

**Securities and Exchange Commission Historical Society**  
**Interview with A. A. Sommer, Jr.**  
**Conducted on October 1, 2001, by Richard M. Phillips**

**RP:** My name is Richard Phillips from the SEC Historical Society. It is October 1, 2001, at 9:25 a.m. I'm here today to interview Al Sommer, the former Commissioner of the SEC. He served from 1973 to 1976. Al, tell us about your career before you joined the Commission.

**AS:** I had been very deeply committed to the area of securities law. We had an excellent practice in Cleveland.

**RP:** The name of your firm was what?

**AS:** Calfee, Halter, Griswold and Sommer. When I left it, I was understudying a partner who was meticulous and careful, who was an extreme perfectionist. He was mostly concerned with registration work, because we represented McDonald and Company. That was the foremost underwriter between New York and Chicago. We did a lot of registration work. I was assigned to absorb what I could from him. Much sooner than I expected, he had a fatal stroke and I was suddenly in the position of the principal securities lawyer in the firm. I was really scared because, as I say, he was extremely knowledgeable and extremely meticulous.

**RP:** How many years out of law school were you at that time?

**AS:** I was about eight years out of law school, but I had really devoted myself to securities law for about two years of that time. Even that was sort of part of my time of my principal occupation. I gradually got very interested in securities law. I heard the American Bar Association had a committee on securities law and I wrote a letter asking to be made a member of that committee. I got back a letter from the staff director, whose name I can't remember, telling me in rather harsh terms that one didn't become a member of the committee simply by asking. You had to merit it. He suggested an article for "The Business Lawyer."

I had previously been in a courtroom trial in Cleveland involving securities law and I decided to write an article based on that. I thought I could do it in a couple of weekends. It turned out to be over a year of diligent endeavor, and that was published in 1966.

**RP:** What was that article about? What was the title?

**AS:** "Who's in Control: SEC." It was an effort to define control for the SEC statutes. I learned a lot of law I otherwise would not have learned through that. I became increasingly interested in securities law. By then this guy had left as director of the staff at the ABA and Neil Kennedy had become the chairman of the committee.

**RP:** And you became a member of the committee?

**AS:** I did. And Neil Kennedy was the chairman. A lawyer who was a partner of Fried, Frank had been the chairman before that, Sam Harris. Steve is his son.

**RP:** And you were active in the committee's work?

**AS:** I was active. Shortly after I became a member, Neil sent out a letter saying, in effect, that accounting issues were becoming more and more of a problem and he wanted volunteers to form a subcommittee on law and accounting. I volunteered. The next thing that happened, he put me as chairman of the subcommittee. I didn't know what the hell I was doing. He suggested it. I wrote for "The Business Lawyer" on the disclosure problems of diversified companies from an accounting standpoint. I wrote that article.

**RP:** And a lot of other articles.

**AS:** I became very immersed in accounting issues. That was the beginning of my fascination with accounting.

**RP:** And you went on to become chairman.

**AS:** Dave Hansen was the chairman of the section. Two days before my own father died, Neil Kennedy died. I went to his funeral in Chicago. Dave Hansen after that appointed me to succeed Neil Kennedy and I became chairman of the committee. Thereafter I was appointed to the Council of the Section and also to the Corporate Laws Committee. I had

been active in the Ohio State Bar Association Corporate Laws Committee. That was the underpinning of my career from then on. As I mentioned, I was involved with the Corporate Laws Committee of the Ohio State Bar Association and became chairman of that committee, which again was a great learning experience, because I had to deal with problems I was not dealing with in practice.

**RP:** You ultimately became Chair of the Section, the ABA Section on Business Law. At that time it was called . . .

**AS:** Banking and Business. Corporation Banking and Business.

**RP:** When were you Chairman?

**AS:** After I was at the Commission. I was appointed to, or elected, as Secretary shortly before I joined the Commission. That was the first step on the ladder that leads to Chairman.

**RP:** So that was 1973?

**AS:** Yes.

**RP:** How old were you at that point?

**AS:** I think forty-nine.

**RP:** And you were the senior partner and a named partner in Calfee.

**AS:** I was managing partner.

**RP:** Is it fair to say you were at the peak of your career?

**AS:** Yes.

**RP:** You joined the Commission, as a member of the Commission. Tell us why you gave up a lucrative and very active private practice to join the Commission at a fraction of your former income.

**AS:** Basically I looked down the road and I could see nothing if I stayed there but more and more involvement with civic affairs. I was very active in civic affairs in Cleveland. I saw nothing terribly challenging in practice and, as I say, I had been there six or seven years as chairman of the firm. I saw nothing particularly exciting along the way, so I decided to accept the offer of appointment to the Commission.

**RP:** You were appointed by President Nixon?

**AS:** Nixon. I always say my diploma was signed by Nixon and Kissinger, who was Secretary of State at the time. It was really my commission.

**RP:** Who was SEC Chairman at the time?

**AS:** Ray Garrett and I were appointed the same day, and we had our hearing the same day, we were sworn in the same day. He was appointed Chairman at the same time I was appointed Commissioner. He had endorsed me as chairman, even though I was a Democrat.

**RP:** You two knew each other through ABA and other things?

**AS:** We knew each other very well. As a result, I probably had more influence over events at the Commission than I otherwise would have had.

**RP:** Who else was on the Commission in 1973 when you joined?

**AS:** Phil Loomis was in the senior staff position before he became a Commissioner. Irv Pollack was appointed to succeed Hugh Owens.

**RP:** And who else other than Irv Pollack?

**AS:** John Evans, who had been on the Senate Banking Committee, not a lawyer but an economist. Phil Loomis, who was probably the best lawyer the Commission ever had.

**RP:** So there were two former staff members on the Commission, Ray Garrett and yourself, who were highly experienced SEC practitioners in their late forties, early fifties, and John Evans. Phil Loomis was a former staff member, along with Irv Pollack, right?

**AS:** Phil Loomis had been on the SEC staff. John Evans had not been on the SEC staff. He had been on the staff of the Banking Committee.

**RP:** What was it like to work with your fellow Commissioners and the Chairman?

**AS:** Ray was infected with the notion that collegiality was something to be sought. At that time, we didn't have the Government Sunshine Act, so we really developed a high measure of collegiality. Ray did not undertake anything of major proportions without consulting the other Commissioners. Often we would brown bag it around a conference table in his office. We didn't have to give notice of a hearing or open our meeting to outsiders, and the result was it was a *very* collegial Commission. We've been the last really collegial Commission they ever had.

**RP:** And you attribute that change to the Government Sunshine Act?

**AS:** I attribute the collegiality to the absence of the Government Sunshine Act. I've always thought that. It was one of the first pieces of legislation I was aware of and I think it put more power in the Chairman's office and reduced the role of the Commissioners.

**RP:** Did the composition of the Commission change during your tenure?

**AS:** Only by the addition of Irv Pollack in place of Hugh Owens.

**RP:** Did there come a time when Ray Garrett passed away?

**AS:** No. He resigned before he became ill and Rod Hills was appointed in his place.

**RP:** That was when? 1975?

**AS:** October 1975, yes. Again a campaign was started to appoint me Chairman. At that time Ford was President and his office told me that they had made a recommendation that I be appointed Chairman. But Ford had the same attitude Nixon had with regard to appointing a Democrat, so they appointed Rod Hills, who was assistant counsel to the President.

**RP:** Did the appointment of Hills make any significant difference in the way the Commission operated?

**AS:** Yes, it did.

**RP:** What was the difference?

**AS:** He was less inclined to consult other Commissioners, with regard to matters of policy and personnel. I had a good relationship with him. He always regarded me as the top technician on the Commission, because he did not have a solid background in securities law. I always regarded Phil Loomis as the outstanding securities lawyer on the Commission.

**RP:** For purposes of context, what was happening in the government, the industry, the Commission during your tenure, 1973-1975?

**AS:** The securities industry was really hurting. They were in a *profound* recession. Most of the firms were losing money. I remember well that Ray called me one day and said a delegation from the securities industry was urging him to meet with them. This was again before the Government Sunshine, so we had a delegation that consisted of Paul Kolton, Frank Weil from Paine Webber, and two other people from the securities industry. Their principal question was: how can the Commission help us? I guess I articulated this on behalf of the Commission. We said our principal contribution to their welfare was the maintenance of a fair and orderly market. Well, they had in mind the banking regulators who, they contended, were much more helpful to their industry than we were to the securities industry. They came back another time with the same plea: for God's sake, help us. We took the same attitude, that the major help that we could give them was the maintenance of fair and orderly markets.

**RP:** What kind of help did they want?

**AS:** Well, they wanted us to let up on the enforcement program for charges of fraud. At that time the Commission had very limited remedies and most of the cases had to contain a fraud charge to be able to maintain it. That was what they were after, as far as I could tell. It was sort of obscure what they wanted. But they had this notion that the bank regulators were much friendlier to their industry than we were to the securities industry.

**RP:** Also during your tenure was Watergate taking place?

**AS:** Yes, it was occurring.

**RP:** Did that have any impact on the Commission?

**AS:** I don't think it did. At that time. I don't think it did. Back on the Commission before I was there, when Bill Casey was chairman. He was charged with secreting documents with Stanley Sporkin. Stanley kept him out of a lot of trouble.

**RP:** What were the significant issues, in your opinion, that confronted the Commission during your tenure?

**AS:** Market regulation, as it was being revamped by the securities industry and the markets in accordance with the 1975 amendments.

**RP:** And that involved the attempt to create a national market system?

**AS:** Yes, it did.

**RP:** The development of the composite tape.

**AS:** The composite tape, with the reporting system. I came into the Commission with a relatively thin knowledge of those issues, because we didn't get them in the practice much. That was mostly the practice of the New York and Chicago firms. I did have a strong opinion with regards to fixed commissions. I thought they were anti-competitive in their impact. I later learned that Dick Smith had advocated my appointment as chairman because of that posture which contrasted with Ray Garrett. Ray was in favor of fixed commissions.

There's an interesting story there. Ray and I, for the first month I was in Washington before my family came, his never did, had rooms side-by-side in the University Club. Ray, God rest his soul, was a renowned drinker. Every night he and I were in town, he would knock on the door about ten o'clock and say, "Why don't we have a night cap?" Frequently if both of us were in town and were unengaged for dinner, we'd have dinner together. I would always bring up at our nightcap sessions and sometimes at dinner the question of fixed commissions. My principal argument was not economic, it was political. I said if the Commission did not take action on fixed commissions, the Supreme Court or Congress would and we would lose control of the issue.

Well, the way the fixed commissions came into focus was when the New York Stock Exchange had petitioned the Commission for permission to raise commissions. We had public hearings on that. The last day of public hearings, which I think was September 21, 1973, Ray and I had been in office for less than two months. We came back to Ray's office after the close of the hearing and said, "What are we going to do?" I spoke up and I said, "Well, I think we ought to grant this request but couple it with a decision to eliminate fixed commissions in their entirety and proclaim a date as of which fixed commissions would end sufficiently far in the future to permit firms to adapt." He said, "What do you think? What do the rest of you think?" Loomis, Owens, and Evans said, "I think that's a good idea." Ray said, "I'll go along with that."

I've always contended there ought to be a plaque in the bar of the University Club that says, "Here perished fixed commissions," because that was really where they did die.

**RP:** And you did ultimately.

**AS:** Set May 1, 1975. In retrospect nobody can appreciate how controversial that was.

Shortly after that I was invited to speak to an SIA group here in Washington. It was not the SIA national convention, but it was the Washington Securities Association gathering. I can remember Bob Baldwin, who was the chairman of First Boston at that time, was the head of the SIA. After I had made my pitch for eliminating fixed commissions, he stood up and said, "Commissioner, if you and your colleagues persist in this course, you will destroy capitalism throughout the world." I looked over my shoulder to see who this

powerful guy was that he was speaking to, and I realized he was speaking to me. That was the attitude many people had over that. Bus Fleming, who was a good friend of mine, was head of the Fleming, Bolger firm.

**RP:** That was a prominent Washington, D.C. brokerage firm.

**AS:** He to this day chides me for my role in unfixing commission prices. He was the last of the Mohicans, as far as I can tell, because I think we saved the industry with that action. One of my fervent recollections is the fact that the American Stock Exchange, a member of their board, I can't remember his first name, but his last name was Renfrew, was a well known economist and was their star witness. I remember I asked him, I said, "You know, Mr. Renfrew, I have checked your writings and you have been a zealous advocate of competition in other industries. Why is this industry different?" He proceeded to bury me in academic arguments, none of which made any sense to me.

**RP:** I take it that fixed commissions was the most significant issue confronting the Commission? What were some of the other important issues that the Commission was dealing with during your tenure?

**AS:** Toward the end of my tenure, I persuaded Rod Hills to let me organize an advisory committee on corporate disclosure, and out of that came a lot of reforms. One of the smartest things I ever did was appointing Harold Williams to the committee. I had encountered Harold several times at UCLA when he was dean and I was invited to speak

a couple of times. I was very impressed with this guy, so I suggested he would be a good member of the committee. Among other people I designated or caused the appointment of was Warren Buffett. We needed Buffett's persuasiveness and Williams' accession to the chairmanship of the Committee.

**RP:** This is the Committee on Corporate Disclosure?

**AS:** Yes, Advisory Committee on Disclosure, by corporations.

**RP:** That Committee included Warren Buffett and Harold Williams?

**AS:** Yes, it did. And later Harold was appointed Chairman.

**RP:** Of the Commission itself?

**AS:** Of the Commission itself, yes. He always attributed his later career to mine. I interested him in securities matters. I appointed him to that committee. Out of that grew his Chairmanship of the SEC and his later appointment to the Getty Foundation.

**RP:** The Advisory Committee on Corporate Disclosure, what was the significant achievement of that committee?

**AS:** I think it was Regulation S-X, which made uniform disclosure required by various acts.

**RP:** S-X was the accounting regulation. SK contains the uniform disclosure requirements. Did you have any role in Commission policy regarding projections?

**AS:** We approached that in the corporate disclosure committee. We approached that and concluded we should not encourage it beyond the encouragement the Commission had previously given it.

**RP:** Were there any other significant issues you recall confronting the Commission during your tenure?

**AS:** I mentioned the problems of fixed commissions. I was strongly influenced by Gene Rotberg, who was on the staff at the time I wrote the article, in effect saying that a lot of other issues would drop by the wayside if you unfixed commissions.

**RP:** Let's take a break at this point and then we'll go on.

We were talking about significant issues confronting the Commission and your role in resolving those issues.

**AS:** Another major issue was fashioning the legislation in 1975. We spent a lot of time on that and we had a positive influence on the contents of the Act as adopted.

**RP:** This was the Securities Act Amendments of 1975, which mandated a national market system and strengthened the Commission's authority over self-regulatory agencies. Is that correct?

**AS:** That's right.

**RP:** And that was a significant development during your tenure.

**AS:** It was. We spent a lot of time on that.

**RP:** Was there an issue, a problem, confronting the Commission where you think the Commission failed? Was there a significant failure on an important issue that confronted the Commission?

**AS:** I think I was surprised that the central market system did not develop more quickly than it did. I think that statute mandated a review of all self-regulatory rules in terms of impact on competition. I thought we were much too lenient with regard to rule 390 of the New York Stock Exchange, which forbade members to deal as principal in any stock that was listed on the Exchange. They finally abolished that in the 1990s, but I thought that we really goofed in passing over that and that we should have been more aggressive in that and other restraints on competition.

**RP:** Do you have any other vivid memories during your tenure with the SEC?

**AS:** Vivid memories of what?

**RP:** Of issues, people.

**AS:** Well, I thought Phil Loomis was a great lawyer, I thought John Evans was righteousness personified, as was Irv Pollack. I thought Ray was a damned good Chairman. Staff was uniformly dedicated and worked extremely hard, particularly during the period when legislation was being drafted.

**RP:** There came a time when you left the SEC.

**AS:** Yes, I did.

**RP:** When was that and why did you leave?

**AS:** April 6, 1976. The principal reason I left the Commission was economic. By that time I had three kids, two in college and one in a private high school. Besides that, I was paying the tuition and room and board for my two nephews and my niece. I just reached the bottom of the barrel of my savings and decided I should leave. On June 5, my term would have been up, but frankly I was hopeful the Democrats would get in office with the Presidency and that if I stayed around I might be tempted to seek the Chairmanship again. I had some very nice offers, law firms and securities firms.

**RP:** And you joined first Wilmer, Cutler, then Morgan, Lewis and Bockius

**AS:** Wilmer, Cutler was second. I went with Jones, Day for eighteen months. When Manny Cohen died, Lloyd Cutler said to me, “We have a need for a senior securities lawyer now that Manny has passed away. Would you come over and head our operation?” He offered me a handsome guarantee. After eighteen months, Morgan Lewis came to me and said, “We have decided as a matter of policy we would expand the Washington office into a full-service firm.” They offered me a handsome income, plus a free hand in hiring and adding people, so I accepted that.

**RP:** And you practiced securities law as a practitioner in Washington after leaving the Commission in 1976. You’ve been actively involved with matters concerning the securities market and the securities industry and the SEC, is that correct?

**AS:** Yes, that’s right.

**RP:** Particularly in the accounting area?

**AS:** I was Chairman of the Public Oversight Board for thirteen years and I was a member of it for sixteen years. Prior to that I was the public member of the AICPA and I was persuaded to go on the Public Oversight Board in 1983. I became Chairman in 1986 and continued to be Chairman until my health made it impossible to continue, but that was one of the most satisfying endeavors I had.

**RP:** Why? Why did you find it so satisfying?

**AS:** It gave me an opportunity to build the POB into a recognized leader in the area of self-regulation in accounting. We managed to insert ourselves into every major problem which came up.

**RP:** I would like you to step back, if you will. How would you compare the Commission during your tenure there and today?

**AS:** I think it's much less collegial, possibly because of the Government Sunshine Act, and I don't think the caliber of Commissioners has been maintained at the level it was when I was there.

**RP:** When you were there, all of the Commissioners were fairly senior, in terms of age and experience. Is that correct?

**AS:** Yes, they were.

**RP:** And acknowledged leaders in their field?

**AS:** Yes. John Evans was the only person who was not familiar with securities law when he joined the Commission.

**RP:** But he was experienced in dealing with the Congress as a senior staff member. Has the staff changed between the time of your tenure at the Commission and today?

**AS:** I would have to say it probably is as good or in some respects better than when I was there. I always marveled at the ability of the Commission to grab senior people for senior posts. I think that's one of the commendable aspects of the Commission's activities.

**RP:** What about the relationship between the Commission and the staff, then and now? Has that changed?

**AS:** I don't know about now.

**RP:** What was the relationship between the Commission and the industry during your tenure, and has that changed?

**AS:** I think it has, because the industry at that time was concerned with the unfixing of commissions as one of the market issues.

**RP:** And you see a difference between the time of your tenure in the 1970s and now?

**AS:** I think the industry is more inclined to accept the leadership role of the Commission.

**RP:** Do you regard that as a healthy development?

**AS:** I think it is a healthy development.

**RP:** How about the relationship between the Commission and the Congress? Has that changed?

**AS:** I think it has. I think Congress is less inclined to accept the authority of the Commission. When I was there, they accepted the Commission as authoritative but I think there is less inclination to do that today.

**RP:** Do you attribute that to the fact that when you were there the Democrats controlled the Congress and now the Republicans do?

**AS:** I don't think that made any difference.

**RP:** What made the difference?

**AS:** I don't know. I don't know what the reasons for it are. There was a change of character in key positions. At the time when I was there, Proxmire was Chairman of the Banking Committee, Bill Stuckey and Jim Broyhill were involved with the House Committee, and there was a good relationship with both of those.

**RP:** It's been twenty-five years since you left the Commission.

**AS:** Incredible.

**RP:** Incredible! Has the Commission changed generally and, if so, for the better or for the worse?

**AS:** The Commission has changed because the Government Sunshine Act has defeated collegiality and vested more power in the chairman.

**RP:** What would you do to correct it?

**AS:** I would get rid of the Government Sunshine Act. Steve Wallman adopted that as one of his pet projects and was working through the administrative conference. He was making headway on that until the Chairman of the Administrative Conference died suddenly and surprisingly, and shortly after that the Administrative Conference terminated. It was another of Steve's projects that came to naught. I think he was on the right course. I don't think we're ever going to repeal it but could amend it for less cumbersome regulatory bodies to operate.

**RP:** Let me ask you a final question. Are there some memories, some thoughts, some issues that you'd like to share that we haven't covered?

**AS:** Well, we covered a lot of that. I was proud of the Committee on Corporate Disclosure. People on that, ten years after the court decision in November of 1976, had a reunion just

about the time that the market collapsed in October 1987. That was a time of history for the group and everyone came. This was a demonstration, in my estimation, of a really integrated group that accomplished a great deal. A lot of regulations were changed, as I mentioned. I was farsighted enough to appoint a future Chairman of the SEC and facilitate the process, the adopted regulations, S-K reforms. I guess those were my personal accomplishments that stand out. I was a leader in some of these issues, or think I was.

**RP:** Al, thank you for sharing with us the memories and thoughts of your very rich career, both at the Commission and as a securities practitioner. Thank you.