

**Securities and Exchange Commission Historical Society**  
**Oral History Project**  
**Interview with Donald Malawsky**  
**Conducted on April 7, 2010, by Kenneth Durr**

**KD:** Interview with Don Malawsky, April 7th, 2010, in University Park, Florida, by Kenneth Durr. Let's start with the back story. You mentioned that you're from Wisconsin.

**DM:** Right.

**KD:** Milwaukee native?

**DM:** Yes.

**KD:** I noticed that you got both your undergrad and your law degree at Wisconsin. Is that right?

**DM:** Yes.

**KD:** Did you have any inkling that you were going to turn your law degree toward the securities industry when you were in college?

**DM:** No, none whatsoever.

**KD:** What was your focus? What were you thinking about doing as a lawyer?

**DM:** I was interested in government, and I wasn't sure what that meant at the time, but I'll tell you why I was interested in government. The SEC was not on my radar screen at all at that time. This would've been in 1961, '60-61. In 1960, John Kennedy won the Presidency. I remember meeting him during the campaign, actually, it was during the primary. Not meeting him personally, but just being along the rope line when he came to Madison. There was something to me that was very inspirational about that. I know others have said the same thing, my friends. I thought the government was a place for me where I could do something. I didn't know much about it.

In those days, things were a lot different in terms of the kinds of information. I mean, aside from having the Internet, the availability of doing such quick research on almost any subject in the world, including what jobs are available and what organizations do and all that sort of thing, there was a dearth, compared to today, of information. It was not available. You could call or write to get information about them, but you've got a pamphlet, and you've got an application form, and that was, essentially, it.

I was going into the Army for what I thought was a six-month period of time. I was in the ROTC. As a matter of fact, I was finishing up ROTC while I was still in law school because you had to take classes, and you had to drill things and stuff like that. It did all come to a head at a point where there was the Berlin Crisis, which started in 1962, and at that time, I was at Fort Carson, Colorado. I was due to get out in September of 1962. I liked Colorado. I don't know if you've been, but it's a nice place, it's a beautiful area.

I met somebody who worked at the SEC office in Denver. He said, "Why don't you get a job here?" I said, "What do you do?" He said, "Oh, it's stocks, it's bonds, it's fraud and stuff." Just before I came into the Army, I was admitted to the bar in Wisconsin. I said, "Okay." I interviewed with Donald J. Stocking, who was the regional administrator at the time in the Denver regional office, and they hired me.

At that time, I made \$6,600 a year. I have a recollection that we were paid bi-weekly in those days. I was getting a check for like \$200 a check. But it was fine. I was married, and my wife was working, and it was a nice life. I then learned for the first time, once I got there, what the SEC actually did. I really didn't know. Kids today, of course, they'll tell you a lot more than you can imagine about what the SEC does because they follow it, they research, they read about it and so forth. Many of them clerk for the SEC, or they know people who've worked there. It's all connected in one way or the other.

**KD:** Denver was the wild-and-wooly region, so to speak. Were they still doing uranium stocks and things like that back then in the sixties?

**DM:** This was early sixties. It was coming to an end. It had been a big item in the fifties. I heard a lot of stories about the uranium frauds. It's an interesting office. It was an office that sort of got a reputation for being the office of the regional administrators. Gerry Boltz was there as a lawyer, Bob Watson was there as a lawyer, Bob Davenport was there as a lawyer, and I was there. The four of us eventually became regional administrators.

**KD:** Why do you think that was?

**DM:** I don't know.

**KD:** Leadership?

**DM:** Maybe. I think it was, obviously, a combination of being around and being committed to the work. Bob Davenport was in enforcement. He was doing other things. He was doing Reg. A work when I got there. We were enforcement guys. Gerry Boltz was the leader of enforcement, if there was such a thing. Gerry had a wealth of experience in New York. He'd worked with Eddie Jaegerman. You've probably heard a bunch of stories about Eddie Jaegerman. Gerry came to Denver. He was in the D.C. office, but worked a lot in New York. He was, originally, from Ohio, and a very aggressive lawyer. He's now deceased. Gerry died a couple of years ago. Tremendous guy, a wonderful guy, and instilled a lot of enthusiasm and that sort of thing for the job.

I come in on the scene. This is kind of a funny story. I started November the 5<sup>th</sup>, 1962. There was a criminal case ongoing, and I think it involved a broker. I don't think it was a uranium deal. I think it was a stock deal of some sort that went bad. They said, "Okay, Don, what I want you to do is—" this is Gerry, I think, telling me, "— we want you to join the team, but basically, you're going to bring witnesses to the courtroom. These people have already been prepped. You don't have to worry about any of that, because

we know you don't know much about the case. Just go out, get a GSA car, get them, escort them, show them where things are, we'll show you where things are first so you know where you're going."

Our offices then were on 17<sup>th</sup> Street. We then moved to the Federal complex. They since have moved a couple of more times. We were right adjacent to the Federal courthouse. Of course, Denver is also the home of the 10<sup>th</sup> Circuit, so we had a lot of law stuff going on there. I said, "Sure, I'd be happy to do this." This was to get to know what's going on, and I always liked courtroom stuff anyway. "Okay, go get this woman. She's an older lady, widowed lady. She invested in this stock, she bought 100 shares or something." They want to show the kinds of people that bought this stock.

I go out to her home, very polite, very nice, and she was waiting for me, knew what was happening. I took her to the witness room, and she was pretty calm. I went outside, went into the audience to watch her testify because I was going to take her home. She testified very well. I met her again in the witness room after she was finished, and I took her home. I talked, I told her I just got here and all kinds of stuff. I saw her to her door. I come back to my car—it's funny how you remember stuff like this—and on the seat of the GSA car in the middle of the seat was a quarter. She left me a quarter for my services [laughter]. I'll never forget that.

My first reaction was I was going to go in and give it back to her, and then I said, you know something, she probably liked doing this. I don't want to disappoint her in any

way, and I just said I'll keep the quarter. By the way, the case resulted in the defendants were acquitted, notwithstanding her good testimony.

The cases that I worked on there, first of all, it was a very aggressive office. Old-time, prosecutor kind of office. Don Stocking, himself, had been an Assistant U.S. Attorney in Montana, so he was a prosecutor. We had guys like Ed Ahern, who was an old guy, but he worked on quite a case. It was called Weavers Beavers, which involved live beavers. You would buy an interest in them. They had different names, but I recall it as Weavers Beavers in Utah. They would keep the beavers, pair them up and have kits or whatever they're called, and then eventually they would sell the beaver fur, and that's how you would make money.

This was an investment contract situation, and it was a big, big case. It was already filed. As a matter of fact, it went up to the 10<sup>th</sup> Circuit, and we did win that case because it was much like the Orange Grove case which preceded that here in Florida. Supreme Court held that it had all the elements of an investment contract, and it was pretty obvious that it did. It was very popular. People out west have a different kind of investment philosophy. They really like the speculation there, not just in buying a stock, but other kinds of scams and stuff. We had plenty of work. There was no question about that.

**KD:** Was the beaver thing going on when you got there?

**DM:** It was going on when I got there. I helped Ed with the case. I had those two things. Then the big thing came along in April of 1963. I'll get the name for you in a moment— Joe W. Newcomer. He was a guy who ran savings and loans in Colorado Springs. He advertised a lot that he would pay on bonds. There were debentures, and there were savings and loan. What it evolved into was a Ponzi scheme. It involved about \$5 million, which in those days was a lot of money. A lot of military people who retired in that area invested. I was on that case. I didn't handle it myself. We had an assistant regional administrator, Joe Crist. Joe was very astute, very sort of brainy kind of guy. Joe was leading the case.

Eventually, we brought a suit, and we got a receiver appointed, and we got injunctions and there was also a criminal case. This was my introduction to the whole panoply. We didn't have an administrative proceeding, but we had everything else.

**KD:** Did you work with state prosecutors?

**DM:** We worked with Federal prosecutors. I'm not sure the state was involved. I even testified before a state committee about these savings and loans because they were all around Colorado, and they were very loosely regulated, and they wanted to know what happened here. They wouldn't be examined at all. There was no examining authority on the state level. So this thing was able to mushroom the way it did.

I got to know the receiver, so I got to know the function of a receiver because I would go to various hearings and things of this sort. He was a very astute guy. He gathered enough assets to pay people 10 cents on the dollar of their losses, that was it. There was not much left. I went around to investors because we still had a pending case ongoing. We had gotten a preliminary injunction, but we had a full, permanent case to go, so I went around and got affidavits from investors. I went to Colorado Springs, and a lot of people were very cooperative, they were very helpful.

I went to one guy. He lived in a trailer park in the area. I knocked on the door, I told him who I was, I was a lawyer with the SEC, John W. Newcomer. He said, "Come on in, I'll tell you what happened." I said I'd come back with an affidavit based on what you're telling me. "Fine, no problem." I come back with an affidavit. It was all very straightforward stuff. There was no – actually, I could just probably have a standard affidavit for everybody. They saw something on TV or heard it on the radio, high interest was being paid, and they decided they wanted to invest at that point in time.

**KD:** So you wanted to get them to sign that, and you used that later.

**DM:** So I knock on the door, and he comes to the door, and it was like a different person. Very upset. The first time I met him – this is another thing out in Colorado and the West – he was talking about the original Constitution. Not even the amendments. I was listening. He was very nice. He's got a flag, he's got this and that. He says, "The

Constitution." He showed me something, and it was the Constitution without the amendments. I said, "Where are the amendments?" [Laughter].

You run into people out West like this. I think you run into them today too. I went back, and he opened the door, he saw who I was, and he was very angry. He didn't want to do anything. Very, very angry. "I don't want to sign any Goddamn affidavits, I don't care about nothing." This was about 11:00 in the morning. I was very disappointed. I had other investors. I didn't say anything—just his whole attitude was totally negative. Back to the office, and they said, "Did you hear what happened?" I said, "No. What happened?" They said, "Kennedy's shot." This was November 22<sup>nd</sup>. Really. Of course, everybody was in this state of not knowing what was going on, and that was on a Friday. I connected the two events, it's one of those things, because I've had other people that turned me down, I'm sure, to cooperate, but that was something that was very startling to me.

Then I started to get a lot of oil and gas cases and mining cases. Now we had in our office a mining engineer. This is a little history I'm not sure people know a whole lot about. Charlie Higdon was a mining engineer. Charlie was very astute, but he was gruff, big huge mustache, and he would talk like that, "Don, we have to go out to the mine today?" I said okay, so he would take me out to the mines.

We had a case called Lamartine Mines, which was an old famous mine in Colorado back in the 1890s. These promoters had gotten another public company, and then changed the

name to Lamartine. We went to the mine, and he went into this mine. He says, "It's a little dangerous because these have been sitting here for decades, these mines, without any activity." He went in, and I followed a little bit. He was taking samples, and he went to an assay office, and had it assayed. It was that kind of thing with Charlie. Of course, we used him as a witness through affidavit. We had a case against Lamartine, we had other cases.

That was on the mining side. On the oil and gas side, which is quite big in the West, as you might imagine, we had Tell T. White. Who's Tell T. White? Well, he also worked for the SEC. He was this oil and gas engineer in Washington. His home, however, was in Pocahontas, Arkansas, which is in the northeast part of the state. Frequently, when I would call him, he'd be in Pocahontas, he'd be home and doing his studies or whatever he did for cases. He would also look at a lot of filings, oil and gas filings, as well. I did cases with Tell. Both these guys are deceased now, I'm sure. Between the two of them, there were no others like them in the Commission. In the fifties, in the sixties, and I'm sure it extended after I was gone into the seventies.

**KD:** This is not just disclosure. These guys are going out and ascertaining whether this stuff's any good or not.

**DM:** Correct. They investigated with the lawyers, and I used to get GSA cars and drive out to oil wells with Tell. I mean, today you would use a four-wheel drive vehicle, an SUV.

Those days, you had a Studebaker or something. We would go out to these oil wells to see if they were, in fact, operating.

**KD:** Would you bring cases if you found something?

**DM:** We brought a lot of cases. We had an iron ore mine case where this guy took about \$300,000 from Iowa investors and deposited the checks. I don't know if I can recall the name right now, but he deposited the checks at a Las Vegas casino, of all things. This is one thing I really got good at: how to obtain bank records, and I did it myself. There was a machine of some sort, and it was on microfiche. I would go through microfiche and then print. I would do all the work. Today, you'd just get a subpoena and it's a little different. I would go through all these checks front and back. So I saw the deposits, and I looked at the back, and it was all Sands Hotel and stuff like this. The long and short of it is we got him prosecuted in Iowa.

**KD:** Was there much discussion about what Washington thought of all this, what the relationships were with D.C., given that this is such an unusual place?

**DM:** To my knowledge, no. There would be the annual administrative regional conference. There were other conferences later on in my career, and they're still going on, the enforcement conference and the market reg. conference and things like that. In those days, there was only one conference. I'm sure they were discussing cases. I went there in 1967. When I was contemplating coming back here, Don Stocking said, "Why don't you

come, and you can meet some of the people from the New York office,” and he was gracious enough to do that, and I went back.

Bob Davenport and I worked on the Edward Dosak case, which was a big prosecution. He had an audience with the Pope. He was one of these played-up a religious angle, but he was also a fraudster. I've got a funny story about that case.

I didn't work as much in Wyoming and Utah, but Nebraska was sort of my stamping ground. I did a lot of injunctive actions. We didn't have as many administrative cases. We didn't have as many brokers. There were some. I had a few cases like that, but most of them were injunctive actions or criminal cases. A lot of criminal cases. A lot of our cases went criminal for pretty good reasons. I mean, they're pretty extreme conduct. One case involved three defendants. Again, the bank records really told the whole story. The deal was as follows. This was in Nebraska.

One guy would go around, and he would have a bird dog that would take him around, a local guy. He would get oil and gas leases in New Mexico. He would pay 50 cents an acre. I think you can still get them for 50 cents an acre, if I'm not mistaken. Fifty cents an acre is vacant land, because they pretty much know what has oil and what doesn't. They would charge these folks \$5 an acre with a big pitch about, "We're going to come back in about six months, and we're going to pay you anywhere from \$10 to \$15 an acre. We have to do this because we have to use your name to actually do the leasing. If they did our name – it was Inland Oil – if we used our name, everybody knows our name,

we'd have to pay a lot more for these leases. We'd have to pay like \$5, or we'd have to pay \$10 or so. You'd have to pay only \$5."

Well, obviously, getting the acreage for fifty cents and then charging \$5, they were making a lot of money. But that wasn't the end of it. There was an old guy at that time who would go around and see all these folks. We had dentists, we had farmers. I was in North Platte, Nebraska, which was sort of the hub of where all this activity was going on. The old guy would come around and see these folks, and he had a card, and the card said Standard Oil of Venezuela. He said, "I want to pay you," and he'd use different prices, but significantly more than \$5. This was like a month or two after they bought. "We're going to pay you \$10 an acre, okay?" His last name was Mitchell. All these people got really excited.

What he would do is he would go to see all these people, and Standard Oil, that's what people were hearing, and it sort of meshed with the other story that this was valuable. But everybody, and I interviewed everybody, maybe 30 or 40 of them, wouldn't do it because they had committed themselves with Inland Oil, with that group. They were honest people, they weren't going to sell their lease. They said, "Well, thank you very much, but we're not going to sell. We're going to sell with Inland Oil. We've got an agreement with them."

Obviously, the next step was nothing happened [laughter]. The Inland Oil people never came by again, so they had leases that they paid \$5 an acre for, and they started to

complain initially to the state securities commissioner. These guys were running around from Kansas, to Nebraska, to New Mexico, etcetera, so they called us and I was assigned the case. Didn't go injunctive, just went straight criminal. That's how the office got to know me, the U.S. Attorney's Office in Omaha. The case was actually brought in Lincoln, Nebraska, where there was also federal court. They were all convicted on all counts.

I got to not only prepare the indictment, the actual indictment that was used. I testified before the grand jury about the case. I was probably the only one that did. Maybe some of the investors. I prepared the witnesses for trial. I wrote the instructions for the judge. I decided not to charge securities fraud on this one, just mail fraud, because it's too complicated. It's a fraud. People understand that. They were all convicted, which I think was my first criminal case where they were convicted.

There's three guys. The bird dog, his name was Crist, he was about 68. The bad guy from Inland Oil, he was in his late sixties also, and the guy that was going around from Venezuela, he was in his seventies. I was there for the sentencing, and the lawyers were making a big pitch. "Your Honor, look how old they are. They shouldn't go to jail. They've learned their lesson." As a matter of fact, the guy that was going around from Venezuela, it was a 10<sup>th</sup> Circuit case, the reason I found that, I got an idea of how this whole scheme work was from the 10<sup>th</sup> Circuit case, which was identical to this thing.

The same thing. He was convicted, he went to jail. The judge said, "Well, yes, they're in their late sixties, one is in his early seventies. But you know something?" I'm looking at the judge, and I got to know the judge. In the smaller communities, you get to know them. "You know something? I'm a little on the older side myself." I found out at that time he was in his early seventies. He says, "You know, you go to jail, and there's a dentist there, they fix your teeth, you get three meals. The beds aren't that bad. They're comfortable. It's not that bad. It's not as bad as you might think." He then sentenced the bad guy to five years in jail, and the other two three each. I always remember that kind of thing. They were appealing about these guys were so old, and here the judge, himself, was their age. Didn't work out that way.

The other criminal case that we had was Edward J. Dosak. I mentioned that before. Bob Davenport and I worked on it. He was a mean son of a gun. He sold stock in a company, and looted the company, basically. Bob and I, we got an injunction in that one because it was a straightforward stock case. But we also went criminal on it. He had the best seats at the Nebraska football games. He was well known in the whole state. He had the audience with the Pope.

**KD:** What was he doing exactly?

**DM:** He was raising money in the company selling stock. I'm not even sure it was registered. He was like a private placement kind of deal, but he had a large number of people. He probably had several hundred of them. That case we also brought in Lincoln, Nebraska.

We liked the juries there. You always want to get the juries. In those days, the grand juries were really people that were very law-and-order type, blue ribbon kinds of juries. In a lot of places you don't get that, especially in the large urban areas. We brought the case there, and it should have been brought there because that's where he lived. He was fighting us.

The one story that I had there, in his defense, a name came up about somebody who liked him and was satisfied with the investment. We were going over this that night. It was about 7:00 or 8:00 at night, maybe later. The Assistant U.S. Attorney, he actually was trying the case with the U.S. Attorney at the time, Blumenthal was his name. He said, "Don, I'd like to bring this guy in as a rebuttal witness." I said, "Well, where the hell does this guy live?" "Well, he lives out near Madrid."

Now in this country, if you have a name like Madrid, they'll pronounce it differently. There's cities all over that have names like that. Houston [pronounced HOW-ston] Street is really Houston, as an example.

I said, "Well, let me call this guy." Now we're talking 1965, '66. He's not listed. I call the operator. Chatty lady. She says, "Oh, yeah, I know. He doesn't have a phone. You have to get the neighbor people, he's about five miles away, to go and get him and bring him to the phone." These were all in ranching and farming and stuff. I said, "Well, can you connect me to the neighbor people?" "Sure." So they connect me.

I talked to them, I asked them, "What kind of phone do you have there?" She said, "Well, we have one of the old crank phones." Not even a dial. I said, "I'm trying to get a hold of him. I'm calling from the U.S. Attorney's Offices." This is about 9:00 at night. She said, "Sure. It'll take about a half hour." I said, "Okay. Here's the number, call me back." Call back. I said, "Well, we need you. Ed Dosak's testified about you, said some things about you." "Oh, that son-of-a-bitch. What do you want me to do?" I said, "We need you here in the office tomorrow morning."

Now if you know Nebraska, it's a pretty big state. Lincoln on one hand, and Madrid on the other. I said, "Here's what we'll do. I'll call Frontier Air, and I'll have a place for you on the plane. It'll be around 6:00 in the morning. Can you do it?" "Sure." I called Frontier, we got him a seat on the plane and, of course, one back to go home. About 8:30 the next morning, we're getting ready, and a guy walks in in bib overalls, the kind of boots with stuff all over them. He says, "Well, I'm here." I said, "You're here, you did come." He says, "I said I would." I said, "Yeah, you sure did."

We then prepped him a few minutes, and we put him on the stand. He was terrific. I said, "You know, thank you for coming. I really appreciate that." In those days, you had people, certainly out in that part of the world, that part of the country, people who believed in government enough that they get a phone call out of the blue late at night, and to go the next morning very, very early to get on a plane to fly to Lincoln. If we did it with anybody in New York, for example, they'd tell me where to – and, of course, Dosak

was convicted. He was a good witness because he had just completely rebutted everything Dosak was saying.

**KD:** That's a good transition to the next step in your career, because it must've been a huge change to go from the type of situation you're talking about to New York. In some respects, it would seem like you're kind of being called up to the majors. Obviously, New York is where the biggest action is. Was that the case?

**DM:** I think you hit it right on the head. In a sense, I didn't even realize it, but that's the way it was. We had seen in Denver, Mahlon Frankhauser would come out. He was with the criminal group in the home office. Irv Pollack would come out because Irv was still very active as a staff guy. I got to meet them. What evolved from that is that Mahlon became the regional administrator in the New York office in 1967. The office needed a lot of help. It needed a makeover. They weren't bringing cases, a lot of the young lawyers weren't that inspired. They were staying a year. For anybody to stay even two years was a major thing.

They were looking for stability, and Mahlon brought in some people in addition to myself. I became a branch chief. We had Dave Bliss, he was also from Wisconsin. David worked in Enforcement in Washington. Dave Bliss was the associate. Working for me was Marvin Pickholz. He's the one that actually founded ASECA, which is a big deal. It was the wild and wooly of the East. Not of the West, but of the East. I had a lot of catching up to do.

**KD:** What do you mean?

**DM:** There weren't oil and gas cases, there weren't these little goofy frauds. What we had, basically, were a lot of manipulation kinds of cases, a lot of fraud cases, new issue cases where companies, even though they were either Reg A or registered, they tend to disappear early on, and there were a lot of complaints and that kind of thing. If you're looking at the time frame, I started in January of 1968. We were still in the Transportation Building, which is the building just south of the Woolworth Building. What a dump that was.

I get back east and, of course, things are much different. Starting, I would say, in 1969, it just seems to be a change. Mahlon brought in a lot more new lawyers. When I got there, there was Roberta Karmel, the Assistant Regional Administrator. Dennis Block. Dennis is pretty well-known in the securities field in New York, a branch chief. I was a branch chief. And Mahlon, of course, was the regional administrator. Bill Moran, that's a whole couple of hours right there with Bill. Arthur Goldman was the associate in charge of enforcement. Dick Bandler, what we called the 10<sup>th</sup> floor. When we made the move over to 26 Federal Plaza, the 11<sup>th</sup> floor was, basically, the enforcement, the examiners, Reg A and the R.A.'s office, the chief trial counsel. The 10<sup>th</sup> floor was '40 Acts and bankruptcy reorganization. At that time, bankruptcy reorganization was a big deal, Chapter 10.

**KD:** Why?

**DM:** The laws have since changed and evolved, but a lot of companies would go into bankruptcy reorganization under Chapter 11. They, essentially, stayed in control pretty much as they would do today. You stay in control, and you continue to function, but you're in bankruptcy so you have the protections. Ten, not every company did we want to go into ten, but basically, if it was a significant company with large numbers of shareholders, we would want a clean house. We'd look at the situation carefully, and then we'd want to have an independent bankruptcy receiver under Chapter 10. These were big, hard-fought things and it was a big piece of the Commission's business back then. It later faded away.

Also, there was the Trust Indenture Act, which was sort of related to that in offerings because you had to create a trust indenture, and there was usually some problem with that in reorganization, but there was also another act we enforced, the Public Utility Holding Company Act, PUHCA. They had some involvement with PUHCA in the tenth floor, but it was mostly examiners, Chapter 10 and the '40 Act, examiners to do the Mutual Fund Investment Advisor Exams.

**KD:** Which floor were you on?

**DM:** I was on eleven. Within a year, 1969, I became an assistant regional administrator. And in a few years, Arthur left. Bill Moran became the associate for enforcement. And Kevin

Duffy came. Mahlon left to go to the Stock Exchange in the summer of 1972, so I had just been there for four years. Before Mahlon was Lou Young.

In the fifties was a regional administrator, Paul Windels was part of the knock-down-the-door kind of thing. Ed Jaegerman and his sidekick, his sidekick was an all-American tackle at Yale, Tim Callahan, would go to one of these boiler rooms. They'd literally knock the door down. They would separate the guys. Openers here, closers there, dynamiters here, whatever the names are, whatever roles they had in doing a boiler room. These guys would separate out, and then they would give them subpoenas, and then they would bust these guys. That was a wild wooly time, the fifties. They even had a boiler room in our building, the transportation room. They went ten floors down and found this place.

**KD:** That had changed substantially then by the time you got there. Things were a bit sleepier.

**DM:** Very loose. There are three guys that fled to Brazil in the fifties because they were doing scams and stuff. He would bring them back, at least brought back one of them, and would go down to Brazil. Like I mentioned to you, you'd wrote your own ticket, so to speak. He did that. No one authorized it. Found the guy, brought him back. Very unusual guy. He later became the managing director of Charles Plohn, a New York broker dealer. I don't want to get ahead of myself. We brought a case against Charles Plohn. After Lou Young, Mahlon leaves to go to the Stock Exchange in 1969. Kevin is appointed in July of 1969.

**KD:** Is he doing this building-up thing too, looking to re-energize?

**DM:** No. That's not his style. Kevin had been an Assistant U.S. Attorney. The changeover, we're talking about the years, if you think about the years, '69 Nixon takes over, Mahlon leaves to go to the Stock Exchange. His appointment was done under Johnson, but under the chairman. Lou Young, Mahlon, Kevin. Kevin is July of 1969 until 1972. He becomes a federal judge in the Southern District. Before that happens, he argues before the Second Circuit the Charlie Plohn case.

Charlie Plohn was well-known on Wall Street at the time for doing a lot of hot issues and being fairly successful. They got in trouble with the New York Stock Exchange because it involved one of the rules dealing with sequestering securities and having adequate securities to meet customer demands, and have the security for those demands. The Stock Exchange suspended them, knowing that they could get back into compliance. They wanted to get rid of Plohn for different reasons, and they did. So we were now stuck with Plohn. We brought an injunctive action. Kevin was the regional administrator. I was on the case. It was my case along with some other lawyers. We filed the case.

Representing Plohn was Bob Arum, who later became a well-known boxing promoter. He worked for a very well-known firm. He was a very astute lawyer. So the case was filed with Judge McMahon. In those days, you had irascible judges. Everybody was

frightened of them. Kevin knew him pretty well. I think he clerked for him at one time. So he filed the case. We asked for appointment of a receiver. This is pre-SIPC now. We charged them with violating this rule, and we want a receiver to, basically, liquidate the firm.

The judge had sitting in his waiting room the receiver and the lawyer for the receiver. Plohn's lawyer objected vociferously. He wanted a hearing. The judge was crazed. I was there. I think Marvin Pickholz and I went over. He just went bananas, as only Judge McMahon can do. He said, "Okay, I'm going to order, on Monday, I'm going to order the appointment of a receiver, and the receiver's lawyer."

Either that day, which would've been a Friday, or the next day, but it was a Friday, late afternoon, he goes in, the lawyer, to the clerk's office of the Second Circuit, and gets a Rule 27 order. Rule 27 is a rule under the Circuit that says if the judges are not otherwise available to issue an order on a temporary basis, the clerk can issue an order. That's what he did. McMahon was – he was something.

We then had a hearing the next week, and he appointed the receiver and the lawyer for the receiver. Goes up to the circuit, Rule 27, the whole schmear. Kevin argues the case before the circuit because Kevin was fairly well known by the judges. I'm not sure Kevin did a great job of arguing the case or not [laughter], but Dave Ferber would normally argue those cases. I met Dave Ferber out in Denver. Ferber would have a party at every regional administrator's conference, a party at his home. Brilliant man, but he did all of

the appellate work for the Commission. I got to know him pretty well. He sort of liked me.

**KD:** In this case, you've got Kevin Duffy.

**DM:** Instead of David Ferber, we thought, "Let's go for the home-court advantage and put Kevin up there." The circuit ruled for us. There wasn't really much they could've done otherwise, and we got our receiver, and Plohn was liquidated. As a little footnote, at Merrill Lynch, Plohn's son, Charlie Plohn, Jr., I guess, worked there, and worked in a very complicated, interesting area, a lot of responsibility. We talked a little bit about the case. Merrill Lynch is a great place, it was a great place, so you'd find a lot of talent there.

**KD:** You've been talking about bankruptcies, liquidations, and you mentioned SIPC. That would've come in during the time, your early period in New York City.

**DM:** Of anybody, I could take out a firm in hours with a receiver. We had a lot of little firms that would come. As it turned out, we were getting some bigger firms that either were converting to computers and they lost control. I can't give you the names right now, but later on, I'll give you the big one. I had the paperwork done, I had an affidavit, usually we could file it. I would call the judge's chambers. Frequently, these things happened at the worst times, like on a Friday afternoon. Friday afternoons are really busy. I would

march over there. Usually, I'd have the consent. I'd instruct the defendants and their lawyers what role they had to play, and we'd get a receiver appointed.

**KD:** Tell me about the role that they you're instructing them to play.

**DM:** Several things. They would have public customers or have obligations to other broker dealers, which could prove problematic if they stopped doing business. The first thing I instructed them to do is to make sure the books and records were not moved from the office, that they're kept there. I would work with the receiver also along those lines so that we had sort of an orderly transition and we didn't have some funny business going on. Usually, we tried to get people to stay there until the receiver, not the sales and trading people because certainly they were out of business, but certainly the back office people and some of the management to stay there at least for a week or something.

That was the second thing we tried to do so that they would show the receiver where the books are, and if he had questions, they would be in a position to answer the questions. Thirdly, there would be outstanding obligations of one sort or another, and that would raise a lot of questions as to what they could or could not do. We tried to stay away from that, but sometimes you couldn't help but get involved in those kinds of things.

**KD:** Prioritizing the obligation.

**DM:** We had cases where we had one broker in Long Island that tried to corner the market in an Amex stock. They had so much stock. Of course, they drove the price up, but they couldn't dispose of it. So as an asset, it looks like it was a very valuable asset, and they went into receivership, but they came into us with the view that we had to help them somehow with this position. I'm not sure we helped them, but we tried to work it out as best as we could figure it out. We probably had more than one caseload then.

**KD:** So you're helping, sort of counseling on how they can maybe get rid of this stock without destroying the market and ruining the company?

**DM:** I was probably going a little farther than I should've. But the alternative was not particularly good either. The receivers sometimes didn't know what to do. Some of them did not have lawyers at the outset, some of them did. It was just too costly. One of the things I used to do is call lawyers and see if they would volunteer to pitch in, outside lawyers. I'd say, "I don't know if you can get paid on this thing," but guys that I knew, and a few did. And, basically, the judges knew lawyers that they could point on this one. Maybe there's a bigger thing later on.

**KD:** These reorganizations are an early specialty of yours, apparently, then. The bankruptcies and those sorts of things.

**DM:** Yes.

**KD:** What other kinds of areas of expertise were you developing in New York?

**DM:** We had fraud cases, we had inside information cases. Keep in mind that I worked on the Texas Gulf Sulphur case, as did a lot of people, not in the initial stages, but we were looking for investors. There was a fund to compensate people, so we were asked to do this by the home office. Matter of fact, Dave Ferber—that's one of the few cases, because this was a huge advancement in the world of SEC, Texas Gulf.

This was the first insider trading case. There were a few cases leading up to it, a little history, but nothing like this. It was strongly litigated. It was tough stuff, and we prevailed on the Second Circuit. I don't think it ever went to the Supreme Court. I don't think there's a Supreme Court case on Texas Gulf. But in any event, we had cases—a lot of the lawyers involved were crooked.

There was one firm, Feldshuh & Frank. When I got there, there was a case against Marty Frank, who was Sidney Feldshuh's law partner. Most of my cases had been settled, and they had prevailed. What happened is the judge had not made findings of fact on a preliminary injunction, and the Second Circuit said that you can't do that, and reversed the decision of the District Court judge, so the case was open for further litigation.

I discussed a possible settlement with Feldshuh and asked, "Would you be interested in talking about a consent?" He said, "Oh, I would never in a million —" and the guy went off. I said, "Well, you know, you may want to do this. We're going to have to pursue

this." They did consent, and without admitting or denying. We saw them all the time in our offices representing people, but Marty Frank did a lot of enforcement work. He would call up and say, "Don," when he had a witness. "Five minutes." I said, "Okay, Marty, what does five minutes mean?" It means that he's going to bring the witness in, he's going to take the fifth. Of course, that's it. He worked with the issuers in a number of fraudulent offerings. Just rank stuff.

**KD:** Would he be the kind of guy who'd have a reputation that people who were going to do this sort of thing would call him?

**DM:** Yes. Absolutely.

**KD:** So that's why you would run into him all the time.

**DM:** Feldshuh went to jail, and he went to jail for that, Marty Frank did, but Feldshuh went to jail because he donated stock to a synagogue and backdated it to get the value. It was worth a lot more. He backdated it by eighteen months or something, so it was a tax fraud. He went to jail. We had others. We had guys that were running who went to Israel, fleeing the country. These were lawyers that practiced before us on a frequent basis that did a lot of crooked stuff. It was, when you think about it, pretty awful, these guys. But we knew it. They knew that we knew it. It was much more interesting.

**KD:** You're talking about a lot of criminal stuff here.

**DM:** Yes.

**KD:** Was that mostly the kind of things you were involved in, given your experience?

**DM:** First of all, in the Southern District of New York, there is a securities fraud unit, still to this day, the securities fraud, commodities fraud unit. The director of enforcement division came out of that unit, or the Eastern District, I forget which one. That was well known, Steve Hammerman, all these guys, Bob Morvillo, the superstars of the prosecutors was there. When I came back, I heard about the fraud unit in the U.S. Attorney's Office. People spoke of it in awe. They were so affected. They had a lot of our investigators over there helping them.

**KD:** Now at some point, Hammerman would've come in to run the New York regional, right?

**DM:** Exactly. Steve came in in 1979. This is after Bill Moran left. Bill became the regional administrator after Kevin, and was there for about seven years, which sort of takes me to the New York City case. Actually, takes me to a lot of cases.

**KD:** Municipal bonds?

**DM:** Right. I should back up a little bit. What we did in New York on the broker-dealer cases, we probably had well over half of all the cases that involved failing broker dealers.

Congress then passed SIPC. The whole idea of a SIPC trustee, what we were doing, in a common law way, is now embodied in the law. I did most of those cases. I wasn't the only one, but I probably did most of those.

**KD:** Did Congress, or Congressional staff consult with you and your people when they're looking at this kind of thing, seeing how it was done?

**DM:** That's a good question, and I don't recall. I didn't testify, but I think there's a lot of testimony. This is where the home office would take over. There's competition between the New York and the home office, which had its healthy side and its unhealthy side. I think in this regard, it came out the right way. One of the provisions is every broker dealer must advertise that they're a member of SIPC, if they are a member of SIPC, which virtually every one is. This only applies to broker dealers that are registered with the Commission. Not intrastate brokers.

Under the Act, SIPC can apply to congress for a billion dollars, if it needs it, over and above the annual fees that they would charge broker dealers. In today's world, if we had the problems with the broker dealers, it's nothing. A billion dollars can't cover anything. It would be a tragedy. Even Lehman had public customers, Bear Stearns had public customers, Goldman Sachs had public customers. Obviously, Merrill Lynch had public customers. SIPC was in no position to do anything about it if there were a broker-dealer failure. I think one of the reasons in the last couple years we had all of these hundreds of billions of dollars is there's no way that the SIPC system – let's assume that it's not

managing all of that, but certainly a portion of it – could handle all of that. There's no way.

But any event, after SIPC took effect, I was involved in a lot of SIPC cases—relatively small ones. There was not a lot of loss. Part of that was because, and this is the beauty of how our system works, in the broker-dealer world, it is not the net capital rule that's so important; it's the segregation rule. So that every week, a broker dealer must do a computation on the cash that it has for customers, and obviously, where it is, and the securities. So that broker dealers, if they fail, the customer assets are secure unless something really goofy happens, but basically, they're secure under the rules. There's mark to the market under the net capital rule of every position. I was amused when they were saying, "Well, let's take the marks off these toxic securities and let the banks determine their value." That's nuts.

**KD:** Let's get into the municipal securities business. We're talking about the mid-'70s here, I guess, and New York's not doing so well.

**DM:** Well, the two cases are the New York case and the other one, of course, is Equity Funding, the Dirks case, but the New York case started when Bill was regional administrator, and we had some very experienced lawyers who were handling it. It was sort of out of the mainstream of lawyers. I was the associate under Bill. I was the associate in charge of enforcement, so I had all of the enforcement responsibility. Bill

personally was involved with overseeing the investigation. It had its ups and downs in terms of its investigative – obviously, once you get into politics and politicians.

**KD:** Give me the thumbnail of what the case was about.

**DM:** New York City issued RANs, TANS, bonds and bills and things. A RAN is a Revenue Anticipation Note, a TAN is a Tax Anticipation Note. Of course, you had your typical bonds and notes. There was a range of different securities that New York City would issue, and would issue them frequently. In other words, there's a big market for New York City securities. One of the reasons is that they paid a very good interest rate, and obviously, were rated very well. Does that sound familiar? In the seventies, New York City was in the decline. It was declining crime, cleanliness, corruption, etcetera. By 1975 or six, it reached large proportion. I mean, it was just way out there. Remember Ford and the *Daily News*, "Drop Dead New York"?

What was New York doing? New York had its hanky-panky accounting. Unbelievable kinds of accounting. When we subpoenaed their accounting, they came up with, "What accounting?" I said, "You put out a report." It was like they had no accounting system, and they took great pride in having no accounting system because if they had an accounting system, they would be so incredibly broke that they couldn't sell a bond, or a note, or a TAN or a RAN or anything like that. Jimmy Carter gets elected. We're really talking about Democrats running the city, so there may have been a little slack from the

congress and from the administration to try and work things out. Well, it wasn't working out very well. This was Jimmy Carter's first year, 1977.

Either I or Bill Moran got a call from Stanley Sporkin. We're going to have to write a report, and we only have three weeks to do it. Three weeks. Can't be done. We're going to send up forty people from the home office, and you guys will have to get as many people as you need from your place. We had maybe forty, fifty people. This is when the chairman is Harold Williams. Harold had committed to have the report in Congress's hands on August 26, 1977.

The study was, basically, to take the investigative record that had been created by the lawyers who had previously worked on the matter. By the way, the two key lawyers doing the investigation had left the staff by that time. Now they came back, we were consulted with them, but the case was dormant for about six months until this happened.

I think the problem was Bill Moran was in the hospital, he was having problems of one sort or another. He was the regional administrator. Bill is an old-timer, very smart man and very dedicated guy, but this was probably something—and we really had no person on the case. I'm not saying that I would've been better or anything like that, but somebody from the staff who'd worked on the staff for some while sort of working the case along with these new lawyers, who are very senior guys, but they were running into a lot of trouble, and then they left the staff. The case was in limbo until we got the call from Stanley that we had to do this report. We call it a 21A report.

Well, the invasion began. Every day, without stop, we worked. I was responsible for doing the chronology. The way we did the chronology is, there are a lot of witnesses in the case, a lot of documents, a lot of stuff, enormous amount of material, and we had a conference room, it was actually a hearing room, about forty lawyers. And we went day by day, "What happened?" It was susceptible to do it that way. What was produced was this document. This is chapter one, it's called the chronology.

**KD:** What's the time frame you're covering here?

**DM:** Chronology of events. October 1, '74, April 8, '75. That was the relevant period. And that was a very crucial time because they were issuing a lot of municipal securities, and yet, things were coming out that were known to various people. Each part of this entailed New York City, the municipal managers from the mayor on down, to the underwriters, to the rating agencies, to investors. I also worked on another part called, I think it was the fraud part, county practices, which there was a limited amount of county. The role of the city and its officials. The role of rating agencies, role of bond counsel. This was the very first time, as far as we knew, that bond counsel had been looked at to determine their role.

Of course, the rating agency—we don't seem sometimes to learn from what we've done in the past because now they'd say, "Oh, all these toxic securities they had, triple A." So did these. We'd look very carefully at that. We had individual investors, and syndicate members managing underwriters, that whole part. The upshot of the whole thing is we

dissected, this group was about fifty-fifty. There's about seventy, eighty people. Stanley would be there all the time, I would be there all the time. I would go home at night, midnight, two in the morning.

We worked Saturdays, Sundays. At that time, we had an IBM computer to do the typing. We had to have it flown up from Texas because of the volume. This is the final product, but we had many drafts and stuff. The strain was enormous, it was pretty unbelievable. It just shows you what you can do under stressful conditions and get it right.

The Wednesday before the Friday, August 26<sup>th</sup>, I get a call and it's Stanley and another guy. I say, "Hello." "Don, we got a problem." Stanley and the other guy are arguing. They're both in Washington. One's saying, "We found some errors in the chronology. We found some errors." They're going back and forth. We knew one thing. Dennis Block, who had been on the staff but he was a big pain in the ass in this case, he worked for a major law firm, and they had a whole bunch of lawyers. They would fly spec everything because it was politically charged. They found errors. This thing would have no credibility whatsoever. We had to make sure the chronology was correct.

They're arguing. It's about 5:00 on a Wednesday before the Friday that this thing was to be published. They had already had it set up to be printed. I said, "Okay, stop. It's getting close to closing time here. I've got to reconstitute the group. We're going to have to do this all night just to go through the whole thing again."

By that time, we had things organized well enough. And so around 6:00, I stopped people. Some of them, who had not been in the first go-around—they were on vacation because it was summertime, "Oh, great. We can stop working." I literally ran to the front door of the office, "Stop, everybody, stop. Go back." They thought I was a crazy person, which I was a little crazy at the time. I said to everybody, I said, "We've got to meet. I'll tell you what we have to do." Everybody was just phenomenal again, fantastic. We went through the chronology and found a ton of errors, and we corrected the whole thing, and it was published on August 26 and delivered to Congress.

**KD:** What did Congress do with it?

**DM:** That's a good question. There was legislation, there was the municipal rulemaking board established.

**KD:** This was part of that process then.

**DM:** I am sure that prior to this there probably were municipal failures and things. I'm sure that was true. Prior to this, there was nothing that came close. I think that was the beginning. Why is it important, how can we translate this a little bit to make it a little more relevant? I'll tell you why.

In 1994, I'm at Merrill Lynch. I went to Merrill Lynch in 1987. There's a little thing called Orange County. Merrill Lynch was deeply involved. The SEC was all over us,

investigating us, Merrill Lynch. I was not directly involved with the case until later on when I was responsible for six of the witnesses and worked with Harvey Pitt's firm. Fried Frank represented Merrill at that time. It was very difficult on us in terms of, if we were indicted—all the firms are always scared of that because it would mean you'd have to go out of business. I remember the staff, I said, "I worked on the old New York City case," and they laughed a little bit. It's like we should've known, but why did you let this happen again type of laugh.

It was very much a different kind of situation, but it did involve municipal securities. That was step two, and we may be going through a step three municipal, financial soundness, I'll call it, in the current environment. As a matter of fact, the work that we did on the rating agencies was, I think, the first time the rating agencies were looked at, and certainly the first time that bond counsel was looked at. A lot of uniqueness about how this was done, and sort of laying the ground work.

**KD:** Other highlights of your time sort of going through the New York regional. You were involved in the Franklin National Bank case. Is that right?

**DM:** Yes. Franklin National Bank. It was around 1975 or 1976, I don't know the exact year. I get a call at home on a Saturday. I don't know how they found me, but they did, from the Fed, the president of the Fed. "We have a problem with the Franklin National Bank," he said, "and could you be here tomorrow?" Well, tomorrow was Mother's Day, May 12<sup>th</sup> or whatever it was. I called Bill. I said, "Bill, this is the twentieth largest bank in the

country by virtue of deposits." I said, "Okay, I'll go. Pick me up." Bill and I go in thinking maybe a couple hours. We get there around ten in the morning, and left at midnight. What happened was the demise of the Franklin National Bank.

It led to an Italian by the name of Sindona, who turned out to be a big crook, who was using the bank in one way or another, I can't go into the details, but its assets were put into some jeopardy because of his business dealings. He was money laundering, but he was also probably getting loans that he shouldn't have gotten. A variety of monkey-business activities. He was later indicted. We brought a case, another one of these weekends, all-nighters kinds of deals. We had a large staff on the case. I was, again, the associate regional administrator, but I was calling the shots from what we had to do, and it got a lot of press and publicity at that time.

**KD:** Why did the Fed call you? Why didn't they call the OCC or somebody like that?

**DM:** They did. They had them all there. Everybody was there. That's when I first found out how all these banks are regulated. The stuff that you hear now, I knew that stuff. I knew that there were state regulators, I knew that there was OCC, I knew there was the Fed, of course. There was another bank regulatory organization. All of them were there. They wanted us—we were the tail end of all of this, because the bank was public, and the securities didn't trade. It wasn't like a Bank of America or Citibank kind of deal where you had a huge trading situation, a lot of shareholders. There were some, certainly there were.

What we had worked out, I remember the president of the bank being there, arguing about how everything was okay. Well, in our side meetings, usually with the general counsel for the Fed at that time, he said, "This is going to be liquidated, this bank, there's no question about it." We didn't know all the details of Sindona's role, but it was significant. There was no question about it, and that also led to the politics in Italy. I'm not saying we were involved. We weren't involved in any of that, but it was all part of the significance of that case. Because Sindona was well-known in Italy as a financier and political connections and stuff. That came and went.

The other thing I would say in the seventies, Dirks. The Dirks case, to this day, is quite significant because it somewhat defined insider trading. Up to that time, or up to about six months before or a year before, insider trading had been viewed as more broadly so that market information was sort of encapsulated with 10b-5. That came to an end in the Supreme Court case in Chiarella, so it complicated our stuff.

Equity Funding was a mix of mutual funds and life insurance. In other words, kind of an annuity sort of operation. They ran into trouble. They had set a goal of increasing their business by 15 percent a year, and they lagged behind. This is early seventies now.

What they had done is they created fictitious life insurance policies. If you think about what goes into a life insurance folder is applications and medical reports and stuff like that. Then what they did was they re-insured those policies. That's where the fraud

really was. Either they sold them or they borrowed money against them, or they worked half and half.

Now it's part of the record. Shortly before Gerry Boltz became the regional administrator in Los Angeles—this was a Los Angeles company—there was a whistle blower who went to the staff. This was in 1971. They said they were manufacturing insurance policies. A few calls, and nothing happened. Then, of course, two years later in March of '73, it blew up. Dirks caused it to blow up. It only took a few weeks. He was approached by a former employee who told him all this stuff that was going on, that they were creating these insurance policies. They had these fraud parties. The senior management was directly involved in everything, and eventually, they all went to jail, of course.

Dirks then went off, and the first thing he did, it was a fairytale kind of thing, he goes through his positions. He was an analyst. He was known as a maverick analyst in insurance fields. He had one big success. There was some hanky-panky with some insurance company a year or two before, so he was a known person in that regard. That's why this guy went to him. Told him what happened.

Dirks then calls the big holders of the stock who did business with his company, the name of which I can't recall right now, his firm. He then visits others in addition to those firms. Princeton University bought over 400,000 shares. Their advisor gets wind of the story and, within four days' time, sells all 400,000 shares. It's obvious that people were

either believing the story, which was not verified yet, or they were afraid that the market conditions, once Dirks decided to dribble it out more and more, would cause a sharp decline in the price.

He then went to California to pursue his investigation, wound up with a *Wall Street Journal* reporter, and on March 21<sup>st</sup> or something, the *Wall Street Journal* published the article. In the meantime, they also spoke to other people, one current employee and several former, who confirmed that they were manufacturing policies. Receiver was appointed, company was liquidated, prosecutions –

**KD:** So when was your involvement?

**DM:** My involvement came—we started a proceeding against Ray Dirks and the tippees. The Boston Company was one, there were others. There were six tippees. They were all investment advisors, consented to censure. Dirks fought. First day, January of 1977, we started the proceeding in New York City. This is an administrative proceeding. He shows up in a white suit, symbolically that “I’m the white knight, I broke this open,” and that was basically his story.

We won the case below. Judge Markham was the law judge. It went on for months. There was one other lawyer who was on the case, a young lawyer, and then I enlisted a more experienced, seasoned lawyer to work on the case. The three of us. They’ve since merged, but one of the large firms in Boston. A major, major firm representing Ray

Dirks—let me take that back. They were representing one of the tippees. Ray Dirks was represented by a name you should have because he's a billionaire in Texas now. Not from the law business, but from mergers, acquisitions and stuff. He was an excellent lawyer.

It's interesting, the boxing promoter, and Plohn, how lawyers who are in the securities world sometimes go off in other things. It was appealed to the D.C. Circuit, who affirmed, and all he got was a censure. Of course, it became sort of a cause célèbre. It went to the Supreme Court and in a six-to-three decision we lost. Paul Gonson argued the case. I was there. When I see Paul, I say, "Paul, we won, we won, we won, and then I guess you lost, right? Is that what happened?" Footnote five became important in the court's decision. What it said is, you don't need to have remuneration to be liable. It could be reputational. That, of course, evolved from the facts of this case.

Dirks got a couple thousand dollars, was sort of thrown at him a little bit, the Boston Company was one of the advisors, so they threw him some money, couple of grand. Other than that, he didn't trade in the stock himself. We had a tough case. The motive issue wasn't there for us, and that was kind of the basis for it. He was coming across as a white knight. We acknowledged that, but we said that it's improper for a market professional to selectively disseminate material, non-public information emanating from a corporate source, that is these people.

But the Supreme Court was not going to buy it on that kind of situation. It was just not going to happen that way. But that's what we got out of it. I think the case has also prompted the SEC to adopt rules. As we know, there are insider trading rules, specifically with regard to mergers and acquisitions, and also to hone much better in light of Chiarella, in light of Dirks's decision. It's how it views insider trading, who's liable, who's responsible.

**KD:** It's part of that whole evolution, really, of insider trading. Let's move you into the 1980s. You took over the New York regional office in '81, I guess.

**DM:** The next person after Bill was Steve. Steve comes on board. Bill was a wonderful man. You could almost write books about him. Grew up in New York, went to Fordham Law School, went to Manhattan College. According to Bill, and I think he's right, he was the first non-Ivy League Lawyer hired by the SEC.

He went down to Washington in the thirties and was coming back on the train and ran into Bill Douglas and struck up a conversation with him that may have helped him get the job.

**KD:** So, Steve Hammerman.

**DM:** Steve comes on board in 1979. I had known Steve. He had been one of the hot shot prosecutors. I didn't know him real well, but well enough. I had a lot of regard for him.

Steve is a very positive, bright guy, but he knows what he wants. I, to this day, believe that if he stayed at Merrill—he left at the end of '01—we wouldn't have gotten into all this trouble that we did. It's a whole other world. If somebody's going to write a book about that, that would be huge.

In any event, January of 1980, Paine Webber. They lose control of their books and records. It's not one of these little firms; this is the big time. Bob Bishop used to run the Stock Exchange, regulatory. He really did a lot of amazing things. Very protective of the Exchange. What happened is they were acquiring Blyth, Eastman, & Dillon.

**KD:** Paine Webber was acquiring them.

**DM:** In January of 1980. They came to see us. I'm not sure I was part of that meeting, but they went to the Exchange, as they would normally do, and then as a courtesy to us, to explain that nothing can go wrong. Now you heard of the experiment that United Airlines conducted years ago? They were going to have pilotless planes, all computerized. And the first flight from Los Angeles to New York, you get on, the announcement was, "We want to tell you that we don't have any pilots here, but everything is fine, it's all computerized. We want to assure you that nothing can go wrong, that nothing can go wrong, that nothing can go wrong, that nothing can go wrong." [Laughter]. That's what they were saying to us. Of course, everything went wrong from day one.

Also, there was a bad flu epidemic, so a lot of their key people were sick, a lot of their back offices. Wall Street still had not emerged, they're not anywhere near the sophistication in their computerization as they are today, certainly. Everything went wrong. A large part of what went wrong is not, thank God, the customer side of the business. It was very large trades, contra trades with other brokers, other kinds of arrangements which involve significant amounts of money. They brought in a big consulting firm. They had 1,000 people in their back office. It was just an enormous project. We monitored very carefully, Steve, myself and our examiners. We would have, if not daily meetings, we would certainly have weekly meetings. It was a tough time because we took a vote, should we throw them into SIPC or not?

Ed Nordlinger is retired now, a guy I have great respect for. He said they should go into SIPC, and we shouldn't have the responsibility. My position was I think we should work with them because the customer calamity would be so great. We would sort of offload it off of our responsibility, that's true, but it sort of harkened back, for me, to the old days when I was sometimes trying to work things out. And Steve said no SIPC, and he spoke to Harold about it. I wasn't on the phone call, but he told me.

Steve used to drive me every night to the train station. Every night we went downstairs. We still laugh about it. We used to see President Nixon down in the basement because that's where his bodyguards were. But any event, they started to pull out, they started to get control. It was a very expensive, convoluted effort. All we could really do was monitor. It's not our place. They brought in some money. They weren't out of capital.

That was the good news. The bad news is you couldn't calculate capital. It's one of those deals where you think you've got enough, but you can't prove it. Paine Webber was saved for another day. And to this day, Ed says they should've gone into SIPC. I said, "Ed, they survived."

That wasn't the only problem we had. There was a little thing called the silver crisis. Bache & Company got caught up in it. It was the two brothers from Texas. They were trying to corner the silver market, and they got caught up in it. We had a big meeting. I went to the meeting. It's kind of interesting. I'm a little cynical at times. But an ounce of silver had to open the next morning at \$8.70. It was something like \$8, meaning that Bache, if it didn't open it up at \$8.70 or better, would be out of business. Well, can you imagine what happened the next day? They opened at \$8.70, and the rest is history. Bache survived.

When you get to commodities, it's not a matter of proof or anything, but to be a little cynical, it was obvious to me that whoever was running the market, and however it happened, they had to get that market up there. Because the Hunt Brothers, if they dumped everything – there's ways of trading those markets where you're hedging so you're short, you're long, you're all these things in combinations. Both firms survived 1980. I think Bache was April, and Paine Webber by March.

We had a little side note on Paine Webber. The chairman of the board, you still see him on TV once in a while, Donald Marron. I met with Don Marron a few times. One time I

met with him was the president had sold a significant amount of stock at a time which we thought was a little questionable in light of all of this. We were taking testimony from him, and Marron wanted to talk to me about it, and I said sure. He didn't intend to do anything, and he was building a house or something. He says, "Well, Mr. Marron, you know, appearances sometimes, we have to look into these things. I'm not saying there's a case here." He was a little upset that we were even looking into it. He should've thanked us for not putting him into SIPC, that's what he should've done, but I couldn't tell him that.

Going back to the late sixties and very early seventies, over-the-counter securities were traded sort of by advertisement, the pink sheets. The conversion from the pink sheets to NASDAQ—I gave a speech at the Plaza Hotel about that, they were celebrating the conversion. I think I was the luncheon speaker. Opened up the over-the-counter market. If you can see the blackest of night turn into like it is now, that was the difference between how over-the-counter securities were traded. A lot of our business, actually, came from the hanky-panky that went on. A lot of it wasn't sort of venal even.

There was no transparency to speak of. Also, I should mention that the options exchanges opened up about the same time in the early seventies, so you used to see these little ads in the paper for options, put options, call options. That all disappeared. It traded just like stocks.

A little insight. At the New York Stock Exchange, John Phelan was a fairly conservative guy, one of the more brilliant guys I've ever met. He was always, "What's our silver bullet?" I remember I had a dinner one time when I was at the Exchange. "Let's talk about a silver bullet, about how we can do something dramatically to enhance our situation." One of the guys said, "Well, we should acquire an options exchange," and I wasn't well-versed enough to say, "Geez, I think that's crazy." But the world changed. 1975 was a huge change. May 1<sup>st</sup>, May Day. If you think health care controversy was big, that was huge. It just shows how greed can drive things to be done the same way over and over again. The hell with the public. They're paying through the nose for all this crap.

**KD:** Right. And there's always the case that, "Well, we don't know what the implications of the change might be that are to be saved," etcetera, etcetera. Let's move you into the eighties and the period in which you're running the New York regional office at this point. I would assume that you're not going out and getting your hands as dirty. You're administering a larger team, things like that. How did your job change, and what were some of the things that you started looking at at that point?

**DM:** Well, the biggest change is I had to look at things from 10,000 feet, and to deal with more people. The whole SEC was going through some changes. If you recall, we were moving from Harold Williams to the next chairman, who was very good, I thought.

**KD:** John Shad.

**DM:** John Shad. John Shad's famous quote was, "We're going to stomp on them with hobnail boots," meaning insider traders. We had a big insider trading case, which really set the tone. John Fedders was the new director of enforcement. This case involved the Missouri company, St. Joe Minerals, but it was the first of a number of cases where trading was done through Swiss banks. One of the Swiss banks, we went in and got a freeze order and froze \$400 million. We were only looking for about 8 or 10 million, but we froze the entire account. Now talk about getting screams. They handled it very well, actually. Harvey called, and he was representing them, so Harvey calls. I said, "What do you want, Harvey?" He said, "We've got to stop this." "Oh, we'll carve out, we'll have a certain amount." We eventually worked it out, and we agreed to an order that would get them back to a little more sanity.

What was good about that situation is several things. John was an unusual guy. I like John, I met with him, we had problems. Then he was a very difficult guy to deal with. Not just me, lots of people. I liked his management style. If he could only be what I call a hamisch guy, which he couldn't, he would be fine. He was tightening things up where it was very loose before that.

Stanley was over at the CIA. Funny Stanley story. One day I get a call, "Don, I'm in town." I said, "Oh great. Why don't you come by?" "Well, I'm here on a case." I said, "What do you mean on a case?" "CIA." "Come on over. Whatever you want. You need some help? You need an office?" So he comes in with three guys. I said, "What kind of

case? Are you trying to keep something secret?" He says, "No, it's an employment case of some sort." [Laughter]. "It's a mundane thing." But a couple things. One, this case, and there were several others at that time. We were the first. We were getting agreements with the Swiss.

That opened that whole door because we were fighting with the Swiss. We wanted to know all the trading records, and we served subpoenas. It was getting nasty. We were getting after the investment bankers as well as the companies because a lot of these deals were, obviously, mergers and acquisition kinds of things, and they were sloppy as can be. We had a big case in our office involving two lawyers for major law firms who were leaking their brothers. We brought that one, we got an injunction against one brother, the worse of the two, and lost the case against the second brother, although the judge, it was sort of with a wink of the eye. He said, "He had to be doing something wrong, but you just don't have enough evidence to prove it."

There was insider trading and the evolution. We had insider trading cases before, obviously, but it had become much more sophisticated. When I got to Merrill after I left the Stock Exchange, I went to Hong Kong on a big insider trading case out of Hong Kong. The whole function of internationalization and the trading anywhere, and we see case after case now where they're everywhere. That was a major, I don't want to call it an awakening, but an evolution or creation of ways in which we went after those kinds of cases. One other area that was major, and we had cases in our office, was the Foreign Corrupt Practices Act. I used to go around giving talks to people who, talk about another

controversial act, the accountants couldn't stand it. They hated it because you had to certify that their books and records complied with the Act. It was a big deal.

PLI runs every year at least one session on the Foreign Corrupt Practices Act. It's still a major thing. We were bringing Foreign Corrupt Practices Act cases before the Act was adopted. We called it something else. Stanley really deserves the credit for all of that. That was part of that timeframe, so we had a lot of insider trading, we had some Foreign Corrupt Practices Act cases. We had a big case at Merrill Lynch involving two options traders. That case was these two traders were timing their trades in such a way to enhance their compensation at the end of the year. I mean, they were distorting the market in options so that they would show a larger value to their inventory and, therefore, their compensation.

The other area was stock loan. Still is a problem. I don't know if we were the first stock loan case, but we certainly did a lot of work, and we brought a case against Merrill Lynch. I called Steve up. He knew about the case. I said, "Steve, I regret to inform you that we're going to bring a case against your firm." He said, "Okay." I said, "We can resolve it, it's a resolvable matter, but you're going to have to have a whole new way of operating. You can't do this anymore, what you're doing." Well, it was a pretty corrupt area. It's hard to get rid of that kind of corruption.

**KD:** Explain this a little bit. You'd have people who would specialize in acquiring stocks to loan, and they would count on the market price falling over the interval of time?

**DM:** If you sell a stock short, you have to borrow the security to deliver it to the purchaser. Who do you borrow it from? You borrow it from agents who located the stock for you. That was the trick, who had the stock in inventory, because you didn't want to disclose what your inventory is normally, except for stock loan purposes. It's a big business from the firm's point of view because they lend out stock, they get a point over market or whatever it is that they make. We had a big business at Merrill on stock loan, but they had been hit. I hit them. That was an '82 case, and they had all these procedures. Merrill, pretty much, was clean on the thing. It went to other firms.

**KD:** Ordinarily the process you describe is on the up and up. Somebody's going out and finding the stock somewhere, and then you're loaning it.

**DM:** There's a lot of payoffs involved. Basically, that's what the problem is. You're paying people under the table to do the business. Because the business is so lucrative, and it sort of has a lack of transparency that if you did it that way, with no one looking over your shoulder, you could make a lot of money. There's a lot of bribery that would go on. Even organized crime was delving into it. I think the problem is solved today, but it wasn't easy to solve. We were one of the first cases in that field.

**KD:** I don't want to let you go without mentioning First Jersey Securities.

**DM:** Right. I have that down too.

**KD:** I think Anne Flannery mentioned that whole story, and the guy, Brennan, who sounded like quite a character.

**DM:** Quite a character. He had arrogance, and he did things. For example, you didn't have a margin account with him. He didn't want to deal with margin, to buy stock on margin. You had to pay cash. Basically, his shtick was small new companies, and he would control the market. One of the things he would do, he had a number of offices. He would take a block of stock and market it in Philadelphia, let's say. Then he'd take that block from the customers and market it in another office, and just move the stock around, which created a lot of problems.

Then also there was corruption with the issuers and how he was getting the business and how he was doing the underwriting. It was doomed to fail. When we brought the case, administrative proceeding, we could've settled the case. But, unfortunately, my friends in Washington were not going to go along with it.

**KD:** Why not?

**DM:** They thought it was so bad that our settlement was too weak. I tried to convince them that this is a tough case. Brennan was going to be suspended for nine months. That would've been big. They wanted him barred. I remember talking to Wally Timmeny. I said, "Wally, we can't do this. Let's get on the scoreboard here. If they keep running this

thing in a bad way, then we'll —" Between a lot of things that they did, including the lost records that were housed, I had no idea that they were there, that we allowed them to keep them there, but one of the lawyers trying the case said, "Oh, yeah, you can put them someplace," and then of course they claim that they disappeared. I know Anne looked into it ad nauseum, and I think it's her firm belief they never—they took them themselves.

I spoke with Anne about this many times. They were not to be trusted. Their lawyers were some well-known Jersey lawyers, but it became a bit of a game with them as well. Eventually, after I left, the case fell apart. It took a while. He went to jail. There was something in bankruptcy. He got like twenty years in jail or something. It was probably the most notorious because he advertised a lot at Super Bowl and stuff like that, so he was pretty well-known, but hard to get.

**KD:** One last bullet from that period is Drysdale Government Securities. Interesting case there. Was Chase involved? This is another one of those instances where you're looking at a gray area and trying to figure out whether you want to do the drastic thing, or whether you want to work something out.

**DM:** Well, I think there are a lot of cases, most of them are small, where you could go different ways. I don't recall too much detail about Drysdale. What kind of security did we have?

**KD:** They were buying government securities. Chase was buying them through them, ostensibly, for a bunch of private individuals. Drysdale, essentially, kept buying and couldn't pay for what they were buying.

**DM:** They failed.

**KD:** Right. The question is, who's going to take the hit.

**DM:** I'm not sure Drysdale resulted, by way of comparison to today it was probably pretty small at the time, but it did have implications for the street, I think it did. A lot of these cases did in the New York office. Insider trading, it's pretty sort of standard. People would say, and I think it's true, doesn't take much to investigate an insider trading case. You find out who has the information, and you work your way through all those people and you'll find trading going on, and that's pretty much your case. Some of these cases like New York City, Drysdale—we also had a case involving Merrill Lynch, a retail case back in the late sixties, which had implications for analysts. The Merrill Lynch analysts came back to haunt us later on when we had those analysts issues involving those Internet stocks.

There was an analyst who was touting Texas Instruments. Merrill Lynch blew this stuff out all over the country. At the time it was a huge case. It raised issues about analysts servicing the sales side of things. We, eventually, were in hearings and eventually settled

it. I came up with a formula. There were so many people involved. We had like thirty or forty different brokers involved in the case.

**KD:** Next big step to the New York Stock Exchange. Did Mil Batten recruit you to come over there?

**DM:** No, Dave Marcus did.

**KD:** Was he running enforcement at that point?

**DM:** He was running all of regulation. Under Dave would be enforcement, the whole exam area, and then all related areas, rulemaking, admissions, etc. Dave recruited me in 1984. I went over in February of 1984 with Ed Kwalwasser. Ed and I started the same day. My role, initially, was broad. Then it was narrowed to enforcement so I was the head of the enforcement division.

**KD:** It would seem to be a pretty big step to bring in two SEC guys at the same time.

**DM:** They had trouble at the Exchange.

**KD:** What was going on?

**DM:** They had missed a couple of firms that went into SIPC, missed in the sense that examiners were examining these firms. One was in Cleveland, and one was in St. Louis, and they both went under. Again, they were members of the Exchange, but it was the Examiner staff, and it was perceived that they weren't doing their job. In addition to all of that, enforcement had become rather mundane with some older guys running it, and they needed to have much more energy in that whole function.

**KD:** What did you do to provide the energy?

**DM:** A couple of things. One, I got more involved in cases, certainly the major cases. There was a case, a big check-kiting case. One of the major firms was moving money around from account to account. I forgot the guy who was in charge at the time, but he was well known. A lot of the cases were not supervisory cases. Go after the little guy who did something wrong, but don't go after the managers. We had to change that mentality. The SEC was pushing us hard to do that.

**KD:** There was a mentality like that.

**DM:** There was definitely a mentality. We brought cases against more firms. They would bring cases against floor firms before they would bring cases against the upstairs firms. Why? Maybe because they had more clout on the board, because there were more of those. Floor firms had people, but it was like oil and water kind of thing. The floor firms hated the upstairs traders, and vice-versa. The upstairs traders probably had more of a

case than the floor people because the upstairs traders are always accusing the floor people of ripping them off, and they probably were, to some extent. John Phelan was able to manage those conflicts and those constituencies pretty well.

He didn't expand the Exchange that much, he was cautious. But in '87, I was at a PLI conference with the SEC chairman at the time and we were talking, David Ruder and I were talking about it. He just finished a panel. I said, "Dave, remember that time?" I mentioned John Phelan. "Yes, John and I, we worked on this thing, and we had circuit breakers and stuff." When you think about it in a single day, the Exchange lost 26 percent of its value. The prior business day, which was a Friday, which was a triple witch day, it lost about 10 to 15 percent.

People went broke writing put options. That was one of the big things I did at Merrill was trying to track down all these situations. A lot of them were under investigation by the SEC because people are writing put options. All of a sudden, what was I doing? They were making money, and then they're having the stock put to them and they went broke. Overnight.

**KD:** Tell me a little bit more about the New York Stock Exchange and the whole enforcement regulation. You took over enforcement. Is that right? You're talking about these internal conflicts that are legendary at the Stock Exchange. What sorts of concrete steps were you able to take to change the incentives as far as enforcement was concerned?

**DM:** Well, you actually had to work through people like Phelan and others. You had to sell them on changing the outlook. What you did is you blamed the SEC for it. "John, we just have to do this, the SEC's all over us. We have to bring more supervision cases, we have to look." We were looking at controversial things a lot more. When I say controversial, I mean it was controversial only because it involved entire firms and their conduct. Big firms.

That carried on. It grew and grew. We were hit at Merrill. Our treasurer transferred a lot of money from the broker dealer to the parent. Technically, we were out of capital for three days. This is at Merrill. Dave and I worked on this. They fined us \$250,000, which was more than fair. But internally, we revised the whole process.

At Merrill, the business people relied on us tremendously because they didn't really understand. They didn't want trouble with the regulators. They relied on us. So many things that happened at Merrill. The things I could talk about are things that involved the SEC. One big thing that never was a case was the limited partnership investigation. And that was publicized, the fact that there was an investigation.

We had paid out well over \$100 million to customers who bought limited partnerships back in the eighties. This is why, when I look back at Merrill, it was a great firm. It really and truly was. And there were some people who did some things who brought on risk that we should've never had. It's pretty obvious. When you see the good side, and you say, "Well, we weren't a bad firm, we weren't disliked. The regulators really

respected us," because they knew they had people like me, and Steve, and Dave Marcus, and so many others with a deep regulatory background.

When we said, "We've got a problem, or we don't have a problem," we were believed because they knew we weren't BS-ing them. At the Exchange, I think what's interesting about the Exchange is there were two problems at the Exchange, and this goes way back.

One problem with the Exchange is it has such diverse constituencies that it's black and white in terms of their goals and objectives. There's quite a few. For example, the issuers whose stock is traded on the Exchange always think that they, too, are being ripped off by the traders, whether they're on the floor or the upstairs traders, that they're not controlling the market well enough. Obviously, they want a higher price in their stock. We can't give them a higher price in their stock. Sometimes we have to sell. Merrill did accommodate a lot of institutional buyers and sellers. That's our business. When I say accommodate, not just execute the transactions, but if there's securities leftover, they want to sell 100,000 shares, we can only sell 80,000, we'll take the 20,000 shares.

**KD:** You were comparing the Exchange, and talked about the two problems, one being the constituency –

**DM:** Yes, that's one. If you turn it on right now, you'll see some guy walking on the floor of the Exchange, and you can roll a bowling ball down there, run a truck through it. In my

time there, it was packed with people. We used to have cases where there were fights and bad words were used, decorum was violated because it was so close quarters. So what was the concern? The concern is that they don't need most of those people. This goes back a long time now.

**KD:** And those people knew it.

**DM:** They damn well knew it. Also, there was an element of corruption on the floor. There are floor cases where the pricing mechanism broke down. Some of it broke down because of existing positions in a stock. If a specialist had a position in a stock, they're trying to keep their value in their own positions. And they may have to do things that were not entirely kosher to do that. There was this big scandal, the U.S. Attorney indicted a few people from the floor. Most have been acquitted, actually. But there's always this belief that floor activity has a certain element of corruption, of which there is some element of truth to it. But the fact that they're not going to be around that long, that just weighed heavily.

**KD:** That was palpable when you were there.

**DM:** Definitely. And also, competition. Bernie Madoff had a company by the name of Cincinnati Stock Exchange. The first time I heard of Bernie Madoff was in connection with Cincinnati. But there were other firms that had these, basically, they're matching buyers and sellers. They did it—you had to be sort of a member. Our effort was to try

and get them all registered as stock exchanges. They weren't registered as stock exchanges. That was very convoluted and controversial. But it all goes back to this. It's like what we're going through today where computerization is shrinking the work force, and that's what's happened to the Stock Exchange.

**KD:** Computerization would've helped enforcement, though, as well. Was this something you were dealing with when you were in there? Were you taking advantage of this?

**DM:** We had what I always thought of as good computerization for a long time at the Stock Exchange under market surveillance. Market surveillance had a regime that they would follow in the event that there was an announcement. They'd monitor all the announcements, all the trading in those companies, and then if there was anything suspicious, it would be turned over to the SEC. They had enough computerization. The SEC may have had some problems in dealing with all those cases and how they investigated them. The other thing at the Exchange—seeing it on the Merrill side, I used to deal with examinations.

There are two types of examinations: sales practice and what we call FINOP, financial and operations. They did a pretty good job, the SEC and more importantly, since we're a member firm, the New York Stock Exchange. Unlike the SEC examiners, who were not as good as they should be. They just can't hire good people, that's their problem. It's all a civil service kind of deal. With the New York Stock Exchange, we could hire quality people with degrees, with experience in back offices, etcetera. Yes, there were a few

failures here and there, but in the main, it was a very astute group of people who were examining firms for FINOP and sales practice. Much better than the SEC. SEC used to do oversight exams of the stock exchange. They rarely were able to make any headway. They'd always find a little thing here and there.

The New York Stock Exchange, I think when it became a business and less of a regulator, self-regulator—they're getting away from that. They don't want to be called a self-regulator anymore.

**KD:** Right, they've got another word for it, which I can't remember what it is.

**DM:** I think from a business perspective, they were happy to dump that because it was expensive. From a credibility point of view, I still, maybe a little naively, believe that it helps the reputation of the Exchange to have really good regulatory controls, good people at the helm in that area.

**KD:** Of course, they're still regulating the floor.

**DM:** They're still regulating the floor, and Robert Marchman is there doing it. I saw Robert, by the way, at the PLI session. He's very, very good. He's really very, very good. Our markets are so institutional now. These institutions, they watch what goes on. They can tell you faster and better what's happening than anybody. They call the people on the floor. They've got their own tentacles out there. They're pretty knowledgeable about

what's going on in the trading world, and they have their own employees that monitor very closely because they have a fiduciary duty to their clients, obviously. This creation of FINRA, there's good things and bad things about it in my opinion. It's not so bad to have competing regulators. I think there's some advantage. It's more costly, though.

**KD:** Any other big issues during your Exchange years? Churning was something that came up a lot, that seemed to be picked up all the time in the mid-eighties, and that was a period when you were administrator.

**DM:** I would say under the rubric of sales practice, I think for the first time people were really getting much more sophisticated on suitability. Churning is a suitability question. Can the account handle the kinds of trading. There are accounts that want to do that kind of trading, so you have to figure out, are they sophisticated enough, did they get the right advice, what's the P&L on their accounts, how well are they actually doing? I don't see churning so much as suitability. It's part of this legislation, the one that's pending in congress now, the idea that brokerage firms are fiduciaries, make them all a fiduciary. So that goes to the suitability question. If the activity in the account is suitable, then even if you apply a fiduciary standard, you've met that standard.

Churning is another way of saying the broker wants to build up his commission business. That is a problem, but I'm not sure that it is the biggest of problems. I think the biggest of problems, if you really get down to it, has not been resolved yet. Since so many investors buy mutual funds, the cost involved. Mutual funds are not traded on the New

York Stock Exchange. Some closed-end funds are, but I think in terms of the Exchange, in terms of the sales practice side of things, we would deal with a broad variety of things. Options trading. Even over-the-counter trades, because if it was done in the account of somebody with a member firm, we have jurisdiction over that.

A lot of the things that we dealt with were mechanical in the business. For example, we had to deal with the estates, and the CRD system, how much goes out on the CRD system. So there's friction there because if a broker had a lot of accounts, you can expect a certain percentage of complaints. Should that go out to the public? There was always that kind of stuff.

Insider trading, generally, went over to the SEC, that whole category. We would deal with a lot of exam reports, plain old operations. We had a lot of cases involving operations against the firms. I think that had a major impact on how firms both staffed themselves and computerized to prevent violations and detect them earlier, that sort of thing.

The back office had been the stepchild of the Street. The poorest-paid, least educated people, etcetera, and the first to go when there were cutbacks. I think that area has been elevated quite a bit, in my opinion. You've got a lot of computer geeks that are running back offices.

**KD:** Anything that we haven't talked about that we should?

**DM:** Yes, one last item. There was a time back in the late seventies, early eighties when staff misconduct was used as a ploy to defend. Even PLI sessions were sort of teaching how do you attack the staff of the SEC. It was quite popular. I remember we had a big meeting with lots of different people from the inside and the outside to talk about that issue with Stanley in charge of the meeting. There were a few cases that sort of fueled that, but it became popular to accuse the staff. We had some issues in our office that evolved and weren't pleasant. Today, you don't want to do that. Then, for whatever reason, I don't know what the reason is, to be honest with you, it was staff misconduct. Now we're talking about thirty years ago. But if you talk to Stanley about it, or talk to somebody else, a broader way of dealing with it, I think they could give you some issues about that.

**KD:** Well, terrific. I appreciate all of your time. It's been a lot of fun.

[End of Interview]