

REMARKS

A. A. Sommer, Jr.
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It is conventional on occasions like this to say that you do not deserve the award being given you. Ordinarily I glory in not being conventional, but on this occasion I am going to be. I truly feel that there are others far more deserving of this award than I. That feeling is reinforced when I consider the merits of the three men who received the award before me -- Stan Sporkin, Irv Pollack, and Kevin Duffy. To paraphrase a one-time vice-presidential candidate, I'm not Stan Sporkin, I'm not Irv Pollack, I'm not Kevin Duffy.

Those feelings of unworthiness are reinforced when I contemplate the achievements of the outstanding person after whom the award is named, Justice and one-time SEC Chairman William O. Douglas.

Many of those who are more deserving of this award than I are in the audience tonight. I would like to single out two of them and I focus on them because they are leaving the Commission's staff after extraordinarily distinguished careers.

First, there is Bob Davenport. Bob has served on the Commission's staff for 38 years, 22 of those as Denver Regional Administrator. In that time, Bob has been, as someone said at his farewell reception at the Commission, a true role model. His enthusiasm, his dedication and his commitment have never for an instant wavered. During his time as Regional Administrator he fought hard to stop the penny stock frauds, he sent Meyer Blinder to jail, he did a remarkable job of protecting the investors in his region from some of the most egregious frauds.

Then there is Linda Quinn. Linda served the Commission for 16 years, 10 of which she was Director of the Division of Corporation Finance. During her time she put the finishing touches on the integration of the 1933 and 1934 Acts, she fashioned innovative responses to some of the most challenging disclosure problems one can imagine, she adapted the disclosure system to the incredible demands posed by new ways of trading, new financial instruments and novelties of every sort. In addition, she has been a most effective representative of the SEC in many of the activities of the International Organization of Securities Commissioners.

It's these people, Bob and Linda and their likes, who really deserve the Douglas Award. But I assure you that my humility does not extend to turning it down: I welcome it, I treasure it, I am flattered by it, and I accept it most gratefully.

I have often said, only half facetiously, that I came to the Commission so that I could become an alumnus. During my days in practice in Cleveland I noticed that there was a special bond, a feeling of camaraderie, a tie that bound together people who had served the Commission. I frankly envied them the warm, close relationship that stemmed from the shared experience they had of working for the Commission. After serving at the Commission, I now understand more fully the nature of that special bond. It is friendship, it is the shared commitment to public service and the public interest, it is an abiding respect for the traditions of the institution, and it is a profound admiration for those who have gone before and what they have achieved.

And I learned first hand that when a person has served at the Commission he or she is never the same. Such a person is never again indifferent to the public interest dimensions of a problem, even when engaged in vigorous combat with the agency after leaving. There continues to be an abiding concern with the fundamental concepts of fairness, decency, and honesty. This goes beyond what I have always called the “pronoun problem.” When a person joins the agency it takes about six months to stop calling the SEC “they,” and after leaving the agency it takes another six months to quit calling the Commission “us,” a misappellation that is sometimes jarring to clients! I told Ray Garrett once, that for us coming out of private practice, I thought nothing was more appropriate than the saying of Pogo: “We have met the enemy and it is us!”

Everyone who works at the Commission becomes by that experience something more than he or she was when he or she got the first government check. Perhaps the greatest example of change overtaking someone was the first Chairman, Joseph P. Kennedy. Kennedy entered upon the job of Chairman with a reputation as a wheeler-dealer, a manipulator, an epitomization of all that the SEC was created to destroy. But in his time at the Commission, he established himself as an effective, diligent, creative regulator and leader and he left an indelibly honorable mark on the institution. I recall when Bill Casey’s nomination before the Senate, Senator Ted Kennedy said it was the worst nomination as Chairman of the Commission since that of his father! In both cases, the men nominated exceeded everyone’s expectations and added to this great history.

During a recent vacation trip I read Joel Seligman’s second edition of his history of the Commission, The Transformation of Wall Street. This reminded me again of the fact that we are all heirs of a great and glorious tradition that began in 1934. As I read the history one great name after another leapt out of the pages: Abe Fortas, William Douglas, Jerome Frank, James Landis, Lou Loss, Milt Kroll, Stan Sporkin, Irv Pollack, Phil Loomis, Ray Garrett, John Burns, Manny Cohen, Bill Cary, Milt Freeman, Kevin Duffy -- and this is only a sampling of those who contributed to the noble history of the Commission. Those of us who were at “SEC Speaks” today know that this tradition is in good hands with the new generation of Commission staff.

As good as the texts of the laws are -- and I think it is universally acknowledged that the 1933 and the 1934 Acts were masterfully drafted -- the strength and glory of the Commission lies not in those laws, but in the people who have administered them. And that history is enshrined not only in the names that I have mentioned and similar

luminaries, but even more so in the work of the thousands who have contributed to the work of the Commission in its 62 year history. The staff has been universally innovative and ingenious in adapting the laws the SEC administers to the needs of the times. What a masterful creation Rule 10b-5 was; without it the Commission could not have done nearly as much as it has done in rooting out fraud and manipulation. The voluntary disclosure program in the '70s was indeed an imaginative solution to a difficult problem. And then there were the innovative "Sporkin settlements" that did so much to advance corporate governance in this country.

The staff of the Commission has never lacked for courage. They have gone to the mat with investment bankers, exchanges, the public utility industry, the accounting profession, the legal profession and, for that matter, on occasions with the entire world of American industry. In every case there were loud howls, efforts to bring political pressure to bear; unfailingly the Commission stuck to its guns and fought to implement the policies it thought were right. It may rightly be said that the SEC has done more to raise the moral level of the marketplace than any other institution, public or private, in the United States.

In 1924, ten years before the Commission was created, Felix Frankfurter, one of the principal draftsmen of the securities laws, foresaw the important role that people would play at the Commission. He said "Everything is subordinate to personnel, for personnel determines the governing atmosphere and understanding from which all questions of administrative organization take shape."

The importance of people was reflected by the testimony of Tommy Corcoran, also an important draftsman of the Commission's organic laws, before a House committee considering the 1934 Act. Here is the dialogue he had with one of the representatives:

Mr. Mapes: The law ought to be made to apply to all alike and I hate the idea that some man can go to an administrative official and get something done that another fellow in the street can't.

Mr. Corcoran: You have to have the power to make rules and regulations in every administrative body. The answer is to pick good men on your Commissions.

Mr. Mapes: While, that sometimes is no answer at all.

Mr. Corcoran: It is the ultimate answer to any governmental problem.

The importance of the staff is underlined by Joel Seligman in his book when he says:

From the earliest weeks of Joe Kennedy's chairmanship, the character of the Commission's registration and enforcement programs had been determined chiefly by the agency's senior staff. Fortified by long established precedents and generally superior understanding of the SEC's regulatory process, the Commission's senior staff . . . countervailed the inexperience and occasional hostility of [some] Commissioners.

Justice Douglas, after whom the award being given tonight was named, said in his autobiography, Go East, Young Man:

We were rich in talent at the SEC; the energies of the men seemed endless . . . The SEC had a staff of 1800 men and women, and I was proud of them all. There were no “fixers” on the staff . . . These were honest, idealistic, hard-working, and loyal men and women to the nth degree . . . The SEC . . . had plenty of antagonists, but no taint of unethical conduct ever touched it nor did partisan politics motivate it. Above all, the Commission’s performance was highly professional. Forty years after the SEC was established it still had the best professional staff of any agency in Washington.

Were Douglas with us tonight he could say the same thing of the Commission after 62 years. There still have been no “fixers” on the Commission or its staff, and staff is still the best professional staff in Washington. And it is still free of partisan politics: had anyone sat through every meeting while I was on the Commission, that person could never have told which of the Commissioners were Republicans and which were Democrats.

More recently, at the SEC’s fiftieth anniversary dinner Bill Casey reflected the same convictions:

The most unique and indispensable element in the SEC’s half century is the spirit, the drive, and the commitment of its staff, which is so marvelously and so regularly renewed and reinvigorated year after year and decade after decade.

Many a Commissioner, many a Chairman has come to the SEC convinced that everyone who worked for the government was a drone, a barer, a mindless bureaucrat, a time-server, a clock-watcher, and invariably they have left with nothing but praise for the industry, the energy, the dedication of the staff. All of us here know how many nights are spent, how many weekends are spent doing the work of the Commission, which is indeed doing “the work of the Lord.”

As I read Joel Seligman’s book I think the fullness of this honor -- and the reason it is named after Justice Douglas -- came home to me when I saw what he said about Douglas:

No other SEC Chairman ever addressed so many fundamental problems . . . His chairmanship was the most accomplished in the SEC’s history, in part because it articulated a coherent policy framework for federal corporation laws that was to guide the next two generations of corporate reform efforts.

And Douglas has not lost his relevance. We are today witnessing dramatic downsizings in American corporations, often accompanied by enormous compensation increases for those who bring the downsizing about. In 1937 Douglas said something that I think might be taken to heart today:

The educational system has been too virile in the production of men immunized from a sense of feeling of social responsibility; trained in the art of plunder and gentlemanly ways; imbued with the false idea that the American way means exploitation.

What a great history, what great people.

Throughout the world, as countries begin to grapple with the problems of private ownership of economic institutions and ponder the means of regulating their nascent securities markets, invariably they look to the SEC as their model. When I have occasion to counsel with officials in those countries, my advice is always the same. Get good people and give them the power to enforce the law free of politics and favoritism.

What is it that unites people who have served the Commission through these 62 years? Is there a common thread that runs through this noble history? What is it that has bound together the 62 years the Commission has been in existence, that still binds together all those who work now at the Commission and those who have worked there in the past?

The answer is simple: concern for the investor.

Chairman Douglas at his first press conference said,

the SEC should be what I might call “the investor’s advocate.” We have got brokers’ advocates, we have got Exchange advocates, we have got investment banker advocates; and we are the investor’s advocate.

That ringing declaration of the central role of the SEC is as applicable as when it was spoken and it is what you see first when you open up the SEC page on Internet: “We are the investor ‘ s advocate.”

At the opening session of the International Organization of Securities Commissions meeting in Tokyo in October of 1994 the regulators from the major capital markets of the world spoke. Those from countries other than the United States gave interesting technical discourses on the problems of regulating derivatives, achieving transparency in markets, optimizing disclosure, establishing solid accounting principles. Chairman Levitt followed all that technical discourse with a very simple message. He echoed the declaration of his predecessor of almost 60 years ago. He said:

We’ve come together again to address the many complex issues facing us as regulators as we move into the 21st century -- issues presented by the development of the vast derivatives markets; the conversion of state-directed economies to free markets; the resulting growth in the number of individual investors; and the expansion of capital markets that have no national boundaries. As diverse as these issues are, their solutions must have one thing in common -- the interests of investors must be paramount.

If I had to draw just one lesson from the SEC's 60-year experience, it would be the critical importance of putting investors first ... For sixty years, our investors have known that the laws protect their interests. The laws hold their interests supreme . . .

Each issue has many sides -- but there's one side we regulators must always be on, and that's the investor's side. They are the ones our laws are intended to protect.

We mustn't let the details of specific technical issues divert us from that fundamental mandate ...

For in the end, what unites us as securities regulators is our responsibility to the investors in our securities markets. Securities laws and regulations exist not as abstract legalisms, but to help real people, as they invest for a new home, for an education, for retirement.

The Commission continues to be the advocate of the investor. No matter how much Congress may seek to tamper with its priorities, that will remain its mission.

I would like to applaud those who organized the association of SEC Alumni -- Marv Pickholz and all the others. This organization institutionalizes a body that existed for many years without formal organization, but which was nonetheless real. It provides an opportunity for us all to gather at least once a year to renew old acquaintances, swap stories, bring each other up to date and honor the institution by honoring someone who has been a part of it.

And finally, I would like to thank again those who have made this evening for me one of the greatest evenings of my life.