after, Justice Louis Brandeis retired. In February 1939, Douglas abruptly changed his career plans. In April, President Roosevelt appointed Douglas to succeed Brandeis on the Court. Douglas was 40 years old. On April 6, 1939, Douglas would recall, “there was a farewell party at the SEC, the whole staff attending. It was a sad occasion, for an old regime had ended and a new one was about to be launched. We would go different ways, and old friends would now disappear.”

In his book, Go East, Young Man, published in 1974, Douglas praised the quality of the 1930’s SEC staff – “honest, idealistic, hard working, and loyal men and women to the nth degree. The industry never took them to lunch or dinner.” While on the Court, Douglas continued his interest in the SEC. He wrote in 1974: “Forty years after the SEC was established it still had the best professional staff of any agency in Washington.”

If Douglas were alive today, he would be pleased to know that the SEC staff is still so highly regarded. He would marvel at today’s technology and complexity, and the globalization of the securities markets. But he would be pleased to witness the enduring concepts he championed – fairness and openness in the securities markets, the success of self-regulation

overseen by the “shotgun behind the door,” and, above all, that the SEC remains as ever strongly committed as the “investor’s advocate.”

These concepts today, 70 years after the formation of the SEC, seem to us commonplace and as natural as breathing in and breathing out. But they were pioneering concepts in Douglas’ day, and we owe much to him for his vision and energy in making them happen.

Douglas always considered himself a loyal alumnus of the SEC, even during his many years on the Court. He would regularly speak at the dinners commemorating anniversaries of the SEC, including those I attended in 1964 and 1974.

During Douglas’ chairmanship, Richard Whitney, president of the New York Stock Exchange, was caught stealing clients’ securities and went to jail. At a gala dinner celebrating the SEC’s 25th anniversary, Justice Douglas spoke and said, “The main difference I see between the old SEC and the new one is that we put in prison a much higher type of person.”

Douglas always saw himself as a western outdoorsman and a populist. He had little patience for pretentious persons. He wrote about John Foster Dulles, at that time a well-known lawyer in New York, as follows: “He seemed to me like a high churchman out to exploit someone. In fact, I was so struck by Dulles’ pomposity that when he helped me on with my coat, as I was leaving his office, I turned and gave him a quarter tip.”

Nor did Douglas have a high regard for New York City, which was too crowded for him. He made this plain in many ways. His negative reaction to that city was even reflected in a judicial opinion. A majority of the Supreme Court held that an insurance agent had to pay income taxes on a contest he won, getting his wife’s and his own expenses paid from Texas to New York City for a long weekend. The theory was that it was a great reward to come to New York City. Justice Douglas dissented, saying, “If we are in the field of judicial notice, I would think that some might conclude that the weekend in New York City was a chore and that those who went sacrificed valuable time that might better have been spent on the farm, in the woods, or along the seashore.”

Now, I would like to turn from William Douglas to Paul Gonson. I came to the SEC in 1961. Earlier that year, a young President John F. Kennedy, son of the first SEC chairman, said that a torch had been passed to a new generation. I felt that I was a part of that new generation.

Now, many years have passed, and my generation is no longer the youthful John F. Kennedy generation. It is the metallic generation – silver in our hair, gold in our teeth, and lead in our pants.

In the 1960's and even beyond, there were still a fairly large number of people who had started with the SEC when the agency was formed in 1934 or who came in the early years – people like Irv Pollack and my long-time boss, the late Dave Ferber. It was wonderful to interact with them. Now, on reflection, I realize that they passed on to me and my colleagues in that era the great traditions and culture of the agency. I hope that we have been faithful to pass them on to the next generation of SEC staffers.

I retired from the SEC at the end of 1998, after 37 years, nine years after I was eligible. Some thought that the only way I would leave the SEC would be on a stretcher.

My transition from the SEC to the law firm went more smoothly than I thought.

But one important change I didn't foresee was the immediate loss of clout when one leaves the SEC.

At the SEC, when I would make a telephone call, it would go something like this:

“Hello, this is Paul Gonson. I am calling from the SEC in Washington, D.C. May I please speak with Mr. Smith.”

The voice on the other end said, “Mr. Smith is in an important meeting with officers and directors of our company. But please hold, and I will put a note in front of him that you are on the line.”

I would respond, “Please don't interrupt him. Just ask him to call me.”

And she would say, “You don't understand. If I don't tell him you are on the line, he'll kill me.”

After I moved to the law firm, my call would go something like this:

“Hello, this is Paul Gonson. May I please speak with Mr. Smith.”

The voice would answer: “Mr. Smith is busy. How did you say you spelled your name?”

I'd get a call back in three days, if I was lucky.

Also, some of my partners thought that I may have been too long at the SEC. I recall a meeting at our firm with officials of a client, talking about an SEC matter. I was explaining some positions that had been taken by the SEC in court cases, and said, “We did this and we said that.” I saw one of my partners wince. After the meeting, he said to me, “The SEC is they, not we.”

Maybe I was at the SEC too long, but I think that complying with the law is good advice to clients.

Our firm represents a lot of large financial institutions. In my counseling work, I advise them to be good corporate citizens and have a culture of complying with the law. This keeps them out of trouble.

And, sometimes, I’m pretty firm about it.

I was preparing the president of a public company for testimony in an SEC investigation. He said, “I’m going to tell them this, and tell them that.” I said, “No. No. No. No. You’re going to tell them the truth.”

He looked at me and asked, “Whose side are you on, anyway?”

I replied, “I’m on your side. I want to keep you out of jail.”

For defense counsel, co-existence between our job of defending our clients vigorously and dealing with the SEC courteously, is not only possible, it is desirable. When it is necessary to be in an adversarial position with the SEC, that can be done in a manner that respects the dignity of the agency, without in any way impairing the effectiveness of the work one is doing for the client. About a year ago, I, together with colleagues in my firm, got the SEC reversed in two separate cases in the D.C. Circuit. But, throughout the entire litigation, we made it a point to be respectful of the agency and to maintain good relations with its staff.

We should do this not because we are alums, but because we are good citizens. We want to see the SEC remain a strong, effective and admired agency, better to protect investors and markets.

Turning now to today’s SEC, I am pleased at the return of civility among SEC commissioners. Of course, with a five-member Commission, it can be expected that commissioners will have different views. Sometimes, the debates at the Commission table were

vigorous and lusty, but almost always commissioners treated one another with respect. On rare occasions, I would witness a lapse, as two would go for each other's throats. It was very painful for me. It was like watching your mother and father fight.

I am cheered by the recent release issued by the SEC as to when penalties will be assessed against corporations. That issue had caused some divisiveness among the commissioners. The important point is that the policy statement was voted for unanimously. I congratulate all the commissioners for bridging their differences and especially Chairman Cox for his talent in finding common ground.

If I have been seen to be successful at the SEC and worthy of this award, it is because I had a lot of help from smart people, many of whom are still on the staff. They made me look good. My thanks to them.

And thanks to the Alumni Association for giving me this award and for this marvelous evening.

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