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The Past Enforcement Directors Roundtable

**Hosted by SEC Chairman Christopher Cox
and Enforcement Division Director Linda C. Thomsen**

***Panelists include Irving Pollack, Stanley Sporkin, John Fedders,
Gary Lynch, Richard Walker, Stephen Cutler***

LINDA THOMSEN: My job here is to kick off the proceeds by introducing the Chairman who is known to all of us. He is of course the anchor of this impressive panel. But if I went through the usual stuff I would say he's spent 17 years in Congress. He's served on every committee that had any responsibility for protecting American investors or capital markets. That before that, he had distinguished service in the White House in the 1980s. That he had been in private practice at Latham & Watkins. Had a clerkship at the federal court. All of that we all know. So I thought it would be more fun for just a minute to think about the Chairman and enforcement and look at his views on enforcement.

And fortunately, I only had to go back a week because last Wednesday the Chairman gave a speech that was dedicated to enforcement. And I have four quotes. "First and foremost the SEC is a law enforcement agency." The next one, which is my personal favorite, "We won't let up" the coming years, oh there are only three quotes, "The coming years are going to be a time of continuing aggressive enforcement because the continued health and prosperity of our markets depends on it." I am not quite sure whether any of those quotes can be sung to any particular tune. But I must say they're music to my ears. So with no further ado, I give you the 28th Chairman of the Securities and Exchange Commission, Christopher Cox.

CHRISTOPHER COX: Thank you very much, Linda. And to repay you for that extraordinary introduction I won't sing. We are very honored to have Linda as our Director of Enforcement. And we are equally honored to have this extraordinary pantheon up here, former Directors of the Division of Enforcement. I'm in the moderating chair today. That should be an easy job but it's more difficult that it first appears because we have six panelists and we have a lot of institutional memory to share and we're going to do all of this in just an hour and half. We want to make sure that we leave time for interactions. So if it's all right with our speakers I might suggest that your opening presentation be about six to seven minutes. Is that all right for everybody, is that what you had in mind, 20 minutes.

Six or seven is long, we can make it shorter but if we at least confine it to about those dimensions then there will be plenty of time for you to go after each other. We'd love to see that too. I want to start on my right and the audience's left and introduce the first of our distinguished panelists, who is himself living history of the Securities and Exchange Commission.

Irv Pollack started at the SEC in 1946 when the Commission was still headquartered in Philadelphia. It had moved there during the war. He was our very first Director of the Enforcement Division appointed to that office by Bill Casey in 1972. He later was a Commissioner himself and served at the SEC all told for 34 years. He's currently special

counsel at Fulbright & Jaworski and just yesterday he took time to be here personally to preside over the presentation of this year's Irving Pollack award. Very fortunate to have him here today. Irv.

IRVING POLLACK: I just want to state that although the Division of Enforcement as a separate unit was organized in 1972, as the Chairman have said, by Bill Casey, the actual enforcement home office division was started in the early 1960s contemporaneously with the setup of the Special Study. At that time I happen to be as an Assistant General Counsel that handled all of the criminal reference work for the Commission and Chairman Cary asked that I go down and join the Division of Trading and Exchanges as it was then known, now your Market Regulation division, to take on the responsibility of creating a national enforcement program. Prior to that time all of the enforcement activities were fairly well done in the regional offices and the home office served nearly as a service entity for the regional offices. It's hard to believe but in those days the regional offices had to ask another regional office to do any work that was outside of their region. There were no resources to pay the regions to travel outside of their own region.

Indeed, when I first joined the Division of Enforcement that's part of the Division of Trading Exchanges they had a rule that that nobody could make a long distance call without the permission of an Assistant Director. In those days too we didn't have electronic records. If you were going to do an investigation you would have to get long distance post slips from the telephone company. They did not record local calls. So you had to find some other way of establishing that calls had been made. The agency was relatively small. It had little bit over a 1,000 people by 1962 when I went down to join that division. And we had about 110 people as I recall that were responsible for not only the enforcement part of the Division but also the regulation of the exchanges, broker dealers and investment advisors. So we recognized early on that if we would be successful we had to gain the respect of the industry and the market participants and convince them that good compliance was good business. And that if they perform in a good manner, they would receive cooperation from us in helping them do a better business. We used our enforcement program primarily for remedial purposes. Where we had crooks we had a very effective criminal reference program and we went after the crooks with all of the efforts including supporting any U.S. attorney that was bringing a case. With the limited resources we had we gave a priority to helping them in whatever cases they prosecuted. And we're successful in the Southern District at New York where a lot of the financial frauds were taking place with convincing that office to give priority to our cases after a number of years when we couldn't get them to prosecute a single case. They became so enthused with the SEC cases when they saw the publicity they could get that they asked us to help them set up a fraud section. And that really started a very intensive program in the Southern District of New York. And of course today you see there are a large number of cases that they bring.

At the same time, we had very limited powers compared to what you have today. We had principally injunctive power and what we did there in order to gain some effectiveness beyond just an injunction that told somebody to stop doing some illegal conduct we were able to argue to and convince the district courts that once they entered an injunction against some violations they had the inherent power as an equity court to grant those ancillary relief. As a result over the years we were able to get restitution disgorgement, even receivership, although, the only Securities Act granted express powers for receiver was in the Investment Company Act. But with the cooperation of the court in those days and the favorable climate in the judicial system, at least in the lower courts, although the Supreme Court was fairly antagonistic to the SEC's programs, we were able to establish a fairly robust program emphasizing to the people that we brought cases against that we would be aggressive but that we would also be fair and reasonable. That was the motto of the office. If some young attorney who first time came in and asked the question whether it was legal to do something we'd tell him that's the wrong question

to ask. The question you must ask as a government official with awesome powers: is it fair to do so. The result of that is that we developed the relationship with the people we were regulating that frequently brought them to us before some problems arose in which they would inform us that they had run into some condition and this is what they were doing about it. And that exposes the violation to us before we investigate it. In such cases we recognized their cooperation and unless it was something that we felt which was absolutely essential to bring in an enforcement case, we would accept their remedial actions and move on to other cases where we felt we would, could establish a program and get the full benefits of some remedial benefits from that.

The other advantage in having enforcement and the regulatory division in one division was that when we saw problems that we felt could be improved by some regulatory measures, we would present to the Commission some regulatory solution that would prevent us from having to expand all of our time in the enforcement area. So that cooperative program within the division was very helpful in giving us better control over a situation where we recognized that we had to depend on the industry to really self-regulate and self-discipline if we were going to be successful, since there was no way that with the resources we had and even with the resources you have today that you can do it without getting the respect of the people who you regulate. And with that I'd pass on to the next speaker.

CHRISTOPHER COX: You are perfectly punctual. Thank you for an excellent presentation. I'd next like to introduce Stanley Sporkin, who like Irv is an institution in himself. Judge Sporkin first joined the agency in 1961 to work on the Special Study of Securities Markets that Irv described. After several jobs here within the agency he was appointed by Chairman Garrett as the second Director of the Division of Enforcement. He left the Commission in 1981 to become the General Counsel at the Central Intelligence Agency. And after that service he was appointed a judge on the United States District Court here in Washington D.C. Today he's a partner at Weil, Gotshal. Judge Sporkin.

STANLEY SPORKIN: I want to thank the Chairman and Linda for bringing us all together. And how often can you find the entire history of a unit. The whole memory of the Enforcement Division right up here which I think is absolutely super. Not only that but each of us is actively engaged in the practice. I'm not going to give either my age or Irv's age but Irv just took over the securities enforcement group at Fulbright & Jaworski. And so he's got much more energy than I have, and he always did. He was one of the great bosses of all time but he was always a tough boss. He believed in what a boss should do is to be there to service the people under him so that we could all excel. The thing that I liked about the Division and which is still there because I just see recent actions taken by the Commission. And that was what Irv talked about the blend of regulatory and enforcement work.

Some of the best regulatory rules coming out of the Commission were the creation of the Enforcement Division that Irv talked about. The takeover statutes were all based upon information we developed in the Enforcement Division. The FCPA based upon information we developed in the Enforcement Division. Rule 144 based upon information we developed. The 15c211 again based upon information we developed. These were very important because the whole concept that we had was to work ourselves out of a job. We wanted to fix problems. We didn't want to just go out there and get statistics. We wanted to fix the problem and that's a paying client there. Of course we never worked our way out of a job because you have the great dynamics of the industry we regulate that they're always creating new areas. And so we never had to worry about that. But we always tried to fix the problem. And the other thing that was great about it was the creativity that we had in addition to bringing these regulatory areas. For example, the whole gatekeeper concept we developed. This Commission developed the gatekeeper. And that was done as the access strategy. And the concept there was that in order

to effectively police the markets you can't do it by going after every two bit promoter. What you have to do is to go against those folks to give access to the marketplace. And there are only very few specialties to do that, very few professions, for example, the lawyers, the accountants, the investment bankers and commercial bankers. And so what we did is focus on those access points and we would take action against those professionals that allow themselves to be used in bringing about these crooked operations. I think if you, and by the way that concept has been validated, is validated in various way. First of all, it was validated to me when I had the famous Keating case, in which Keating says he didn't do anything wrong. He relied on accountants and lawyers. And of course I asked the question: where are the accountants and lawyers. It's being validated by Sarbanes Oxley because Sarbanes Oxley is a gatekeeper statute. The gatekeepers, they're expanded. They used the audit committee, the lawyers, the accountants and now the certifications by the CEOs and the CFOs.

So again, that concept is validated and it is an effective concept. Now the thing that I want you to know, you're terrific. You're the best. You got an excellent program. But you got to understand that you can hurt yourselves if you don't watch what you're doing. And if you become too arrogant, if you become, if you take things, do things that would, would get the reputation in the community that, that you're not, what bothers me sometimes and this is not to permeate the whole operation but you see it and I think you people know it. And that is the fact that you, that sometimes you're not good listeners. And sometimes the concept that Irv said and if there is anything that, that distinguishes Irv from anything else, anything he's known for his fairness. And you got to be fair and you got to be good listeners. You got to also understand what affect that you can have by simple phone call or a simple request. It can result in many millions of dollars being spent by an organization. So you got to really be very careful when you request records because I've seen cases now that I'm on the other side. Remember I've been on three different sides here. I've been in the middle as a judge. I've been with the SEC. And now I'm on the other side. But I've seen cases where request for documents have run in the 20s and 30s millions of dollars. And you got to be a little bit careful about that.

You got to be careful also in throwing out Wells submission requests. Your supervisors have got to be brought in and make sure that's what you want because while I as a lawyer or we as lawyers should like well submissions because they give us plenty of billable hours. But you got to remember the cost on the person to comply. And that could run as much as \$50,000, sometimes \$100,000. So try to see if you, if you have to do it. Sometimes what I've tried to do is have a little later that would explain to the staff why. Rather than have to go through the full submission. They're good. Well submissions are great but be careful on these things here. Again, I'd only say is keep up the good work. You're the best government agency. I've said this all along in the United States Government. There's no agency, you're so far ahead of everybody else that it's unbelievable. And I'm now talking about even the Justice Department because that organization is so big, its muscle bound. You are not muscle bound. You got good leadership at the top with the Chairman. Good leadership from Linda and her people. And I only congratulate you and wish you well and if there any time that you need anything you got people up here who have devoted virtually their entire professional life to the agency. We're not going to see it destroyed. We're at your corner. I think you got to understand that. We're in your corner. We want you to succeed. We do not like it when we see some of these decisions that are coming out in the courts when you lose. When you lose we feel bad about it. So I don't get any great joy in winning a case from this agency. And as a matter of fact I wouldn't even when I was a judge, I wouldn't even take a case from this agency because I just felt so close to it that I just didn't feel that I could really do it justice. Again, thanking for this opportunity, Mr. Chairman. I think it's a good program.

CHRISTOPHER COX: Thank you very much. Next I'd like to introduce John Fedders who succeeded Judge Sporkin as Enforcement Director in 1981. Following his appointment by

Chairman Shad he spearheaded a crack down on insider trading that resulted in the passage of the Insider Trading Sanctions Act in 1984. John has continued to be involved with the development of the securities laws since he left the Commission in 1985.

In fact since his retirement, he's testified before Congress no fewer than 20 times. He is now in private practice at his own law firm. John.

JOHN FEDDERS: Thank you, Mr. Chairman. Thanks, Linda. When I came to the Commission I came as an outsider. I had no institutional experience. Chairman Shad asked me to come in and succeeding Stanley was an enormous undertaking because I had no credibility. And it was presumed by the staff and the community that I had no integrity. So the important thing at the outset was to establish credibility and to establish that there was integrity in the program because it was clear that Stanley and I had different points of view with regard to a number of different areas that he had pursued. I was blessed and could not have had any success whatsoever if it hadn't been for Gary, Bill McLucas, Ted Levine and a number of other people. And the best thing for me about my five years here was the people. There was homogeneity. There was a sense that the people were important and working together and helping in establishing credibility. And what the people did for me in the early days was really to raise the level of my own credibility.

The Chairman just said that we were confronted by insider trading and that he's true. But the problem that we faced in was so true at the top is that insider trading was so attractive to the media that we were afraid that other things we were doing were going to be diminished. So the objective right from the outset was to keep a balanced program. And I think we brought many very significant accounting cases although they were not of the publicity of the Enrons and the Tycos. But in that day accounting was very important to us.

Insider trading did take on sort of special cachet with the media. You had three factors that were very attractive at the time for somebody who wanted to engage in that conduct. You had new open access to offshore accounts, Switzerland, Panama and other places. You had the fact that options were available in certain exchanges., such as the San Francisco Exchange, where you could put the limited capital at risk and with the opportunity of, of achieving enormous rewards.

And the third factor is that we were facing in the year where enormous premiums were being paid for such. We had some offerings that were being made for as much as \$30. I remember one there was a stock at 29 and they were offering a 59. So if you took the secrecy, the option opportunity in this potential for enormous problems it was very attractive to the, to the offshore. But failure to supervise became very important to us. And I can remember days on end where we would talk at the senior staff about what're we doing and is it the proper thing to do. And all of the emphasis was on balance. Let's not let this insider trading get out of control. And either one time when Gary and I were participating, we began to talk about how many insider trading cases we had brought. And we had grossly overestimated it. It did not become the dominant thing that drove the agency that became the dominant thing that the media was interested in.

When I came to the Commission I didn't know anyone and Stanley came over the first morning and he said I put three letters in the drawer if you ever have any controversy or any difficulty. And he said consult those letters and they're numbered. And after I was there about six weeks I had a hell of the controversy with Capitol Hill. And I said look I'm going to go to letter numbered one and I opened it that said blame your predecessor. So I came out and I said that oh this problem had been caused by Sporkin. The press bought it and I loved it. And then I ran into another controversy with Dingell and Tim Wirth and so I said what the hell, I'll go for the second letter. Went into the second letter and it said reorganize the division. So I engaged in reorganization. The whole thing came blew over. And at the time I resigned there was a hell of a controversy. I went for the third letter and the letter that I opened it said write three letters.

I've had an opportunity to practice law in various capacities with corporations, large law firms, small law firms, for 40 years. And I think what the message that Stanley gave at the end is absolutely correct. You will not find more credibility, you will not find more integrity than you do in this institution or in this division. And it stands as the hallmark. When you leave no matter where you go in your career if you have that badge of having been with the Division of Enforcement you, you have instant credibility. You have instant integrity. Thank you.

CHRISTOPHER COX: Thank you, John. Our next speaker is our fourth speaker, Gary Lynch. Gary was also our fourth Director of the Division of Enforcement. He was appointed by Chairman Shad at 1985 and in 10 years dealt with such modest challenges as investigations of Ivan Boesky and Michael Millken. He left the SEC to join Davis Polk and currently he is the Chief Legal Officer at Morgan Stanley. So welcome, Gary. You have the floor.

GARY LYNCH: Thank you, Mr. Chairman. Where to start? I had the privilege of joining the staff as a relatively young lawyer out of the law firm. And in my first case I got to work with Stanley Sporkin very closely in the case he took personal interest in. And so having done a relatively good job on that he made me a Branch Chief, three years out of law school which is just the great opportunity for me. And I could see it moving up the chain and served as Associate Director under John Fedders. Back at that time were there weren't Deputy Directors. And when John, left I became Director of Enforcement in 1985.

And at that time we were still dealing with most of the issues that John identified. And certainly first and foremost among of those were excesses and abuses in corporate takeover activity. Certainly, there was insider trading and we focused on that but there were also a number of issues relating to proxy violation and 13d violations. And in addition of all that we had the gamut of the accounting cases and other types of cases that Commission is doing today.

We were very fortunate in that. Not long after, I think it was Business Week published an article, talking about the unwinnable war on insider trading. We started to win. We had brought a major case against an investment banker, Bennett Drexel. Previously at a number of other investment banks called Dennis Levine and had identified him as the person who's directing trades through Bahamas bank that was hitting takeover after takeover. And that was the case actually that started us off on what became basically an almost all consuming series of cases for me over the next four years. The Dennis Levine, Ivan Boesky, Marty Siegel, Michael Milliken, Drexel Burnham cases because one, one led to the other. And the, in the first it was the insider trading violations that took us to Dennis Levine but we had such strong case against him and we reinvigorated the partnership that we had with the Southern District of New York. And we were closer with them to bring criminal cases. At the same time we were bringing the civil cases. And at least, in my experience we had many more witnesses decide to be cooperating witnesses as the result of facing real jail time.

It was also the beginning of the period of big money cases. And what seem like big money at the time I should say. We settled with Dennis Levine back in 1986 for \$12 million which I think was the largest amount of money paid by an individual in an SEC case. Based on his cooperation, we shortly thereafter settled the case with Ivan Boesky who at that time was certainly the most well known arbitrageur of Wall Street and settled with him with him paying a \$100 million, which was substantially all of his wealth, to resolve that. And more importantly, he became a cooperating witness and provided information as to Michael Millken and other folks at Drexel Burnham as well as other major Wall Street players.

Make a long story short, I think, coming out of that is that by pursuing all those cases we, by the time we got to 1989 to the time I left the agency most of perhaps not all but most of the accesses and abuses that we had seen in the early 80s that if anything had ramped up during the mid 80s had largely disappeared through the enforcement activity that we had undertaken. And again, I announced that almost may after a week after we settled Drexel Burnham where

they agreed to pay \$650 million to settle the case which again at that time seem like an enormous amount of money.

The other thing I have to touch upon just very briefly is that in addition to those cases and the other cases that we brought that looked very much like the, they're a mix of cases the Commission brings today. John started the era of international cooperation with agreement that was entered into with the Swiss Banking Commission, I think in 1982. We expanded that after I became Director and I spent a lot of time on the road visiting other countries trying to convince them that it was in their interest to enter into a memorandum of understanding with us where we could exchange information in investigations. I must say, at that time we did, they did need some persuasion. They saw it as the one way street where they would help the SEC which frankly wasn't viewed in a friendly light by many of the foreign regulators at that time.

I think that initiative to negotiate agreements with regulators in other countries I would view as one of the highlights of the time when I was the Director. I think it still serves the Commission very well today. The six agreements that we negotiated back in the 80s are up to whatever number you have today. And I'm sure have changed in some respects over the years but it's put the Commission in the position that you can really please the global markets that we saw coming back in the 1980s. Thank you.

CHRISTOPHER COX: Thank you very much, Gary. Our next panelist is Dick Walker who came to the Commission in 1991 as Director of our Northeast Regional Office. He then served as Director of two of our most important offices here. Chairman Levitt appointed him General Counsel in 1996, and two years later made him Director of the Division of Enforcement. In 1997, Dick received the highest federal award for government service, the Presidential Rank Distinguished Service Award. He is now Global General Counsel of corporate and investment banking at Deutsche Bank. Welcome and thank you, Dick.

RICHARD WALKER: Thanks very much, Chairman Cox. And thanks also to Linda for bringing us all together. I have to say and Stanley said it past. I'm feeling very honored to be in the presence of my predecessors and my successors. It's a really terrific group of people. And I know when I became Director in 1998 I felt very much that I've got really a high bar to meet running this division. There is just so much tradition. There is so much history. There is so much integrity. But it's a real challenge to meet. And I think that really marks the feeling of being in the Division of Enforcement. I mean, the traditions, the history, the continuity are really special in this division. And as I see look out in the room today, I see so many people here that that I worked and had the privilege of working with just a few short years ago. And that's I think another tribute to the dedication of the staff and to all of you. I mean, you like what you're doing, you're good at it, you're effective and you got the passion to do it. I can't think of a better commitment to a job.

I'm also very relieved that I'm not back here in a windowless room at the old 1C30 on the wrong side of the table. I think, when I think back about the challenges that I worried about when I was Director, probably the greatest challenge which I think is probably a timeless challenge is: how do you make do? How do you have the greatest impact with locally inadequate resources? And no matter whether you double, triple, quadruple in size you're still going to be outgunned by all of the resources that exist in the world that you have to oversee and regulate. And the perpetual question: how can a small group of very capable people have an impact? And then what can you do in a way that makes people nervous and worried enough to think that they might just get caught if they take a false move or do something wrong because the Division of Enforcement at the SEC is out there looking and kicking the tires and you know up a real and incredible threat. And that is really I think a challenge that will always be the case.

And obviously since I was Director a lot of things have changed. And you've gotten a lot more resources. But the case still remains that they're inadequate for the task at hand.

When I think about the difference between when I was Director and, and the current period it's, it's amazing what timing can do. And the late 90s of course we were closing in. We didn't know it at the time to the end of the largest and the longest running bull market in the history. And obviously a rising tide floats all boats. The economy was strong and the markets were very strong. And though we started to see some of the cracks that I think came into fuller view later in 2001 and after. It was sort of pushing against hard surface to try to get people to listen, to get people to understand. I know we started looking at and observing that there were financial frauds in reporting problems in some larger public companies which had previously not been the case. And we brought a lot of what then seemed to be large cases. Sanden and Sunbeam and AOL, Time Warner and cases like that. But no one really understood, I think, the size of the problem that really existed in magnitude.

We spent a lot of time worrying about the audit function as well. And I know that a number of at the time advocated that there should be really an SRO overseeing the audit firms. And that was not something that was welcomed and well received at the time either. And again, in a few short years with Enron and WorldCom you have a much easier time up persuading people of the need to do those kinds of things.

And I think what that taught me and I think what's important is you got to stick to your guns. You have got to really not be afraid. If you see something, if you believe in something, if you have evidence that there, there is wrongdoing and things are not right, stick to your guns. Don't give up. It may not be the right time and it may take a lot of efforts. It may not just be a single conversation or a single dialogue to get your point across. But I know that we saw a lot of the things I think back in the late 90s and, and the early part of this decade that really came into sharp focus later. And we didn't give up. We kept pushing and it obviously became easier at a later point in time. But you really have to just stick by your guns and trust your instincts and go with the evidence and understand and believe in what you're seeing.

It's obviously a terrific honor and a privilege to be in the Division of Enforcement. It's always being the sort of the signature of the Commission when you think about what the SEC does. I think more people than not would say the SEC they bring inside are trading cases. They bring enforcement. And, and you are really to most people, sort of the voice and the appearance of the Commission. And I have to say in my new position I've traveled around the world and I've dealt with regulators in a lot of different places and I've seen different processes for enforcement and different regulatory approaches to things.

But it really when all is said and done I keep thinking that fundamentally the process here at the SEC in United States is just got so many important safeguards that that really don't exist in other places. I think another one of the mantras that you will here from many of us is the mantra of being tough but fair. And there's so much that's build in to what you do and to what the Commission does that really achieves that. And that makes that mantra real and acceptable. And this is not always the case in other places that we do business and around the world. But I think the hallmarks of the process here even though sometimes they're a little bit cumbersome, sometimes it seems like there are so many people that get involved in making any different decision in turning light bulbs. How many SEC people does it take to change the light bulb? But fundamentally, at the end of the day I think the inherent fairness of the process is very, very worthwhile. So enjoy yourselves and keep doing God's work.

CHRISTOPHER COX: Thank you, Dick. Our last and certainly not least but is as stellar as anyone up here is Steve Cutler who was the Enforcement Director during one of the Commission's most challenging times from 2001 to 2005. He was appointed by Chairman Pitt in November 2001 just as the Enron scandal was beginning to take shape. And his tenure had him handling such scandals as WorldCom and Adelphia and Tyco and HealthSouth. Most importantly, Steve was the head of Enforcement who first had to deal with the real problems of

SOX implementation. During his tenure the Commission's penalties and disgorgements topped \$6 billion. Welcome back and you have the floor.

STEPHEN CUTLER: Thank you, Chairman Cox. Thank you, Linda. I'm delighted to be here and I miss you. It has been an interesting year away from the Commission and this has certainly given me an interesting perspective on what it is that you do, and I did but having had the opportunity to work with so many of you in this room certainly has been and I know it always will be really one of the professional highlights of my life.

I am struck as I listen to all those who came before me and before us by the debt of gratitude that we owe them. And think of it this way, we had an incredible array of tools. We had great penalty authority. We had O&D bars. We had 102(e) bars. We had injunctions. We had cease-and-desist orders. We had the disgorgement. They made all this up. They didn't have it. They didn't have statutes, I mean think about this. Until 1991, the Commission didn't even have the power to impose penalties on an officer or director of a public company. It didn't have the power of an officer and director bar. It didn't have the power except through the equitable powers of a court to go get disgorgement until I am not sure when, I think, sometime in the '80s. In some ways, in many ways, I think our jobs were made so much easier by the creativity of Irv and Stanley and John and Gary and Dick and Bill, my partner who happens not to be here today, which is not unusual for him either. And it's really an incredible tribute to these folks up here that we had what it is that we had to work with because Congress copied them. Sorry Mr. Chairman. But you know where did the SCPA come from? It came from Stanley and Irv's voluntary payments program. And by the way, I guess the other thought that occurred to me as I was listening to all of this and I don't really want to talk about my tenure because you guys were all here for it. I used to say when I was here, one of my favorite lines was Mark Twain's about history doesn't repeat itself but it does rhyme. Think about the scandals that we saw in the 2000 to 2005 time period. Think about the options grant matter today. Right. That's market timing or late trading sort of transformed to another venue. Right. It's using yesterday's newspaper if you will to effect transactions. It's what was called cherry picking or still called cherry picking that all these guys went after in another era, right. It's getting the results of a trade, and then deciding which account is going to be the beneficiary of that trade. When I think about the financial reporting cases that we brought you can go back to what all these guys were doing during their tenures, and the incredible financial reporting cases that they brought. When I think about the program that Dick initiated to have all the accounting firms come in, and tell us about their independence problems, where does that come from. That came from Stanley's voluntary payments program. Right. And having 600, with the 600 companies, Stanley, come in and sit on Stanley's couch and tell them about all the foreign payments that they had made without properly booking them. This is an incredible place that's really built on its proud history, and I have to say I am as proud as anyone to have been part of it. And thanks for letting me have been part of it.

CHRISTOPHER COX: Thank you. I think we have got some quality time remaining for a little interactivity up here.

IRVING POLLACK: Well I think that one thing I would like to get back to is some of the remarks that you have made Mr. Chairman in recent days.

CHRISTOPHER COX: I don't think you were supposed to be talking about anything about the chairman.

IRVING POLLACK: One of them was that you are going to have a vigorous enforcement program but it was equally important for market participants to perform their

access roles in a proper manner. And I think that really goes back to the start of what we tried to do many years ago. The second one was in the accounting area, which has been mentioned briefly here. And I think that your remark that we have to get away from these complex rules and go back to principle accounting is critical. Because I think what happens now as the accountants use those rules either erroneously or sometimes deliberately to really evade giving a proper picture as to the financial condition of a company. And I think they would have the independent responsibility of using their skills on the general principles to reach what is the final test for them. Do the financial accurately report what the financial condition of a company is. So I was impressed with your remarks, and I think they really reinforced what we tried to do in our day.

STANLEY SPORKIN: The one area that I see always as a consumer is an issue in the sales practice area that's very troublesome and lot of the firms out there that are selling investments to people have a limited portfolio. They can't give you or attempt, they don't have the ability to give you any investment even though it might be better. They usually have one or two, or three things. That's very troublesome because recently I was called in by my bank, and they took me behind the doors said this is a broker dealer and then they proceeded to try to sell me what their products were which were high loads, and also were lot of investments that weren't suitable. And I was talking to Scott Friestad yesterday about how do you fix it up. I mean how do we, used to go about dealing with problems like that. That's what was so wonderful in the Pollack year was to be able to come up with a solution, and just going over an cab to CLE program we came up with an idea and thought perhaps having the Commission put out a document that would indicate that there are many choices out there and as to what these choices and what they have a various fees and cost and that require that the that these limited broker dealers can only sell you one or two complex require that they give you that documents. So that and you sign for it so that you can see that there is a range of other kinds of investments that are available, and I just think that this is where Mr. Chairman, you have been talking about helping the investor. And I think this is an area that really, you got to do because it's not been attended to. There is no regulatory organization that's out here dealing with this problem here. It goes throughout the whole industry and its really got to be dealt with and I really think the SEC might have to step in with the regulatory program, so that people know that they are not going to have to pay you 5% or buy a variable annuity. I mean imagine trying to sell me or Irv a variable annuity with B shares and C shares. Its ridiculous but I do think there is an answer here that the Commission ought to be able to deal with and that's where you are going to, you are finding that the public is being overreached.

JOHN FEDDERS: If I had a regret, about being at the Commission it would be that I spend too much time worrying about the defense power, and I think that ties in with what's Irv and Stanley are saying. I am not sure the Commission does enough courtship of its constituency of investors. I know you have an investor relations department, and I am not sure that in my area that we did enough courtship of the broker dealer community or the corporate community. Sarbanes-Oxley is a difficult selling job and I am not so sure that investors understand it. They certainly understood when Stanley stood up and talked about foreign payments or we stood up and talked about inside trading and said it was lying, cheating and stealing. They understand that. Sarbanes-Oxley I see as cloaked in this mystique that is the special anathema that works for this accounting problem and people really don't understand the anathema and I think that if the job, the first job, I think, of the agency is always credibility and integrity I am not so sure that today with the investment community, with the corporate community or with investors that you have full credibility on Sarbanes Oxley. You'll always have full credibility with the defense bar because all they say is more, more, more. They don't care what you are interested in, just more of it. And therefore, if I had regret, you are there for a couple of years you give a couple of 100 speeches. I wish I would have talked maybe 20 times

to the legal community and spent all my time up on the street or in the corporate community or with investors convincing them of the integrity of what we were doing.

GARY LYNCH: I'll venture in, I think I probably shouldn't but I'll anyway. I made this comment to your predecessor Mr. Chairman about two years ago and I think if anything truer today, back when I was in the Commission they probably going into probably this century, it was very clear that the United States had the preeminent capital market in the world. And I really don't think there was threat coming from anywhere. I think as a result of a number of factors, among them Sarbanes-Oxley probably more importantly just the private securities litigation which exists to the greater extent in the United States than anywhere else in the world. We need to recognize that the U.S. markets are at real risk of losing their preeminent position, if in fact we haven't lost it already. I am sure you have seen the statistics that's nearly 23 or 24 over the large class of the largest 25 IPOs that have been done recently. We are done without a public tranche in the United States. And perhaps that's due to just the reality of the capital markets that the capital exist there now in London and Hong Kong, and Tokyo thus no longer necessary to do a registered tranche in the United States. And I wish I had an easy solution. I don't think you can simply say that we were we are not going apply Sarbanes Oxley if you are a foreign issuer. I am not even off to think that given Enron and WorldCom and everything else that one can really roll back Private Securities Litigation Reform even to the extent that we had in 1995. But this is a real issue, a real problem I mean if you look at just the revenue and the contribution to our economy as a result of being in the preeminent capital market from certainly from 1930 into 2000 or probably into 2003. We are at a point now where most of the Asian companies wouldn't consider doing a register tranche in the United States.

And frankly, we go back to 2002 and already most European companies wouldn't do register tranche. Though it's an issue, I don't think there is any silver bullet but you know it's the development that I don't see any change. I don't know if in fact if you were to make changes today I am not saying they are possible to do. I don't know to bring that back since it's so clear now that the capital exists in these other markets. But I think that's to me that's the biggest issue facing the Commission because last I saw is still part of the Commission's statement to assist in the development of t the capital markets in the United States in addition to investor protection, which by the way I don't think those are conflicting goals in any way whatsoever.

For the fact I get back to John's point that a big part of our mission here has to be, make it clear to investors that there is a connection between the regulation and the quality and safety and integrity in the market.

RICHARD WALKER: Gary, sort of stolen my thunder and maybe it's because we both see life from a similar advantage point now that financial institutions that do business around the world that I definitely see as well the changes, and the available capital in markets other than ours and it think that often times we sit here in the United States and we think oh, they will come and our markets are the best, we are superior. But guess what there are real and incredible alternatives around the world now for people who want to raise capital. But and so I see in addition to the biggest challenge facing the Commission going forward in addition to sort of making sure that our markets are competitive and safe and secure as well. The issue of sort of harmonizing our systems and the way we do business and our regulation with regulation around the world. And I must say I see very encouraging signs, Chairman Cox, I know that you have reached out to regulators and in many other foreign country. I bumped into Chairman Cox in China of all places, in the lobby of a hotel last fall. And it's vitally important that we do not sit here and we not think ourselves where the U.S. market is superior and the heck with everybody else. But instead reach out to other people. Try to find out how it is that we can co-exist. How it is that we can harmonize the standard so that global businesses that they do business here in the United States and aboard aren't frustrated. They can actually thrive and prosper and I think

the real challenge is going to be on your doorstep very soon with the New York Stock Exchange and is going to be the Commission that has to figure out how to make that work. We cannot be the source through insistence on our own particular way of doing things of seeing that failed. Because the world will move around us if that fails. So it is a daunting challenge. It's going to take a lot of work, and certainly the original plan is that at least initially these exchanges will operate separately and independently but that's not the long term goal. And I think it's incumbent upon all of us at the Commission and others to make sure that we try to take a few steps to bridge the gap as well as expecting others to do the same. But that as I see it is the real challenge going forward.

STEPHEN CUTLER: Let me just mention one other challenge that certainly I think while I was here, we were constantly dealing with. It's easy to lose sight of and that's the challenge of figuring out where the next problem might be coming from. And it's all too easy to get consumed by the thing that's right in front of you. Where you need to be as a program and certainly in the aftermath of research analyst scandal and the mutual fund scandal and all the financial reporting disasters that occurred while I was here, we were very focused on that. And it's something that you can't lose your focus on. As you pursue every one of the options, grant cases and as you pursue every one of these financial reporting problems be aware of, there is so much intelligence within this division that I never thought that we were good in taking advantage of. Intelligence based on what you know some group of people is doing and some of at some where that doesn't necessarily make it to the division and the Commission at large that can really prevent the next scandal from happening.

STANLEY SPORKIN: Let me address this problem of globalization. Really what you seeing here is what this country saw years ago, when you had every state that was regulated in market places until you got the SEC. What you are having now is the transposed the states to countries. And so you are having countries now regulating each market. So, I think you got to see, you are going to have a global regulator that's going to have to fit all these parts together. But I wouldn't that afraid of this competition because we have such a sophisticated market. We have a market that is geared to the protection of the investors. I think you are going to find that in this global marketplace that there going to be tremendous scandals. And people are going to try to come back to that state or country that gives them the most protection. But I do think we are going to have to look down at the road and talk about a global regulator where we will be just one state or country among others. I mean that's what happening and that's easily to foresee.

JOHN FEDDERS: I don't like the idea of a global regulator. I think it leads to bad political consequences for more than just a capital market. I do have a greater fear than Stanley does about the issue of globalization I think that we have lost billions and billions of dollars by what's happened as Gary explained it so well. Chairman Shad always used to begin his speeches by saying we have the fastest, the most liquid and the most efficient markets in the world. And we don't need any more. And that's a serious problem. I do think that the point that Stanley raises about having the market with the greatest integrity is true because if you go and deal with some of these problems offshore, you see that there is no police power. There is no one who has any kind of sense of how get to the real problem whether that will cause a migration of our own capital or foreign capital coming back into our markets, I think that's going to be a slow process. And I am going to be greyer than I already I am and some of you may be bald and grey too. That's going to be a very slow process. But I think it's dangerous to think about any world authority in any area of government but that reflects my politics as well as my use on enforcement.

GARY LYNCH: John, its even tough to make the argument that's somehow, our system protects investors better although I believe that it does. Don't get me wrong. I believe that it does. But it's hard to make that argument now given the events of the last four years. You look at the company's here in the United States and the accounting problems that we have. And you look at Europe and you have Parmalat, you probably have a couple of others. And maybe there are lot in Asia that haven't been discovered and will be. But if you just look at the experience over the last four years, its more difficult to take the position now that by far and away our markets are the better place, that we have less problems with integrity. That was the principle issue as I recall back in the '80s when I was getting involved in international corporation efforts and throughout the '90s where particularly on the accounting side we took the decision. What's with our accounting principle I remember the speech well. Maybe on a accounting principles we can grow up with international standards but the real issue is on accounting standards. I think that was the concern that the audit process wasn't nearly as robust in other countries as it was in the United States. And because of that maybe you get a little ground on accounting principles but not in the audit process. And I think there was still a lot of opportunity back then to harmonize and move closer together but because we felt so strongly about how much more effective we were in regulating public companies, we weren't prepared to abandon and reach the court. We are at a point now where given the last four years we just look at what's in the public anyway. I don't know what lurks in the second set of books of foreign companies. But if you still look at the pubic records it's really hard. I would think it would be hard if I was representing the SEC that were going to meet with the foreign regulator and pound the table about how much more effective are our regulatory system is than theirs.

IRVING POLLACK: I would just like to comment that I think part of the problem that's created this situation is the publicity that's been put out that the Sarbanes-Oxley legislation is a tremendously costly and over regulated piece of legislation. And while it's difficult to predict I think years to come will demonstrate that it was a very necessary part of a regulatory and disclosure scheme, and that it will provide the kinds of protections that are not available in other markets. And you will find that maybe some of these offerings will not be successful because they are not subject to the same rigorous review that they will receive here in the United States. As I see this Sarbanes-Oxley legislation and the new experience I am having outside the provisions such as the certification is very valuable for anybody who sits on board of the directors and understands his responsibilities. That's a godsend to have somebody within the organization have to certify for the benefit of a director that he says the financials are correct and the internal controls are accurate. And that's essential for running any decent business. And I think, eventually, as the publicity turns the other way and people recognize it maybe in the initial inception it was costly to obey any provisions of Sarbanes-Oxley. But when you think of them what's more important to a business than to have good internal control, what's more important for a chief financial officer to be able to say that the company has put out in his views of you is accurate and doesn't contain any fraudulent or false statement with respect to it and the chief executive signs off after he gets his reports from his underlings that he too believes that his financials are accurate. So sure there is going to be competition and where the capital is going to effect the movement. But I remember in my day we frequently received the comments that people are going to move overseas because of our regulatory and enforcement scheme. And I think the years since I had the privilege of serving in the agency I have demonstrated the faultiness of that kind of thinking.

STANLEY SPORKIN: Also I am concerned about the so called race to the bottom. We can't compete on a basis other than what we have in our integrity of our market place. We know that when you folks were here that every country would come and want to look at how we do things. We got the best court system in the world. We got the best regulatory system. So I don't

think we could compromise in that area. The fact is some money is going overseas; fine. If the Americans want to put their money overseas without these protections, you are going to see how quickly they are going to come and ask the government for why they were permitted to be defrauded. If the foreigners, when they go overseas and spend their money, fine, I don't see any problem. People in the banking business said do what they really said: follow the money. They asked, why does [Willie Sutton] rob banks? He was the biggest bank robber in his day. It is just because I go with the money is and I am telling our bankers here that if they feel that they can get more money out of these foreigners then go ahead. Go over there; check their money.

GARY LYNCH: This is not an issue Stanley in terms of making money for investment banks. I mean all the investment banks are just too happy to do a deal in London or Hong Kong as anywhere else. And maybe the margins are better, frankly. I don't think the banks are losing money because if you are a global bank, you are just happy that to do it, where and whatever jurisdiction the capital is. It really doesn't come down to that issue.

STANLEY SPORKIN: Well what is the issue? Are they draining American money?

GARY LYNCH: No. I think the fact that foreign companies do not have to come here to source the same capital that they had to source. They can basically tap the same capital in London or they can tap in Hong Kong, in addition to having much more local capital available from investment as well. The bottom line is if you repeal Sarbanes-Oxley tomorrow then I make it clear, I am not advocating that. If you were eliminate private litigation tomorrow companies may still not come here anymore because the fact is the capital is now available in London, in Hong Kong. And you don't have to register tranche in the U.S. they attract huge capital for an offering. So it may very well be that these were economics forces that would have happened anyway. But this is not a question of profit or loss for the global investment banks because they are going to do the deals in these other markets. And we are all present in these markets more happy to do whatever we want to do.

STANLEY SPORKIN: Wouldn't be great for us to go over and get some of that Chinese money back here. I mean I don't understand why we will be reticent to take that money if they want to throw it or give it to us. Maybe I am missing the point and why it is we got to be why it is that we have to be the center of raising all these capital.

GARY LYNCH: I thought that's why we have the capital and the wealth we have here because of the success of our capital system over the last 100 years. Maybe I read too many books about the greatness of America and how that's why we are where we are. That's why we are most affluent country in the world.

STANLEY SPORKIN: Well you think our bankers go overseas and raise you will still be raising money or bring it back to the United States. No one is preventing you to do that.

RICHARD WALKER: Stanley I think no one is saying that we should water down the standards of our markets. I think everybody believes that the standards are high. They should be high and I for one I am not going to argue that I think Sarbanes-Oxley has a lot of beneficial effects on companies and I have seen a lot of them. And it's not about appealing Sarbanes-Oxley. But I don't think we can blind to the fact that there are alternatives to our markets, alternatives that are very successful, are very liquid. And is very hard for us to sit back and sort of wallow in our superiority by saying our markets are the best when we've had five years of exceptional cracks in the system and incidents of situations where our markets and the companies that populate them and the accounting principles that we have used have not

protected our investors. And again I don't know, what the answer to the question is but why is it that we haven't seen the same level in quantity of market meltdowns in other parts of the world. Is it because either they are hidden from view or they will command 10 years from now. Maybe that's one of the cases or is it because perhaps investors are being protected adequately out in the market.

STEPHEN CUTLER: There is a third possibility. This discussion reminds me of a conversation I had with one of my counterparts in Europe in the aftermath of the research analyst scandal and what he said at the time was I don't think we have that kind of problem here and then he said that I am not sure I'd go looking for it any way.

STANLEY SPORKIN: It's like Casablanca where, oh my, there is a lot of gambling going on. No, I think, I understand what we are saying but there is sometimes that this foreign competition isn't that big, but I don't think you compete on integrity or honesty of the marketplace just like we don't compete on our court systems, to demean our court systems. I think we got to stand and you know take the heat and I think they all come around at some point just like democracy is going to come around at some point. Look how we were worried about Communism. Communism is coming all over, we never able to rebuff Communism once it took a foothold. But there is no Communism any more. It disintegrated.

JOHN FEDDERS: Ronald Reagan.

STANLEY SPORKIN: But I am saying that if you got the better system and if you got the foundation over the building it's going to stand up there but if you got some bamboo shack somewhere, they are going to go with the wind.

JOHN FEDDERS: I still don't think we have sold Sarbanes Oxley. I still think the public where you take the investors on one side or you take the Wall Street and the corporate community on the other side. They don't understand it. They don't believe what Irv said before about the importance of it may or may not be true. But I don't think Congress sold it, I don't think the Commission sold it, I don't think the world understands Sarbanes Oxley in consequently the people who are winning right now are the those saying it's too expensive, it's too great of a burden. The Commission is not winning that war.

STANLEY SPORKIN: But wait a second. John. It reminds me of the story they tell about there are three guys in a car and it crashes and they all fall out in the and the cops comes over and he says to them which one of you was driving. They said none of us, we were all in the back seat. And the point I am saying here is these people are in the back seat. And what Sarbanes-Oxley does it puts their nose in it, they can't be in the back seat any more.

JOHN FEDDERS: But no one understands that. What I am saying is that the public the investor, no one understands Sarbanes-Oxley yet.

STANLEY SPORKIN: Why don't they understand it? I mean they got to certify. The CEO of the company can no longer walk away from his company.

JOHN FEDDERS: I used two analogies. When the Foreign Corrupt Practices Act passed and the accounting provisions were in there and after what you had done in the corrupt payments, I think people generally said these accounting changes are important. They are acceptable and the people understood it.

When the MD&A came along the Commission sold the importance of MD&A which I still think is the most important part of any registration statement or 10-K, and you don't need Sarbanes-Oxley because of it but I'll put that argument for another day. Those two things, the accounting provisions of FCPA and the MD&A were sold marvelously by the Commission and by those associated with it and by the accounting industry's support that hasn't happened on Sarbanes-Oxley and that's my thought.

IRVING POLLACK: Do I understand what you are saying is the Commission or the financial community should rally around and create a publicity program that explains to people that the Sarbanes-Oxley legislation is probably the most effective piece of legislation reform since the original Securities Act were started in 1933 -34 et cetera. And that I think that if you speak to people who are still in institutions where they are independent directors that you will find, in my experience that they feel that Sarbanes Oxley was an essential remedial measure that made their life not harder but easier, of course, originally as people tried to comply with new legislation, there are excessive expenses, I think the ordering profession, created a cost that was unnecessary by the method in which they approached. They have functions, it could have been done more effectively. I have seen it in cases where I happen to have a interest in position, and I think that eventually you find that as Stanley has said, you attract money when people believe that if their money is safer in some place than it is elsewhere and the Chinese believe, I guess, still believe by buying our Treasury instruments, is that they can count on this country to protect their reserves which are now in billions of dollars. I think that we have to look at these things will move as other countries become richer, more competitive. We of course have to compete with them. I think that the answer is, we have to show them that our markets are more honest, have more integrity, then perhaps overseas. In fact that we have had, the back alert we had with Enron and WorldCom et cetera, the fact that we are sure we attack them with the prosecutions and try to correct the conditions that cause them is to our credit and whatever the capital flows may be for economic reasons, they should not be because of our lack of our ability to protect our capital markets from fraud and to protect investors in the end, who supply the savings and money you are looking for in the capital markets.

STANLEY SPORKIN: When the Chinese find out that Ponzi is not the name of some pizza parlor. I am going to tell you, they are going to learn, what we have learned the hard way.

STEPHEN CUTLER: Maybe I could change the subject. I think I was in this building for 2 days, before leaving the Commission, so I didn't enjoy the incredible space that you have. And one of the things being here reminds me about is the importance of architecture, on the Commission's business and I am wondering if Stanley can talk about the importance of the pillar that sat in the Commission room and that he would hide behind during Commission meetings.

STANLEY SPORKIN: Why are you rubbing salt into some old wounds there. The Chairman doesn't have to get involved in these intramural problems that had in our day when I had a Commissioner that didn't care too much for things that I was doing and sometimes I had to run for cover. But I came back to fight the next day and I outlasted the Commissioner.

STEPHEN CUTLER: In my case, I just hid under the table.

CHRISTOPHER COX: I could wrap it up or we can go back to that old topic of a few minutes ago and get into again, if you like. We are getting very close to our appointed time. In any case, and as you probably know there is a splendid reception that's set up for everyone. I think everyone has done a really nice job of staying here with us the whole time. It's been quite worthwhile, as you could see it got better as we went along.

We have got 3 minutes left, and if anybody wants to put a question to the panelist, it is an excellent idea. Why don't you come up to the mike and put your question.

JOHN FEDDERS: I think that the Commission has a credibility and integrity problem in a small area. I don't suggest that the credibility or the integrity of the whole agency is in decline or the enforcement division is in decline, but I do think to use the vernacular, there has been a piss-poor job done with regard to selling Sarbanes Oxley.

CHRISTOPHER COX: And is that going to just stand?

JOHN FEDDERS: You don't want to end on that note.

GARY LYNCH: You needed educational campaigns with European and Asian companies. I couldn't agree with you more. I think, at least mid-size to large cap companies in United States understand Sarbanes and their obligation doing their Sarbanes. But I think what we were talking about is the international capital markets and I don't think that European companies or Asian companies understand other than they understand that there is lot of expense associated with.

STANLEY SPORKIN: Does everybody know that the, in 19, I guess 77 or 76, was passed, they have a provision in there that says, every company must have internal controls. That's one of the key parts of the bookkeeping provision. I put in the books and records, Sandy Burton put in the internal controls. He was the Chief Accountant at the time. And I can't understand that when all these companies, as we don't have them. I mean, what the hell was wrong with the law. It is there, it is in the books.

CHRISTOPHER COX: Well, I hate to wrap this up, to be honest with you. Its been a great deal of fun but it's 5:30 on the nose and that's the time that we were scheduled to adjourn, so I want to conclude as I began, first by observing just how stellar this panel is, how extraordinarily fortunate we are that you could be here today. I think this discussion has brought out very explicitly the debt that our current legal and regulatory regime owes to the giants of the SEC on whose shoulders we stand today and several of whom are here with us, just now on the dias.

We have talked about the need to anticipate where future problems are going to come from and the close connection between enforcement on the one hand and regulation on the other, in particular given the added dimension that this problem and this opportunity acquires an era of increasingly intense global competition in capital markets. So it's been a very stimulating discussion. I think we can continue it and even more favorable circumstances with food and beverages across the hall. So, welcome to our reception. Thank you very much for your participation today.