

Securities and Exchange Commission Historical Society
Interview with David Smith
Conducted on April 16, 2013, by Robert Colby

RC: This is an interview with David Smith for the SEC Historical Society's museum and archive of the history of financial regulation. I'm Robert Colby. Today is April 16, 2013. We're talking with David Smith at his home in Scarsdale, New York. Mr. Smith, thank you for being with us today.

DS: You're welcome.

RC: Let's start with a little bit about your early life and education. Where are you from originally?

DS: I was born in Greenfield, Massachusetts. My mother worked for the Board of Education in Scarsdale, so I went to Scarsdale High School in Scarsdale, New York. I come from a family involved in education. My father was a high school teacher in Mount Vernon, New York, and today my sister is a college professor. That's how I got my start in life.

RC: Where did you attend college?

DS: I attended Amherst College, graduating in 1967, and then went to NYU Law School. I went to law school for a year, and then taught in the New York City Public School System for two years. I taught fourth grade one year, and fifth grade the next year, and then returned to NYU full-time and graduated in 1972.

RC: When you were there, did you have a particular interest in law or corporate issues? What did you study in law school?

DS: Actually, I took the required courses first year, and I didn't really concentrate in the corporate area. I would say my interest in law started when I was in seventh grade and we had to do a career project. I chose to interview a lawyer, who's a friend of the family. That was my first foray into any kind of career interest or career path. I suppose I just as well could have decided to interview a doctor; it just happened I interviewed a lawyer. He was a very nice guy. I was very impressed with him. That was a good experience.

When I was a junior in college, I was Congressman Richard Ottinger's first intern in Washington, D.C. The internship program—this was 1965—had just really started. Now it's very routine and a very active program, but there weren't so many of us then. I became interested in law and politics. That was always in the back of my mind as I finished college and went into law school, but I didn't really concentrate on corporate law or securities law in law school.

I came out ready to work for any kind of law firm, really anywhere that would hire me in those days, whether law firm or government. I ended up at Donaldson, Lufkin & Jenrette.

RC: You started at Donaldson, Lufkin & Jenrette. What was your experience there?

DS: It was actually a great experience. DLJ, Donaldson, Lufkin & Jenrette, had just gone public. They were the first brokerage firm to go public, so they were forging a path that would soon be followed by others. Bill Donaldson was still there. You'll hear from me as we talk throughout this interview how my path crossed with Bill's on several occasions throughout my career. Bill was still there. Dick Jenrette was still there. Lufkin had left to pursue politics in Connecticut. He had political aspirations that he never realized.

It was a very young place. Everybody seemed about my age or a little older. It was kind of a heady environment. I mean, they were on a roll. It was a hot issues market. There was a lot going on. What was great for me as a young lawyer, because of their growth and going public, they had brought in to create a legal department five young men from Davis Polk, who was their outside counsel at the time.

Their names don't matter except one in particular, Michael Boyd, who became general counsel of DLJ, just retired a few years ago. He was something of a mentor to me. I was assigned to Michael. Now I'm the sixth lawyer. Of the six lawyers, four of them were former Rhodes Scholars. I got good training from good people and very interesting people, a bright bunch.

When I started in my career, you aspired to the top law firm. In-house corporate attorneys, I wouldn't say they were looked down upon, but it was just not viewed as the same level of practice. If you came out of law school and went to Davis Polk or Cravath

or one of the big firms—that was the right career path for a young lawyer. I figured that going to DLJ and having the fortune of being with this smart group from Davis Polk, who were fine young lawyers, I got the same kind of law training, if not better, as people who went to a big firm, for it was really hands on. I was thrown into the fray right away.

My first work was for Alliance Capital, which was just a baby then. If I had stayed with Alliance, of course, I'd be a very wealthy man and wouldn't have time for this interview. (Laughter.) Michael was the general counsel of Alliance, so I worked for Michael at Alliance. He was a great teacher, became a great friend, and as you'll hear later invested in my project that never worked out. Now I'm in the securities business as a lawyer.

RC: What sort of things were you doing?

DS: I had to become somewhat of an expert on the Investment Company Act of 1940, which I thought was a bit of a yawn at the time, but I did that for a period of time. Then one of the other young lawyers—not one of the ones from Davis Polk—we were like a basketball team. I was the sixth man. The other sixth man, Tom Wiser, left and I moved up to DLJ. I continued to work with Michael, but I became exposed to John Castle, who was running Sprout Capital Group at the time who later became chairman of DLJ.

RC: Where did you go from there?

DS: At my brother-in-law's wedding, I met a guy from Scarsdale, New York, where I had gone to high school. He was the chairman of the board of a company called Seligman & Latz. Seligman & Latz asked me if I would be interested in interviewing for the job of general counsel.

I was very happy at DLJ, and I think they were very happy with me, but this was an opportunity. I was married at the time and had a young son. I had to weigh the opportunity and risk of whether I was ready to be a general counsel. Was I ready for this opportunity and growth in my career or should I stay where I was very happy at DLJ? I decided to go to Seligman & Latz.

RC: What did being a general counsel entail?

DS: They had been very disappointed in their general counsel. He had been in private practice, a little older than I was. It was a personality thing I think more than competence. As it turned out, personalities were the problem; even though it was a public company, it was relatively small, family dominated. The personality aspect of being at Seligman & Latz was an important ingredient. That worked well for me.

Our outside law firm was the Proskauer Firm. They took care of Seligman & Latz, the Seligman family, the Latz family. It was that kind of old fashioned relationship. The family, at that point, owned about 40 percent or so of the company. It was an American Stock Exchange company.

Here again, I was fortunate and I had a really, really outstanding mentor who's still practicing law today in his eighties, Klaus Eppler, who is well known to almost anybody who's been involved at the SEC. Klaus' practice was before the SEC. He knew everybody there. He certainly could have easily been appointed chairman or commissioner of the SEC. Klaus was the partner on our account for corporate and family matters.

Right after I got there, some of the family members wanted to cash in. The Seligman family wanted this more than the Latz-Kubie family. So we had a secondary offering and went on the New York Stock Exchange. I was involved in it working with Klaus and associates at Proskauer hand in glove. That was an unbelievable experience from beginning to end.

As a result, I became more comfortable with the business of Seligman & Latz and the people of Seligman & Latz and the lawyers at Proskauer. We had lots of labor issues, so I worked with a lawyer named Howard Lichtenstein, who was a prominent figure in New York labor law. Howard should have been a Supreme Court justice by appearance—or chief justice. He looked the part. He looked kind of like a combination of Warren Burger and Earl Warren.

We had big labor problems because Seligman & Latz had over 12,000 employees, who were hairdressers and operators of fine jewelry departments in department stores.

We ran all of Macy's beauty salons around the country, including Bamberger's, which was part of Macy's, and Bamberger's had a storewide union. It was the Teamsters, so our hairdressers were represented by the Teamsters union. I learned my labor relations and labor negotiations at the hands of Howard Lichtenstein. That was a very interesting negotiation with the Teamsters for our population of hairdressers.

I was again fortunate in my training that I had this great securities lawyer that I worked with and then this great labor lawyer that I worked with. To make a long story short, I think I learned quickly and learned well and developed their confidence. Then I became what I would say was a true general counsel. That was important to my career growth, as I'll describe it, but my goal then, and it was with Proskauer's agreement, was to reduce the amount of fees that we were paying Proskauer. I did that. I think over the course of about three years we reduced our fees by over half a million dollars.

RC: Fees for labor?

DS: For both sides because I started doing all the SEC filings and the proxy statement and preparing for the annual meeting, which was modest for us, and all the labor negotiations. The business people at Seligman & Latz started coming to me directly. It had been an open door, and this is a problem for in house counsel in a family business with the law firm that manages both the business and the family.

Everybody felt that they could pick up the phone and call Klaus or Howard. We changed all that when there was confidence in both sides of the equation. Everything had to come through me, so I could control what was going to outside counsel.

RC: You mentioned that you were in charge of the SEC filing and dealing with all the proxy matters. This is the mid-seventies?

DS: Yes.

RC: Can you talk a little about what it was like to file with SEC and to deal with the proxy issues in the seventies?

DS: Yes. For us things were pretty routine. I can't remember whether it was a proxy statement issue or not. A couple of times I had occasion to call someone in the Division of Corporation Finance, but my interaction with the SEC was not that frequent or that involved. That came later in my career. I will say in terms of corporate governance and all the things that happened post 1970s, Seligman & Latz fit the model of probably everything that was troubling to investors about corporate governance.

RC: How so?

DS: The board was peopled with family and friends of John Kubie. You were expected to vote the way John wanted you to vote. The road was not too bumpy because it was a

family dominated business still even though it was public, but when I think back to some of the business problems that developed in terms of performance, particularly of the beauty salon division, I think that we might have fared better as a company with a board that was more appropriate, as we see boards today with outside directors.

In fact, we had an outside director who was a professor at Harvard. She was very direct, asked hard questions, and John didn't like that. We had a classified board of three year terms for I forget how many directors. It was a bigger board than you'd see today. The professor from Harvard was not asked to stand again for election. She was really a true outside director. She was really a disinterested director. Then we put another woman on the board that was very prominent in retailing. She did adhere to the company line. After the professor, we never had anybody on that board who asked the hard, tough questions. What management said was what it was.

RC: Are you the corporate secretary at this point?

DS: I'm corporate secretary as well. My name's on the stock certificates. I signed secretary certificates, banking resolutions, took the minutes at the board meeting, but it was a very ministerial kind of job. I kept the records. It was a very different time. We had about 1,000 subsidiaries because we were taking advantage of the multiple surtax exemption. We had 6,000 beauty salons.

Each beauty salon, a cluster of beauty salons, was a separate corporation in a separate state. I did all of the housekeeping for those corporations. There was no software to do that. It was done by hand. That was part of my responsibility. We had physical stock certificates for every one of those corporations. Our accountants were S.D. Leidesdorf, which became Ernst & Ernst, then Ernst & Young. The founders of Seligman & Latz went back to E.K. Latz, Sam Leidesdorf, and Judge Proskauer. That was how it all developed.

RC: You have a company that goes on the New York Stock Exchange right before the Exchange does pretty significant corporate governance reforms. Can you tell me a little bit about what that was like?

DS: I really became more aware of that when I got to the Society. So there's a break in time. We were a small company. It was kind of like the delay in Section 404 of Sarbanes-Oxley applying to smaller companies. We were left the way we were. We didn't get the corporate governance kind of attention that the larger companies were getting. We coasted along at Seligman & Latz into the mid-eighties without feeling or taking recognition of what was going on and what they would soon face.

I left Seligman & Latz in '85. About the time I left, I would say they were just starting to focus on board structure. It was driven less by regulation and what was going on in the environment. We weren't largely institutionally held either. There weren't outside influences really compelling us to do things.

RC: There just wasn't pressure on the small firms.

DS: No pressure. I had an interesting situation. I went on the board of Seligman & Latz. Whatever discussions there might have been in the board room about what we should be doing or not doing were really not related to governance. We were starting to get ready to position ourselves to sell ourselves. That took up a lot of the discussion at board meetings, but we didn't position ourselves so that we would look appropriate for a purchase, in terms of our governance structure.

My interesting position on the board also was that I was the executor of Marian Kubie's—John Kubie's wife—estate. Marian Kubie was a Latz, so she was the ownership, not John Kubie. He married into the business. So I was voting a controlling block of shares on the board, but again, I was not expected to exercise any independence in that role, although I did on one occasion vote against management.

In terms of your question, were we taking account of all that was starting to percolate and go on in the corporate governance arena, I would say no.

RC: The domestic salon division, is that still within –

DS: That's within Seligman & Latz. That was the original part of the business, started in 1910. The first beauty salon in the country was in H. & S. Pogue in Cincinnati.

E.K. Latz was a hair goods salesman and Seligman was a notion salesman. They both lived in Scarsdale. They would get on the train and go across the country and sell their wares to department stores. Old man Pogue asked them if they knew how to run a beauty salon. As legend has it or the story goes, E.K., who was the salesman while Robert Seligman was the behind-the-scenes administrative guy, said of course he knew how to run a beauty salon.

They get on the train coming back to New York and Seligman says to E.K., “You don’t know anything about running a beauty salon.” E.K., the eternal optimist, says, “Don’t worry.” They ended up having a huge business. They really made Clairol the company it was. The campaign “Only her hairdresser knows for sure” was all Seligman & Latz.

Kubie was very friendly with the Gelbs. I became friendly with the Gelbs.

RC: Now there are subsidiaries.

DS: I would say in terms of the securities laws and the one thing that I was very conscious of, and this is the Klaus training, we were very, very conscious of when we had to make public disclosure. I think for our size company and I think it was because of Klaus, we were very, very concerned about the family dealing and inside information. The great purpose of the securities laws in terms of equal footing and disclosure was something that was drummed into me and drummed into the senior executives at Seligman & Latz.

Our control, we had stock option plan, the old kind, restricted stock. I administered that. This was before Section 16. We had 144 stock. We were so very, very careful with trading in company stock and disclosure of events that maybe we always erred on the side of caution.

RC: Were takeovers or tender offers a concern?

DS: Even though I had been there as general counsel and was now president of the salon division and on the board, Harold Geneen, who eventually bought the company, came at the company twice but it was not hostile. He came initially because he was interested in the fine jewelry business, Finlay Fine Jewelry.

He came back again at the beauty salon business. The beauty salon business is a cash cow, but low margin business. There are no fixed costs. It's almost all variable. The rent to the stores is variable. The commissions, the operator is variable. The cash cow fed the voracious appetite for cash that the fine jewelry business had with a very slow turning inventory.

Geneen's idea was to buy Seligman & Latz and then buy our single competitor in the business, a company called Glemby International, and combine the two and he would have a monopoly. In the department store beauty salon business, he'd have about 12,000 beauty salons. His theory basically was he could control the wage cost, and also he could reduce the effective rent of, say, 18 percent to the stores, down to, say, 16 percent.

On a billion dollar business, they both become significant. Payroll was in excess of 50 percent. He bought the business and he bought Glemby, but what happened was during that stage, the second time he came back, I spent hours with Harold Geneen, uncomfortable hours.

Geneen had somehow gotten the notion that there were 15 percent margins in the salon business. I mean you could do the math all day long and it wasn't possible—even with his scenario (if he could pull it off) and if there weren't antitrust problems. I don't know if Hart-Scott-Rodino was in effect in those days, and maybe the share of the whole beauty salon marketplace was looked at rather than just department stores where it would have been a monopoly.

I think that's what happened. He would not accept the fact that I couldn't show him 15 percent margins. I had an old-fashioned golden parachute deal, which maybe today would be looked askance at. I just didn't think I'd be happy with Geneen, nor he with me. That's when I left Seligman & Latz.

RC: Where did you go from Seligman & Latz?

DS: From Seligman & Latz, I went to a company called Federated Linen & Uniform Services, which is a family business. I had a look at the governance of a family business. Now I've seen DLJ. I've seen Seligman & Latz, which fits the mold I've described. Now I'm

with a family business started in the 1890s in New York. If you're from New York, it's known as Cascade Linen. They provide table linens and back-of-the-house garments for virtually every major restaurant in New York City. We had 300 trucks on the street in New York, a huge plant in Brooklyn with 1,500 workers, all unionized.

We had a big business in Texas, throughout Texas, and a business in California. There I was general counsel, secretary and kind of family lawyer all put together, a consigliere kind of role. They had a shareholders' agreement which was more important than any bylaws. The shareholders' agreement I kept in my right hand drawer to find out what family member was entitled to what, because it was not a happy situation. I also ran the laundry business in Texas and California.

That was a different experience. Now there's no SEC. It's just lawyering and doing a lot of deals. The way that business grew is they'd buy into small independent laundries all over the country. I went around buying laundries and running the business in Texas and practicing a lot of labor law.

RC: Is it from there that you go to *Confetti*?

DS: It's from there I go to *Confetti*.

RC: Tell me a little bit about that.

DS: *Confetti* is interesting in terms of governance and the corporate world in general. I left Federated Cascade, General Linen, all those names in '87. I was with the laundry business for three years, late '84 through '87. I was uncomfortable because the business is done with understandings with competitors. General Linen was operating under a consent decree for antitrust problems they had in the sixties. When I was there, we had some huge problems in Texas. This was a criminal antitrust investigation. Actually I spent about a year almost full-time in Austin, Texas. I, myself, was before the grand jury several times. It's not a pleasant experience.

So I decided this was not for me. It really wasn't the kind of law I wanted to practice. Being part of a family business that's at odds with one another is a nightmare. I decided to move on and was not sure what I was going to do, which was scary. I was, at this point, a little over forty with five children, including a baby, so it was a strange, difficult time. I bumped into a friend of mine from high school, named Dougie Kreeger, who had owned a group of stores in New York called Kreeger & Sons.

Dougie came up with some idea for a magazine, which was going to be for members of PTAs around the country. I said, "Dougie, the magazine we've got to do is a magazine for customers in department store beauty salons. They're a captive audience. If we can get a contract to provide all the reading material in those salons, we can go to advertisers with ten million women a month coming through salons, a captive audience, in department stores. They spend on average \$100 in the store on the day of their salon visit."

The original idea of beauty salons was to create traffic in the store. Women used to have a weekly wash and set, so they were coming in the store all the time. If you go to any old store that still has a beauty salon—they're pretty much gone—like Macy's in New York, the salon would be on the tenth floor in the corner so the woman would have to go through the store. She goes to the beauty salon for her weekly visit. She feels good about herself. She's looked in the mirror after she's been fixed up, makeup, hair. She walks through the store. She feels good about herself, so she spends money. The demographics of the customer were great. I convinced him.

RC: So from *Confetti*, you go to the Society. I guess it was then just the Society of Corporate Secretaries.

DS: It was the American Society of Corporate Secretaries.

RC: Right, but no governance professionals yet.

DS: No governance professionals yet. Our logo was an ink well and pen, an old quill pen. We weren't even called ASCS in those days. It was the Society. By the time I was there, there were some women but very few. If you went back ten years before I came and you took a picture of the people at our national conference, it was like "Where's Waldo?" to find a woman. The organization was in the process of changing. Then from 1990 when I

got there through when I left in 2010 is when really my career followed the evolution of everything that was going on at the SEC and the Exchange.

RC: Can you give us a little background about the Society of Corporate Secretaries, what it was up until 1990 and a little about what they do?

DS: It was started in 1946. The idea had been floated before World War II and then tabled when everybody was preoccupied with the war. Then in 1945 or so, a group of four men got together. They had this idea of a society of secretaries to deal with the business of being a corporate secretary more than governance issues, because as you know, as everyone knows, the company has one corporate secretary.

Oftentimes, it could be the chairman's executive secretary, often a woman, who knew where all the bodies were buried and where all the documents were, who was loyal, loyal to the chairman and loyal to his board of directors and so on, very competent, and just hadn't had the opportunity to go to college or law school. The corporate secretary position was initially I think very ministerial in a lot of ways.

Our founder was a proxy solicitor. He saw a business opportunity. So they started this group in 1946 at the Harvard Club in New York. That was not the first chapter, just where it started. The first chapter of the Society officially was the Chicago chapter and then New York, and then it grew from there.

The early chapters were St. Louis, New York of course, Mid Atlantic (which covered D.C. and Philadelphia), Southeastern, then the California chapters were early. L.A., I think was the first in '51, then San Francisco. As the country grew and as corporations moved around, by the time I was there, there were twenty-five chapters around the country and about 2,800 members.

The original purpose was to help people who were similarly situated, with nobody in their own corporations to tell them how you did things. It very much relied on networking. Chapter meetings were very important. Most chapters had monthly meetings. It was important to people. I can remember Jack Goetsch, who was secretary of a utility in Milwaukee and later became chairman of the Society. Jack was not a lawyer. For Milwaukee and Chicago, there was one chapter: Chicago. Jack, for years, would drive the 100 miles to the monthly meeting in Chicago because it was so important for him to be able to ask the secretary of Morton's or the secretary of the Chicago utility or the secretary of Walgreen's, what are you guys doing? The secretary of Sears was also an important member.

What do you do about this? What do you do if you need a new director? Do you go outside? Do you do it yourself? If you go outside, who do you use? Any issue that related to the board of directors, dealing with the recordkeeping and dealing the care of the directors. You heard when I first started; the secretary was involved with the care and feeding of the directors. If there was an offsite meeting, you were arranging it; you made

sure the coffee was there. You made sure that if the wives were included that there was something for the wives to do.

You made sure the bus got to the place at the right time and was there when the directors came out of the hotel. The war stories that used to be told when I first started in national conferences were like that. There were stories of a bus not being there—Oh, my God, what are we going to do? Or going on an off-site and somebody all of a sudden wanting a separate meal. This person doesn't eat steak—I thought we told you that! That kind of thing. That was the corporate secretary.

It was a combination of a specific job function, which was ministerial and somewhat clerical. It was often being the confidant of the CEO because you would often be traveling with the CEO. It was in a way a heady job also. It was an interesting combination of being subservient and dutiful and cooperative and making sure nothing went wrong, but being able to fly on the corporate jet with the chairman and go over what he was going to say at the annual meeting or what he was going to do if someone got up and threw a rotten tomato at him, that kind of thing.

RC: Is this an independent position or are people doing this in conjunction with another job?

DS: Mostly in conjunction with another job. Also, by the time I got there, most of the people who were corporate secretaries were lawyers, and lawyers who had good educations. It was an important job. I don't want to in any way diminish the importance of it. There

was this aspect of always making sure. In any job, there's that. You worry that everything's going to be done properly, but the worry fell directly on the shoulders of the secretary. You were very visible because you were doing things for the chairman. If it was not done A number one perfect—it's the kind of thing that if it's done well you get no recognition, but boy, if something goes wrong, you're really in a bad way. You were subservient to the chairman's needs.

You did have your very important specific responsibility. You were the keeper of the corporation's books, records, history. You were it. You often had an HR position as well. You often were in charge of the company's charity—which was the chairman's favorite thing. As the company got more involved in the complications of being a public company and disclosure, especially if you were a big company, you had a lot to do with the SEC and disclosure. You had to understand the listing agreement. What are the requirements of the listing agreement? What were the triggers in your bank agreement that would cause disclosure problems? As the complexity of being a public company grew, the responsibilities of the corporate secretary grew as well as along with them.

RC: When you got to the Society in 1990, what were the major issues at that point?

DS: If I were to characterize it in terms of the SEC and governance, I look at it this way. Breeden was chairman of the SEC I wouldn't say I got to know him, but I was exposed to him. He was, I think, mid-term. Linda Quinn was head of the Division of Corporation Finance. My impression when we were down at the SEC, if Breeden was at a meeting,

Linda was right there. I'm not drawing any conclusions. It just seemed that that was a very important, close working relationship, the chairman and the head of the division, which I think it is.

I think Breeden's a little younger than I am. I was born in '45. I think Breeden was born in '48-'49. I mention that because he's now in his late sixties. He grew up, went to school, was a lawyer, and had the experiences that I've described were mine out of law school in the seventies. He would have had parallel experiences in whatever he was doing in a law firm. He grew up and matured professionally during a period where really the model was that management and the board were close. Shareholders were investors. They didn't question things.

It was all the bad things that institutional investors and others who care about corporate governance have come to deal with, criticize, and try to correct. As I look at my own career starting in the nineties and the people I dealt with at the SEC, I see a kind of evolution that I think is interesting. If you look at it chronologically a little bit, you have Breeden, as I just described. Then he was followed by Arthur Levitt. I consider Breeden a traditional gatekeeper kind of guy, I would say.

RC: In what sense?

DS: The status quo more or less. The real attack on corporations and on what they were doing was just beginning.

RC: What do you mean the attack on corporations?

DS: You didn't have a powerful Counsel of Institutional Investors. You didn't have an ISS [Institutional Shareholder Services]. You had gadflies still. You had the woman, Evelyn Davis and the Gilberts. You started to have the more serious ones, the Icahns and the Nell Minows and Bob Monks. That was the infancy of it, as I see it. I see Breeden as in the mold of the former SEC chairmen. Then Levitt comes in with a background in business and a background at the American Stock Exchange. I would say that he took a kind of practical approach. He saw a need. He saw a need in terms of disclosure. He saw a big need. He initiated the Plain English Initiative, which I think was his major undertaking.

RC: Can you tell me a little about the Plain English Initiative?

DS: I think quite simply Levitt felt that the documents that were given to shareholders were filled with legalese. They were very difficult to read. There was a movement in other areas to make things understandable to everybody, whether it was a lease agreement or a bank loan agreement, but he certainly wanted the SEC documents, particularly the proxy statement or an offering statement, to be clear and understandable so the average person knew what was being disclosed, why it was being disclosed and why it was important to them in plain, simple subject-verb kind of language.

RC: Was there an impetus behind him pushing that or was it just something he thought needed to be done?

DS: I think he was the impetus. The reaction was interesting because initially my impression was that a lot of lawyers didn't like the initiative. They thought that it stripped away some protective language that they were used to. Also, they had learned it the way their teachers had taught them. You go to a major law firm and they have a way of writing documents. You follow that pattern. I think Levitt felt it was more obfuscation than clarity.

He made a big push. He had Nancy Smith. He hired a woman—I don't think she was a lawyer—but her passion, her goal, her charge was to see that Plain English got put in place. We were very involved in that. The first major corporate document I think that was done in Plain English was done by Kathy Gibson when she worked for Bell Company. They have since merged, but this would have been back whenever Levitt was chairman. That was a major plus for what he was trying to do and a major accomplishment for the Society because we worked hand in glove with him and Nancy Smith on that doc.

RC: That would have been a big change for corporate secretaries.

DS: Huge, and for lawyers as well. Corporate secretaries are lawyers, but the lawyers in private practice as well, big change.

RC: What are some of the other things that you remember from Arthur Levitt's tenure?

DS: That's really the thing that sticks most—his Plain English Initiative.

RC: Did the Society deal much with the auditor independence rules that he pushed?

DS: Not as much. I think that that really fell more to the financial side of corporations, the CFOs, not as much at all to corporate secretaries.

RC: Shareholder access is a big deal in the nineties. What are some of the things that the Society dealt with—or were its issues specific to corporate secretaries?

DS: The issues that I think of that we got very involved and perhaps are still involved in was certainly proxy access, very involved in that whole dialogue discussion and what were going to be the thresholds for access to the proxy statements, whether 3 percent, 5 percent, as well as what kind of groupings could you have. I know we wrote comment letters. We were always in discussion with the SEC about what was the right balance there. I know that they had not appealed the Court of Appeals decision in that. There's private ordering now. I think also the Internet and so many issues have changed the landscape incredibly, certainly in terms of communications and disclosure. We were very invoked in that.

I'll pick out some things that may not or may be significant. We were never really involved in Section 404 of Sarbanes-Oxley. I say that with some reservations. The Society, it can be said and may be critically said that we were more a big company organization, New York Stock Exchange kind of companies. During my tenure, and I'm not saying it was me, but during the time I was there, we became very conscious of a need to service a constituency that really needed us more than the big guys and that was the smaller issue NASDAQ companies. We never made the kind of inroads in terms of membership that I wanted to with them. We had about 500 or 600 members. We had a lot of turnover there. There are reasons for that, too. We did take a stand on 404. We wanted for it to be delayed, if it were to become effective at all on small companies. We were on the side of the small issuers on that one.

In terms of other governance issues, we looked at the leadership structure of the board, we were certainly involved in the discussions of director tenure, director retirement, the splitting of the chairman and the CEO. I think our position was a proper one, because I think it's a gray area in many cases, and circumstances alter situations. I think our general posture—and I'm not saying we really ducked the issue—but often one size doesn't fit all, which became almost clichéd, but it's true. I think that's one of the issues with regulation in general. I'm not opposed to regulation. That's not what I'm saying. You are creating a paradigm where it's inclined to be one size fits all. You can carve out some exceptions, but we were very conscious because of the variety of companies that we had in our membership.

I think that's something where we really were of value to the SEC. Nobody represented more companies before then than we did. We had 2,700 public companies represented in our membership, big and small, mostly big. There's no other organization that I know of that had that breadth and scope of membership, and a membership that was involved in the plumbing, the nuts and bolts of how corporations dealt in their board of directors. That's why I think our opinion was highly valued. It was always tempered by an understanding that different companies in different situations required different solutions. In broad strokes, I think our value was that we could relate to specifics but we also could caution that you can't take any one situation and apply a standard that will cover everybody.

I think the whole issue of board structure, board accountability, what gets in front of the board; those are still issues that they deal with. How is the board addressing risk, the standard stuff? How are they addressing succession planning? What do they do? I think it's interesting that recently, as I read in the papers, there have been several boards where the directors have not gotten majority votes; in one case I think a whole board. I can't tell you which one. A whole board was not reelected by majority. They all met. They're all sitting there. They all got 40 percent. They meet as a board to fulfill their fiduciary responsibility in the face of this vote, because they're supposed to under their bylaws tender their resignation. So all of the directors tender their resignation, meet to decide whether they will accept their own resignations, and of course don't. (Laughter.) That's the extreme example.

In a common comment letter, we might say, “What would happen if...?” Sometimes people might say, “Well, that’s not going to happen,” but it happened. It seems to me that’s an important issue today. I know it is. It seems to me that if a director doesn’t get a majority vote and he or she is to tender his or her resignation to the board, it seems to me if the board decides that this director deserves to stay on, that they’re valuable in a way that nobody understands, there ought to have to be a public explanation—it could be a page—of why they have made that decision.

I think that explanation also ought to be prominent either under the director’s name or it ought to be in the proxy statement next time they run as to why they retained their position. Put it prominent on their website so an investor could say, “Okay, they kept Ms. XYZ, even though she got 30 percent, because...” I don’t think that has happened. I’m not aware that there’s a clamoring for it but that to me would be the kind of issue that our members would think about and might suggest.

I think what we tried to become, at least I hope we tried to become, is a little more proactive that way, rather than reactive. We never wanted to be always negative. That’s easy. We had a different role from the Business Roundtable or others who were very, very pro-corporation. I think our inclination was that you can’t take a few bad apples and punish the whole world for it. I would say that was definitely our position. Don’t regulate because of a few bad apples. I think we had a very measured, thoughtful approach to things.

I think the issue I just described to you is one that I would urge as an intelligent, proper thing to do. Maybe it's already in the works. I don't know. I'm not there, but it seems to me that would be the kind of thing to look at. If I were organizing a presentation for the SEC, I would say, "Hey, isn't this going to be a solution that will solve a lot of problems for everybody involved?" If you can't write a paragraph as to why you kept that person, maybe you better rethink your vote.

RC: You talked about representing companies before the SEC. How does the Society do that?

DS: We have a committee. The Society has several committees that do serious work, very responsible work. The one that deals with the SEC is the Securities Law Committee. The people that you are going to be meeting with that I suggested, Hank Barnette and Karl Barnickol, were not only corporate secretaries and general counsels of major companies; they both were chairman of the Securities Law Committee of the Society.

The three major committees, the Securities Law, Securities Industry which is called something else now but it's Securities Industry. That dealt more with your listing requirements. They would interact with the exchanges. They would deal with more mechanical issues like ISS and those.

RC: Is it Public Companies?

DS: That's Public Company Affairs Committee now. That's right: Public Company Affairs, Securities Law and Corporate Practice. Corporate Practice is much more the nuts and bolts of being a corporate secretary, how you take minutes, how you prepare for the annual meeting, how you select a solicitor, how you select a transfer agent, how do you know if they're doing the right thing, what are the rules for abandoned property and on and on. That's Corporate Practices, Public Company Affairs and Securities Law. Securities Law is the only one that always dealt with the SEC. What was the question? (Laughter.)

RC: How does it do that? Is it mostly comment letters or personal relationships?

DS: It's a combination of things. On its own it's charged with keeping abreast of all the things that are happening at the SEC that are of importance to us. They have at least quarterly meetings. Their meetings are usually around major events, whether it's a national conference or a major fall conference or a board meeting or an annual meeting, so there is an opportunity to spread their thinking throughout the organization. They are following current events closely. If something like SOX comes up, Sarbanes-Oxley or Dodd-Frank or the rules on proxy access, we're like the law firms. We're waiting with baited breath. Then it comes out. The ten members of that committee are pouring through it point by point, and they come out with a summary.

Now that's an interesting thing in terms of the Society's history. We used to be the only source of that stuff for our members when I first came. We were it. First of all, the law

firms did memos. They were their memos. They went to their clients. In fact, we were scared to take any memo from a law firm that got in somebody's hands as a client of the law firm. Let's say Chevron gets a memo and distributes it to our members. We would go to the law firm, whoever it was, and say, "Can we give this to our members?"

Law firms started to change, as did the environment and the economics of the law firm. All of the sudden midway through my term as chairman and president and CEO of the Society, they're begging us. Now we've got ten memos. I come to my office in the morning. If something's come out that afternoon, obviously the associates of every major law firm have stayed up overnight to write a memo on a Section 16 change, a crowd funding memo, anything you can think of. I get ten of them.

RC: Now it's a way to drum up business.

DS: It's marketing, but it didn't obviate the need for our committee because we looked at it with our own perspective. The Securities Law Committee is on top of everything that's coming down that leads to what our members need to do their jobs more effectively. Then they have meetings to prepare. We have publications. We have programs. It's deciding we need a seminar on such and such a subject or we need a conference call meeting on such and such a subject. It's organizing ourselves by publications, by events, by programming to convey this to our members. Then we have this regular periodic formal dialogue with the SEC in person.

In between time, we have developed enough relationships in the SEC whether it's a Market Reg issue, an Enforcement issue, as I said most often a Corporate Fin issue, to call up whoever's the person handling the matter, whether it's Brian Lane, before he was head of the Corp Fin, he was a go-to guy, or Marty Dunn. It could be all the names you know and will come to know and your father knows. We had the ability to pick up the phone and they would answer us, up to the chairman. We had that access because during our meetings and our comment letter process, we were viewed as somebody who was thoughtful and helpful to the process.

That interaction was both informal and very formal in terms of these two meetings a year where we prepared – the agenda was done in conjunction with someone at the SEC. Often in later years Mauri Osheroff would be the focal point for us and the chairman of the Securities and Law Committee. Mauri and the chairman, they'd figure out what were the topics, who should be there, who was going to speak, for how long. It was as if we were testifying before a Congressional committee, so it was very formal.

Then through the informal stuff afterwards, whether it was a reception or a dinner or a gathering, the discussion would continue. It was an opportunity to really get a little more into the weeds with somebody or to find out when do you think this is going to come out, when should we be looking for rule making on such and such. It was on multiple levels. There was very constant contact with the SEC and its personnel. I can tell you ten, fifteen former heads of the Division of Corporation Finance are members of the Society.

Ed Fleischman's a member of the Society, a long-term former commissioner. I think Richard Roberts was for a while. Virtually all these people that I've known since 1990, they've all spoken at various conferences, chapter meetings so that the back and forth and the contact is constant with them. The same for other issues with the exchanges, much more so during I think during the John Phelan, Dick Grasso, Bill Donaldson era at the New York Stock Exchange than recently because the personalities have changed, the issues have changed, they've changed, we've changed. It's just different. It's been a long, long, long relationship going back. When we started in 1946, the SEC hadn't been around but thirteen years. It was an infant.

RC: Who are some of the personalities with whom the Society has worked pretty closely or worked well with?

DS: A lot of personalities. I would say in his short tenure, Harvey Pitt. Harvey was well known to lots of us when he was a Fried Frank lawyer because he was on a lot of panels. Then he became chairman. It was kind of short lived for lots of reasons, as you recall, but we knew Harvey well. He was a good guy.

In terms of my own personal relationships with people, as I mentioned, Harvey Pitt was someone that a lot of us knew pretty well when he became chairman, because he had spoken for us many times when he was a lawyer in private practice. I would say Steve Waldman as a commissioner was very interested in working with the Society. He had a

very important view that way too much time, effort, and capital was spent on '33 Act registrations and not enough to the ongoing disclosure under the '34 Act.

I can't put words in his mouth, but I just think he thought that that was something that should be focused on and streamlined and made more nimble than it was. After he left the SEC, he started his own business. I think he sold it, but he tried to compete with GMI [Governance Metrics International] and ISS in the proxy advisory business. He and I talked a lot about that. He talked to the Society about that. We had the relationship when he was at the SEC and then following.

Mary Schapiro a long time spokeswoman at Society events. I was not at the Society during most of her time as chairwoman, but all throughout her career when she was a commissioner, when she was at FINRA [Financial Industry Regulatory Authority]. We did deal with FINRA. Again that was more for the accountant side of things. We had members who were accountants as well as lawyers. We did get involved in some auditing type accounting issues. It was kind of rare and sort of tangential to our main purpose.

Again, I said Breeden was sort of the status quo gatekeeper. I think that the appointment of Mary Jo White is very interesting. You could ask Hank and Karl this question, if you follow the chairmen they have known and the character of the SEC throughout the outside events that have taken place, I think you'll see a parallel from sort of—not benign neglect, I won't go that far—but a traditional role to a more activist role to now a very

serious oversight role movement more obviously towards enforcement, or that's the perception.

It's interesting they chose Mary Jo, because she spoke before the Society on a couple of occasions, not as a securities lawyer, but because what became a concern particularly after the Disney case was minutes. Minutes is the bread and butter of being a corporate secretary you might say, but is it in short form? Is it in long form? How much do you say? Here is where you find amazing needs on the part of smaller companies.

I used to do a breakout group when we did the public companies section at the national conference or at an issues update seminar. I would cover the private and not for profit companies. We'd maybe get twenty, thirty people because they weren't into the issues at the SEC. I had been at Cascade, the family business and the small public company. The issues were what you put in minutes, how do you write minutes. My chairman wants to change this resolution. People who had a tape recorder like you have for this interview recording everything that went on at the meeting. Should I do that? Hundreds of questions about taking minutes?

Long way of saying, we once had a guy named Charlie Stillman, who's a white collar criminal lawyer in New York City, former U.S. attorney. He's about seventy-five now, but he defended some people in Enron and WorldCom. I asked Charlie to come speak to us. I'm friendly with Charlie. His whole message was that there's real serious liability to

minutes. People can go to jail depending upon what you put in the minutes or don't put in the minutes. It's become a very, very serious document.

RC: Liability for the secretary or for the director or both?

DS: For the director and the company, more for the directors. Mary Jo came and talked in the same vein, not just about minutes, but about all the things that can get people in trouble with the securities laws. That's how I know Mary Jo. Of course we knew John White when he was head of the division of Corporation Finance.

You may not want this for this, but it's interesting. I was home watching television when Mary Jo came out with Obama and he was announcing her appointment. I had her email address. I knew her because of her speaking at the Society. I knew her husband very well. I wrote her an email. I said, "Congratulations, this is great," or something. It just had "David." I didn't even think she'd get it. I mean she's there on television. Twenty minutes later I get a response saying, "David, thanks very much."

RC: (Laughter.) That's wild.

DS: Isn't that amazing?

RC: Yeah, that's amazing.

DS: It's amazing. It says something amazing about her. I just did it almost just as a courtesy. I didn't think she'd remember me. Maybe she didn't, but the fact that she's so on top of everything is remarkable. I actually had breakfast with John a couple of weeks ago. She had been considered for head of the FBI. She's on some Guantanamo committee.

He said, "What she's been through already in terms of security clearances and what she has for breakfast and where her kids went to school and who they hung out with," he says, "It's incredible what you go through to have one of these positions." I think her appointment is very interesting. We'll see what it means.

RC: If I could jump backwards a little bit, why does the Society go from Society of Corporate Secretaries to Corporate Secretaries and Governance Professionals?

DS: In January of 1996, we had taken our kids skiing, a day skiing trip up near Poughkeepsie. There're some mountains up there. But I don't ski. So they were all out skiing. I'm sitting in the lodge. I'm reading the *New York Times*, Sunday's *Times*. There's an article in the business section about companies creating the position of CIO, chief information officer. It describes who that is and why there's a need for it and all the information that comes in and goes out and someone has to sort through it and filter it and be the gatekeeper and so on. I guess that's it.

Corporate governance has been around as a concept for a long time. I was becoming concerned with all that was happening in corporate governance that the Society and our

members would be left out, that someone else would grab hold of that, either a new association or NIRI [National Investor Relations Institute] or the NACD [National Association of Corporate Directors] and we would lose membership. We would lose standing.

I also thought, and I was always very conscious of this either fairly or unfairly, that this role that our members by virtue of their jobs and almost their personality, as a very diplomatic people because they had to be in the kind of position they were in, meant that they weren't aggressive for their own careers, which is why if you're at a gathering of corporate secretaries, all of whom are lawyers, it's a wonderful experience because they're nice people generally. They are. They're really great people. They're very smart, but they're accommodating. They have this role that we understand.

I thought these people might not fight for their careers. As a general rule, I don't want someone else swooping in and taking over this field. So I write an article in our own publication February 1996. I call for the creation of a CGO, chief governance officer. The article, I probably have it bronzed somewhere. (Laughter.) There are few people who remember that. I was the first. I will say this with no reservation. I called for this. It fell pretty much on deaf ears.

I got Rich Koppes a couple years down the road to join me in this notion that there ought to be a chief governance officer. He wasn't sure whether it should be the corporate secretary or a separate person or whether it mattered. A "what's in a name" kind of thing.

I thought it was important in the name. He and I did an article together. Then the thing started to grow. A couple of people caught onto it. They went to their chairman and said, "I want to be a chief governance officer," so it grew. Now I think it's fairly common. The name change didn't happen because of that, but that's how I was thinking.

Then the leadership of the Society started thinking not so much about changing their titles or changing their upward mobility in the corporation, which was what I had been thinking about, but that we needed a name that better reflected what people did, that they were doing this in fact and it ought to be part of our moniker, our umbrella. We struggled with what we should be called. It pretty much divided I would say about 50/50. Maybe not.

I would say most people wanted to keep our name. It had been around now for fifty years. We were the Society. We were the ASCS. We had created a tagline after my article, Excellence in Corporate Governance. It was the American Society of Corporate Secretaries, Excellence in Corporate Governance. Then we were ASCS, Excellence in Corporate Governance. We did get rid of the inkwell and quill as a logo. A lot of people didn't like that, a lot of people. That one was age-specific.

There was something of a sensitivity always among the men in the organization about the title corporate secretary. All the sudden it became a badge of honor to be a corporate secretary. What are we doing away with the pen and quill for? What's wrong with being

a corporate secretary? We have Secretary of State, Secretary of War. It's honor, Secretary of the General Assembly of the U.N., which is all true.

It's a very ennobling, important designation, but it used to be you're at a dinner party.

What do you do? I'm the secretary of Coca Cola. Do you get coffee? Do you take steno? Sometimes people were joking, sometimes not. When I got this job, people in the know like Klaus Eppler right away said, "Oh, my gosh, David that's a great organization," but I'd be at some dinner party in Scarsdale. They'd say "What are you doing?" "I run the corporate secretaries." "What's that?" They would assume it was a secretary stenographer. That's a little bit of an aside.

All of the sudden with the name change, people became really wedded to being corporate secretary. It really divided along age lines on that. The younger folks, they had a prominent voice in what was said. It did make some sense. We became the Society of Corporate Secretaries and Governance Professionals. We dropped the American. Some people thought there was significance in that that we were going international. There was no such thought at all. We had some international members, but no. It was to add the governance part.

I understand that recently they thought it was cumbersome, which I always thought it was cumbersome. When you went on the Internet, our address was long and cumbersome. Somebody said, "Well, that's good," and somebody said it wasn't. There was a lot of debate about it. They settled on that. I think it's a good name by and large. People are

used to it now. It does say something important about what our members do. They really are involved in this arena of corporate governance. They are professionals. So I think it's a good name.

RC: Did it come at all out of the expanded responsibilities out of Sarbanes-Oxley?

DS: Yes, I think that's a point I should have made to you because the timing, I think it was pretty coincidental with that. That's right. I think that was a big impetus for it.

RC: What sort of new responsibilities came out of that legislation?

DS: I'm trying to think of all the provisions. I think it focused a lot on 404, it focused a lot on the structure of the board and having companies really, really straining to figure out first of all the definition of financial expert, who was and who wasn't. Then the issue of independence—what's an independent director, what's a financial expert—those definitional questions which were trying to be sorted out and interpreted from Sarbanes. There had to be interpretive releases and stuff. That was a major, major issue. Companies became focused in terms of their board structure and dealings. The executive search firms, the board search firms, that became a preoccupation was how they would people the audit committee and who was going to be the financial expert.

RC: There was a shortage of directors.

DS: Yeah, exactly, absolutely. That's another major issue in general that I see going forward is peopling the board, not only the board in general but the special committees of the board and finding people who have time and finding diversity. Yes, that was a huge issue. At the same time, I was also touting with search firms that they should put corporate secretaries on boards of directors because who knew the inside and outside of the boardroom better? I thought this was another thing of promoting my membership.

I got in front of some big search firms, Spencer Stuart and Heidrick and Korn/Ferry. They all bought into the idea, although their one skepticism was, is the CEO going to let them do it time wise and so on. They said, "Our attention right now, David, and for the foreseeable future is the audit committee and finding financial experts for companies." They said, "That's all we're doing. That's all we're doing right now." Your question brings that back to mind.

We were involved very much in the discussion of the definitions, and also, very involved—and I think it came out of SOX too—in the perquisites, using director pay and what had to be disclosed and a whole thing about traveling on corporate aircraft. We talked about it two or three times in presentations at the SEC on how you calculated if a director was going anyway to Paris and his wife went with him, what was the increment to gauge?

RC: What you have to disclose?

DS: Yes, and what do you disclose if, what's the value if the company has a parking lot and the CEO has a separate spot inside the lot and so on. I mean it got to that point. It really got to that point. An executive bathroom, is that a perquisite? You get a \$10,000 executive bathroom built. Do the shareholders have to know that your CEO has that? Then of course along comes some guy who not too long ago spent something like \$300,000 on his office. I forget which company. It wasn't a major player but it made the press.

Sarbanes-Oxley, the whole Enron thing, brought into focus all of this stuff and we were involved in it up to our eyeballs. That's right. What is a perq? How do you value the perq? How do we get a financial expert? Do we have one already on the board? Is he independent? Is she independent? There was a case about somebody whose kid went to the same prep school as a member of management. The question was is that person independent?

Both their kids go to Deerfield or something. They go to this football game. They both play football. He's a partner at Peat Marwick. Is he an independent that can be on my audit committee? That was the way it was. The sensitivity—it's like after a terrorist attack, everybody's looking at every backpack in the world thinking there's a bomb in it. The sensitivity after Enron and WorldCom and then Sarbanes-Oxley comes along—nothing was too ridiculous to consider.

RC: You also have the exchanges putting in new regulations.

DS: Right. A big deal that our members got involved in—this isn't Securities Law, this is more Public Company Affairs—was the Rule 452 stuff at the stock exchange and the broker discretionary vote. We spent many, many hours on many committees at the New York Stock Exchange and many of us were on committees, dealing with the fees that ADP [Automatic Data Processing] charged for proxy distribution, the proxy fee discussion. I was on several, several committees. We went through that thing. If they suppressed mailing, what kind of fee should they get?

The broker non-vote was a huge issue. We were very involved in that. I think it was absolutely essential that the election of directors be taken away. It's not a routine vote. That was a big deal because if directors were routine votes and you had an election for directors and approving auditors, the street voted. They voted 99 percent for management. That was the issue. They took away the broker discretionary vote for directors. You had to get votes from everybody. Of course, the proxy solicitors loved that. When was that?

RC: Mid-2000s.

DS: Mid-2000s. That's when I think Cathy Kinney was president of the New York Stock Exchange. It started with Grasso.

RC: It was 2004 or 2005.

DS: That would be about right. I still think a major issue that nobody seems to want to touch, although they still waltz around it, is the undue influence of ISS, the intermediaries. I think the fact that ADP, now Broadridge, is basically the sole distributor of proxy materials is a problem. It's just a problem.

RC: People have been talking about it more, the conflict of interest, where you get a score on your corporate governance. You have to go to the same people to tell you how to fix it.

DS: I'll tell you a little story about that. When I first started at the Society, ISS operated basically out of a one room office in Bethesda, Maryland. Now Minow and Monks had left, and Jamie Heard was running it. We had a guy in Washington, a member, Jerry Breslow, who was corporate secretary of Comsat. We never had a lobbyist in Washington. We don't lobby. We advocate, we don't lobby. We don't register as lobbyists. We don't attribute dues to the lobby.

Jerry was our eyes and ears in Washington. He was secretary of Comsat. The reason for Jerry, he's in Washington and Comsat had three congressionally appointed directors or something. It's a quasi-public utility kind of thing. They put the satellite communication. So Jerry was our eyes and ears in Washington.

RC: Executive stock plans?

DS: Yes. ISS and Jamie Heard had this black box. That's what it was called—the black box. They put your plan into the black box. If it came out one way, they said the shareholders should vote for it. If it came out another way, they said they should vote against it. Sometimes identical stock plans for subsidiaries in the same company would come out differently.

RC: The black box being a computer program or something?

DS: Just figuratively I think. It may have been people with check sheets or something. Then it was how did you value them for disclosure purposes. Black-Scholes were a similar way. It was critical to companies and critical to corporate secretaries because if you had a stock plan and you get your proxy statement out and you spend millions of dollars on it and you've got all kinds of people poised to get these stock grants. You then go to your shareholders and you get turned down, it's a disaster on many levels.

Who would be looked at as having blown it? It was the corporate secretary. The shareholder would ask, "Is our plan going to get approved?" They were supposed to go to ISS and say, "Here's what we're doing. Is it going to be approved?" They wouldn't give an answer or they tell on the eve of the meeting when it was too late. Everybody was pissed off.

So Jamie has this meeting with us. He says he's going to create a business, so a company can come to them and pay for their advisory service and in effect, we'll tell you now if

you pay for the service whether your plan is going to pass or not. I think the magic number was \$17,000. If XYZ company has a plan or a couple of plans, \$17,000 is not even a footnote on a big company's finance. Why not? I'll pay \$17,000.

Jamie will tell me whether it's going to pass or not. If it's not going to pass, he'll tell me how to adjust it. He's saying this is going to be his business. I said, "Jamie, that's unethical. No one's going to pay you \$17,000. You can't walk both sides of the street. I don't think it'll work. He said, "Well, we're going to do it." I said, "Okay."

In the beginning, some companies said, "Why not? We'll pay the \$17,000." I only know of one instance where someone paid the \$17,000 and he didn't get the vote. I know the corporate secretary. I said, "Boy, you must be livid," and he was, but they're still doing it. Now they're not in a little garage in Bethesda; they're a huge, huge company that's been sold a couple of times. ISS, the CGQ, I think now is not as good as it once was.

RC: CGQ is?

DS: Corporate Governance Quotient. They graded everybody.

RC: Okay. That's their metric.

DS: That's their metrics. Everybody has their metrics. GMI has their metrics. Waldman had his metrics. ISS is the big gorilla in the room. The Hewlett Packard-Compaq deal was

waiting for ISS to advise on 12 percent of the vote. I think it's outrageous, but it's unregulated. They are registered as an investment company under the '40 Act. That doesn't mean anything. No one wants to touch it with a ten-foot pole. I think that's still true.

Karl Barnickol, just mention ISS, he'll go bananas. Ask him to tell you about ISS. Karl and I led the charge against ISS, Karl in particular. The power that they wield and their research is flawed. It's a check your box mentality still. I don't think this is for the oral history, but to me they are a private regulator in some ways as powerful as the SEC in influence corporate behavior.

They're a private unregulated regulator. They have the temerity, the gall, to act like a regulator. When they're changing their criteria, they send it out for comment to the companies, just like the SEC does. Then if people give them negative comments, at the end of the day when they go ahead with them anyway, they say, "Well we put it out for comment. Everybody had their chance," sort of a McCarthy tact. When did you stop beating your wife?

RC: Is there anything else you'd like to cover?

DS: No, I hope that's the kind of stuff you wanted to hear.

RC: It's tremendous.

DS: Really?

RC: Oh, yeah, it's been fascinating. It's a completely different side.

DS: You'll get from Hank and Karl much more in depth, better description of the issues. Karl was very involved in Section 16, which was a huge deal when I first started, Section 16 then Forms 3, 4 and 5. Hank's going to go back into certainly the fifties and sixties. Hank has been not only chairman and CEO of Bethlehem, you could probably Google him and stuff, been on a lot presidential commissions and stuff. Good guy, very good.

RC: I just wanted to say thank you for this. It's been a pleasure.

DS: Thank you. Good, I enjoyed meeting you and doing this.

[End of Interview]