

**Securities and Exchange Commission Historical Society**  
**Interview with Curtis H. Barnette**  
**Conducted on May 21, 2013 by Robert Colby**

**RC:** This is an interview with Curtis H. Barnette for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm Robert Colby. Today is May 21, 2013. Our interview is taking place at the office of Littner, Deschler & Littner in Bethlehem, Pennsylvania. Mr. Barnette, thank you for being with us today.

**CB:** Robert, thank you. It's a pleasure to be with you and to have this interview.

**RC:** Let's jump right in with your early life. You were born in St. Albans, West Virginia?

**CB:** Yes, born in St. Albans, West Virginia on a family farm property that had been the Barnette family for some 200 years, very interested in high school athletics, very interested in lifesaving and water safety, spent most of my early years as a lifeguard and teaching lifesaving and water safety. My father worked at Union Carbide. My mother was a teacher.

**RC:** What took you to West Virginia University?

**CB:** Different actions caused me to head to Morgantown. I was a high school athlete and a very good student, so I had scholarship opportunities to go to several different colleges. West Virginia was the home state flagship university. Several friends and relatives had

gone there. The Benedum Foundation offered a modest, but very nice scholarship. I think a combination of recommendations and financial assistance caused me to go there.

**RC:** What sports did you play, if you don't mind my asking?

**CB:** No, not at all. Football, basketball, and baseball.

**RC:** Did you play any at West Virginia?

**CB:** I did not. I was advised in high school, my senior year, that accepting a football scholarship at 167 pounds would be suicide, and that I shouldn't do it. I mulled that over. One other college in particular was of interest. I concluded not to be, or to attempt to be, an athlete at a place like West Virginia, which even then played big time athletics. I was very active in intramural athletics at the university, particularly in basketball.

**RC:** On entering, what did you think you were going to study or what did you plan to study?

**CB:** From the outset, I believed that it would be political science or history or a foundation course that would lead ultimately to law school. Like many college freshmen, I was certainly unclear about what I ultimately wanted to do, but I had a lasting sense to this day that it would some combination of teaching, or public government service, or something in the private sector, those three intersections of interests, so I chose political

science and history. There was a professor early on that caused an interest and I pursued it from there.

**RC:** You said you always had law school in your sights?

**CB:** Yes.

**RC:** You thought that that would further the sort of career you were talking about?

**CB:** I had a grandfather who was the town squire. My grandfather Robinson was certainly influential in that regard. I was always very interested in government leadership, public service, political office, and was a successful candidate for those offices in high school. It seemed that lawyers in adult life often were those who led in politics, certainly in our state of West Virginia. It seemed a logical career path.

**RC:** But you ended up on a Fulbright scholarship. How did that come about?

**CB:** I was fortunate at West Virginia to have an excellent academic record, was elected to Phi Beta Kappa, was fortunate to have a good military record, and was the cadet colonel, the commanding officer of the ROTC program, and was also the president of the student body. Those recognitions, achievements came together.

It made one eligible for consideration of a scholarship like the Fulbright or the Rhodes. I had then to be commissioned as an officer and had no deferment at the time I was applying for these scholarships. The Fulbright was a year. I could get a deferment for a year. Ultimately, that was the decision. Two professors were particularly helpful and influential in the decision.

**RC:** You studied international law?

**CB:** I studied at Manchester University under two very distinguished professors, a Professor Wortley and a Professor Bowett. Derek Bowett went on to become a secretary at the United Nations, a very distinguished scholar. The two West Virginia professors, a Brit named John Williams and the department chair Carl Frasure. I'm eternally grateful to them, to the four professors, as we all have professorial reasons for our success.

**RC:** You did this looking forward to a career in law after the Army?

**CB:** Teaching, law, government, public service, still the three. I'm sure, Robert, if I looked over my applications to different institutions, organizations, it would simply repeat those three possible interests. Yes, the Fulbright very, very much supported that. The study of international law was an excellent foundation. I had a hope and a reasonable degree of confidence that when I did go into the military, I'd go into military intelligence and hopefully as a counterintelligence corps officer. Of course, the study of international law would have supported that.

**RC:** Which is where you did find yourself. I never know how much you're allowed to talk about military intelligence, but I'd be interested to hear about your career.

**CB:** I can talk a little about it in some respects, not very much even today. The year plus that I spent in England; I completed a diploma degree at Manchester. But a young lady that I had known and dated, we were not engaged, but dating seriously at West Virginia, Joanne Harner and I were still of interest to each other. When I came home from England on the Fulbright and went into the military at Fort Holabird, Maryland in the intelligence school, we had serious discussions about marriage. Clearly, my interest was, if I could, to get assigned back to Europe. She was interested in joining me in that. That's what happened. That is part of the military intelligence story.

I was trained for six, seven months at Fort Holabird, Maryland as a counterintelligence corps agent. Then I went to Germany just outside of Frankfurt to serve for the remainder of my service for a couple years as an operative agent, mostly in plain clothes in Germany and working with some of the most capable and dedicated, often trilingual, quadrilingual, agents that one could imagine; it had an enormous positive impact on my interests and my career.

**RC:** What brought you from there back to Yale?

**CB:** The continued interest in attending law school, but it was very close. The program exists today. I believe it's a matter of public record and I believe I can talk about it, but there is something called the FAST, Foreign Area Specialization Training. It is a remarkable program. If selected, you would finish a master's degree at a university mutually agreed upon about a foreign country. You would then go to the foreign country and work for three years or so in a State Department-type position. You would then return to the university and finish your PhD and then return to the country on assignment again. After that second foreign country assignment you would go into your assigned career.

We thought very, very carefully about the FAST program. I was starting to raise a family, with a long-term interest in law school, and decided to realize that lifelong interest in going to law school. The challenge we had was that we had never visited any of the law schools, but we asked a number of people. I had one mentor in particular and I should have mentioned him earlier.

Dr. Irvin Stewart was president of West Virginia University. His son, Richard, was a year ahead of me in college. Dick was a Rhodes Scholar and often talked with me about the importance of going abroad to study, but also he went to Harvard Law School. The two law schools that I heard most about other than West Virginia were Harvard and Yale. A very distinguished professor at West Virginia had gone to Yale Law School. I knew a little about both of them.

Here we were sitting in Frankfurt, Germany applying to law schools that we had not visited. We did so just ranking the schools and applied ultimately to Harvard and Columbia and to Yale, and were fortunate to be accepted to all three. We decided upon Yale partly for a serious substantive reason. The scholarship assistance was more. We very much needed scholarship assistance.

It was a little closer to West Virginia where our families still lived. We joked often that in the student housing literature it advertised student housing on Lake Place, which we were certain overlooked a beautiful lake in Connecticut. Of course it was a street behind the Payne Whitney Gymnasium. (Laughter.) Nevertheless, we decided to pack up and head for New Haven, which we did.

**RC:** At Yale, did you focus on a particular kind of law or have mentors that directed you?

**CB:** I had probably the most general undergraduate legal education, contracts and torts and civil procedure and estate planning and taxation, but early I had a decided interest in the litigation, the dispute resolution process. I was fortunate to the win the Thurman Arnold Appellate Competition prize in my first year, became very active in moot court, and quickly decided on teaching. If I had an opportunity, I wanted to teach and became, then if you were still a student, you were called a research assistant at the law school. I did that. Additionally, I had transferred my intelligence interests to something again which I think it's okay to talk about. At many major universities there are located what are called SIDs, Strategic Intelligence Detachments.

There was such a detachment at Yale, the 434th Strategic Intelligence Detachment focused because of the expertise of a professor in a particular part of the world, in this case Burma, Laos, North and South Vietnam, Cambodia. It was a small seven person unit. I was very fortunate to get assigned to that. I was teaching and going to school and serving in this unit and then ultimately, I got part-time jobs with law firms that needed research done in connection with cases. That's how law school was spent.

**RC:** It sounds incredibly busy.

**CB:** It was very busy. Joanne had a couple of jobs as well. A fun part, she was in a sorority and I in a fraternity, so we occasionally chaperoned Yale social events. They were a little different than West Virginia. (Laughter.)

**RC:** Were there particular professors who mentored you?

**CB:** Sure, very much so. The then associate dean of the law school, Jack Tate, was, and our experience was memorable, the dean, Eugene Rostow, professors Elias Clark, Richard Donnelly, James William Moore, Boris Bittker. These were all legendary names in the profession and textbook authors in their chosen fields and many others. I don't think there's any single one, but cumulatively the half dozen or so were very, very influential.

**RC:** What brought you to Wiggin and Dana after law school?

**CB:** The question in our minds was whether we should return to West Virginia. That was our home. Our parents were there, my family in the Charleston area, Joanne's family in Morgantown, home of the university. Should we return to West Virginia to practice law and run for governor? That's always the student body president's ambition. That's almost your duty to go back and be governor. Joanne made it pretty clear that it was either her or being governor – that she didn't really want to get into an election. I'm joking. It was partly true. We didn't want that for our life.

Nevertheless, we went back to West Virginia. I worked one summer in West Virginia with a wonderful firm. In fact, the firm's name is Steptoe & Johnson and my youngest son, Jim Barnette, is now a partner in that firm in Washington, D.C. It's a different firm from the West Virginia firm now. It was an interesting coincidence. We spent a summer there. It was a great law firm. Certainly if we had stayed in West Virginia, if we'd been given the opportunity, we would have worked with Steptoe, but we did not want to return to West Virginia.

Then the question was where? We were really small town people. We wanted to live in a smaller community. As I started applying for interviews and jobs, Wiggin and Dana, a firm that's counsel to the university, a very prominent regional firm then and even more so today, interviewed immediately. They interviewed the first week of law school and made a job offer and said, "You have two weeks to accept."

They were making an offer at UVA, at Harvard, and at Yale, three positions. My wife and I talked about it and decided that New Haven is a small town. It's a great place and we were raising a family then and to raise a family, let's give New Haven a chance until we get our lives stabilized, so maybe three to five years and look at it again. We accepted the position. I was a law tutor teaching at the Yale Law School. By then I was the commanding officer of the intelligence detachment. Those helped, having those two additional associations, and I joined the firm.

**RC:** What kind of work did you primarily do?

**CB:** Litigation, initially a lot of insurance defense work, what I could call in today's world minor criminal defense work, representing Yale professors and students, a little domestic relations work, but just a broad general litigation practice, some corporate work, but very limited.

**RC:** Did you find it helpful later to have that broad experience?

**CB:** I did. I don't mean this immodestly, but I've said it publicly and in talks and because I believe it. I believe a good litigator can do anything because you're taught how much you don't know and the consequences of not being well prepared and not seeking knowledge and assistance. If that's your discipline, then working in the corporate area is not easy, but it's achievable because you're going to do your homework. You're going to get assistance. That's certainly what happened in my career. I started as a litigator and

moved into the corporate world. I never lost my interest and attachment to litigation, but I found it a relatively easy entry.

**RC:** What caused you to make that entry? You were at Wiggin and Dana for five years?

**CB:** Yes.

**RC:** What took you from there to Bethlehem?

**CB:** We drove regularly through Bethlehem, Pennsylvania to West Virginia, to Morgantown and to Charleston, St. Albans. We had friends in Bethlehem Steel, who would often say, “Stop by and say hello.” Ultimately the invitation was that Bethlehem was a great place to live, Bethlehem Steel was a great company to work for, had a growing law department and asked, “Would you consider joining Bethlehem Steel as an attorney?” For several years, I didn’t even give it a second thought, but there came one point, one discussion where we decided to at least stop as a courtesy and talk to people and interview. That caused five, six return trips to Bethlehem just to look and consider and think about it and talk.

In our family, you may ask, “Well why did you finally decide to go to Bethlehem?” My answer to that often is, “Because of the Tappan Zee Bridge,” because we were probably there a sixth time. We’d just been to Bethlehem, had a wonderful visit, and were going back to New Haven. We were literally driving over the Tappan Zee Bridge and Joanne

said, “Well, what’d you think of the visit?” I said, “They’re wonderful people. It’s a great company. I can’t wait to get back to New Haven.” She said, “I understand. That’s really interesting. What do you think you’ll be doing in five years?” I said, “Hopefully I’ll be practicing at Wiggin and Dana and trying important cases and hopefully still associated with the law school and maybe have moved up to full colonel in the intelligence detachment.”

She said, “That’s wonderful.” We drove a little further. She said, “What do you think you’ll be doing in ten years?” It was the same answer. She said, “You ought to think about that. You ought to think about that.” I said, “What do you mean?” She said, “Contrast that with Bethlehem Steel—international operations, wide travel, a diversity of work within the legal field, a whole host of very different opportunities and experiences.” It was substantial compensation increase. That caused us to decide to try three to five years at Bethlehem, recognizing that that might not work out, and if so we’d move back to Connecticut. It was a trial of a three to five year experience.

**RC:** You said it was a growing law department at Bethlehem. Was there something driving that growth?

**CB:** I think several things drove it. The increased size and complexity of the company and the international operations of the company, the legal issues facing the company, all of those were happening in the late sixties and the early seventies. Francis Van Nuys was then the general counsel. Francis was a member of a group—I will be interested in whether

you've even ever heard of it—but there is a group called the Association of General Counsel.

At that time it probably had sixty members. They were the sixty most prominent general counsel of the leading companies in the country, and they met twice a year for several days. They truly shared the best practices, the efficiencies of operating in a corporate environment. The trend, which seems commonplace today, was to bring all lawyers in a corporate entity together into a corporate law department and function as a law firm within the company. That was not true at Bethlehem Steel.

Generally, it was not true in corporations, with exceptions; the exceptions were those who were on the cutting edge. What had happened in the corporate world is that lawyers were hired functionally and vertically. If you were the vice president of accounting and responsible for taxes, you hired tax lawyers. If you were the research officer responsible for patents, you hired patent lawyers. If you were the corporate secretary, you hired a corporate lawyer who knew about SEC kinds of things. You can go on.

What had happened at Bethlehem, and it was very representative of corporations generally at that time, was that there were many lawyers in six, seven different departments within Bethlehem, many of them from substantial New York City law firms, principally Cravath, but attorneys that for one reason or another really wanted to have their careers and raise their families somewhere other than in New York City. I think a

majority of the attorneys at Bethlehem, certainly when I joined, were graduates of a New York law firm, and principally Cravath.

The provision was, the trend then was consolidation for the leading companies, and clearly within the Association of General Counsel group, which is not a public organization. You won't ever read about it. It exists today and I am proud to be an emeritus member today. I think the teachings came from that. I had an opportunity to be part of that. No question that was part of the reason for joining, to see a great company bring together all these professionals in one organization. It was easy to say but very difficult to achieve because people had grown out vertically. They're independent. They worked for a different officer. They may or may not have had an interest in consolidating under a general counsel or chief legal officer. Clearly that's where the efficiency and the effectiveness was.

**RC:** Were you hired to be in this newly consolidated legal department or originally to work in one of the branches?

**CB:** I was hired to be a part of the general counsel's office. Mr. Van Nuys, the then general counsel, may have had a dozen, fifteen attorneys, general in their scope who reported to him. The corporate secretary did not. The patent attorney did not. The tax counsel did not. They were independent. The vision was to bring them together. It took years to achieve that. The same thing was happening in other companies. I will not name them, but the same things happened in the other companies.

**RC:** When you started, was this consolidation a project of yours, or were you primarily dealing with other things?

**CB:** No, I was practicing law serving as a division counsel to several divisions of the company and I did litigation and investigation, internal investigations, criminal defense, some corporate and then counseling of several divisions of the company, but with a particular interest and informal assignment to watch the evolution of the corporate law department. That's what really interested me in addition just to my normal practice.

**RC:** What were the primary issues you were dealing with practicing within the company at that point?

**CB:** I think the adjustment, the family move, the family adjustment, working within a corporate environment as opposed to a law firm environment, having in effect one client as opposed to multiple clients, learning about the company, learning the business of Bethlehem Steel. Those were all major challenges.

**RC:** As you moved up within the department, did your responsibilities change?

**CB:** Yes.

**RC:** You went from first to general attorney and then assistant general counsel. How did your responsibilities change?

**CB:** They changed more with the administrative responsibilities and the assistance in the hiring of new attorneys and the supervision of new attorneys, but then the very case-specific responsibilities. The title that you carried often identified you within the company, and externally as having the authority to speak for the company, to speak for the general counsel and your clients. I haven't thought recently about the specific assignments that were changing over that period of time, but clearly the major cases, the major investigations I was part of and often was the attorney in charge. That's the concept we did, not title, not general attorney. You could be a brand new attorney and be the attorney in charge of a particular project. There were a number of those.

**RC:** One of the issues in corporate governance at this time is the corporate scandals ranging from the Penn Central bankruptcy to the domestic and foreign payments. Was that an issue that you had to confront?

**CB:** Bethlehem was a very compliance-oriented company. I think its officers truly believed in doing the right thing and complying with the law. It made it relatively easy to implement process and the procedural changes that were directed by the outside environment. I think we were always on a learning curve to try to adjust our internal concepts and practices to meet what was happening in the outside world.

**RC:** With the reforms that the New York Stock Exchange instituted regarding internal controls and the like, did you find that that was something that was easy to comply with or difficult?

**CB:** I think that with all of the accounting issues, all of the internal control issues (we had had PriceWaterhouse as our independent accountant), we were fortunate to have just a rigorous internal audit system. I think it was not a major change that took place; it was only enhancement because of new directives, new requirements, internal procedures, or practices being changed, modified, made more rigorous. It was time-consuming. It was expensive and often thought unnecessary. But the change was adaptable.

**RC:** One of the other major issues in the 1970s for a lot of major companies was shareholder proposals. Was that something that you ever dealt with at Bethlehem?

**CB:** It was not. We had shareholder proposals. They tended to be the proponents, regulars, the Evelyn Y. Davises and others. When we had a serious, meaningful, constructive shareholder proposal, we negotiated those. As a result, we hoped our objective was to go to an annual meeting with zero stockholder proposals. We regularly did that. On the other hand, if a stockholder had a proposal we just believed was fundamentally wrong, and they tended to be the professional gadflies, if you will, we would oppose those and then routinely defeated them.

**RC:** Can you give me an example of the constructive proposals that you dealt with were?

**CB:** I think the answer generally is no because they were so elementary. It may have had to do with the place of the annual meeting—instead of mandating that it be in Wilmington, making it flexible. They were just good common sense, “Why didn’t I think of that,” sort of things. Other than the ones that we routinely opposed—there was another side to even those that we opposed.

**RC:** In 1976, you became vice president, general counsel, and corporate secretary. Was that all at the same time?

**CB:** I became assistant general counsel and corporate secretary first. Then, upon the retirement of Robert Sonneman, a very well-known corporate securities lawyer within the corporate world at that time who had been at Cravath. I believe he retired in '76.

**RC:** He was the corporate secretary before you?

**CB:** Yes, to my pleasure, but to my surprise, I was advised that I had been selected to succeed him. That started a different orientation in my experience and work life. Then Mr. Van Nuys retired within the next year or so. Then I became general counsel.

**RC:** You said it was a reorientation when you became corporate secretary. How was that?

**CB:** What had happened in the early seventies, was that Bethlehem became very interested in diversification. A team of three officers, our vice presidents of planning, finance, and accounting, were the three corporate officers. I was selected as the attorney to work with that group. That's a fairly high profile group within the company. We did a number of acquisitions. That meant working in the corporate SEC world for sure, which I had done before then prior to Mr. Sonneman's retirement, had done it for several years and had done quite successfully and had good reviews by the other officers.

I think that opportunity, which I thoroughly enjoyed, that opportunity helped prepare for possibly becoming corporate secretary. Once you are formally the corporate secretary, it's tough. You could see a bylaw definition of a corporate secretary, but I believed and today believe that a corporate secretary should be the chief corporate legal officer for corporate affairs, should be the officer responsible for board and committee agendas, liaison, certainly should be the officer responsible for Securities and Exchange Commission matters, such as the SEC filing and preparation.

I perhaps continued the old-fashioned view. Because of that prominence with the board and the interest in efficiency, effectiveness, I still think consolidating the corporate secretary with the title of general counsel is a good idea. It's one person. The general counsel can have an assistant general counsel who is in charge of litigation, an assistant general counsel who really is a corporate law attorney and can have other assistant general counsels. I think it provides a consistency and consolidation and board

relationship and stockholder relationship, and a financial community relationship that's very efficient.

**RC:** Could you tell me a little bit about your responsibilities and the things you had to do as the corporate secretary?

**CB:** Sure. First, if you go right to the organizational structure, it would be all of the relationships and the work with the board of directors, which was a major responsibility—agendas, minutes, meetings, speakers for board meetings and for the committees as well, preparing all of that work. Second, all of the corporate transactions because you were then, at least within Bethlehem Steel, you were the chief corporate attorney and transactional work, M&A work, all of that would be your responsibility.

The attendance, at least in our tradition, the corporate secretary attended all board, committee, and executive management meetings. Different chairmen had different rules; there could be an officer group or a management group or an executive staff, but whatever the internal group, the corporate secretary attended those meetings. The general counsel might or might not, if a different person. Those are some of the principle responsibilities. You're really at the heart of the leadership and the governance of the company.

**RC:** Serving on the acquisitions committee and then as the corporate secretary, was that your introduction to the world of corporate governance?

**CB:** I think so. You're on the outside of that world when you are involved in litigation or a criminal investigation. You see the need for all the compliance or you see where something might have gone wrong, but it's a more narrow focus than the whole corporation, the whole entity, the whole enterprise.

**RC:** Entering that world, what were the major things that you were dealing with as corporate secretary and then also as general counsel in this time period?

**CB:** Substantively, the issues facing the general counsel, this line gets blurred, Robert, between what's general counsel and what's corporate secretary. The issues facing you are the issues facing the client, I guess is the best way to respond. Those issues had to do with the competition facing your company, both domestic and international. By subject matter, significant issues involved international trade, also, because of the nature of the steel product, the environmental issues associated with the making, shaping and treating of steel.

A steel plant is a very complex workplace, so the Department of Labor and other regulatory authorities over the workplace were very, very significant. The diversity of the workforce was very limited, as were issues about the rights of employees. In Bethlehem Steel's case, because we had multi-businesses in shipping and railroads and transport and mining and so forth, we must have had a dozen different unions that we had associations with to negotiate labor contracts and work rules and so forth. Those are some of them.

**RC:** That's quite a full plate.

**CB:** It's a full plate.

**RC:** I understand that a lot of your time was spent dealing with the trade issues, trade agreements and things like that. Could you tell me a little bit about that?

**CB:** Sure. Let me digress. I'm not sure how familiar you might be with the steel industry, but it's important to have that background to understand the trade issue. The steel industry is both domestic and international. The domestic, the United States steel industry, during the time we're talking about here was privately owned, owned by stockholders. The world steel industry nearly universally was government owned or government subsidized.

The American market, for ease of description, requires about 100 million tons of steel a year. That goes up and down. It's a good, easy thing to remember. The domestic producers are generally capable of furnishing nearly all of that. If that market goes to 120 million tons, which it ultimately did, the domestic industry was still able to produce only 100 million tons. If you think of it in simple terms as a 100 million-ton market for domestic producers, a total of 120 million tons, with imports taking up the additional twenty, what happened repeatedly and continues today is if conditions in a foreign country change, unemployment is the easiest example, or a poor economy, the

government simply cuts the price of the product since it owns the business and dumps that product into the U.S. market.

If something is being sold here for \$500, and they can sell it at \$300 or \$400, of course some types of customers, short-term customers, are going to buy that. That's overly simplified with the story of the trade issue. You had a domestic industry with a very competitive product that simply could not compete with a foreign government which subsidized its industry or which permitted the dumping, selling here at less than value or less than the cost to produce. The industry, and not just steel, but industries generally, came to associate together as companies and associate with their unions. They spoke with one voice. That's all against our trade policy, which basically has not changed today.

I had the privilege of being appointed by President Reagan, then by President Bush, George Bush the forty-first and by President Clinton. I served in a transition under President Bush the forty-third, moving from the administrative conference of the United States to the President's Trade Advisory Committee. That's the key committee made up of businessmen, a small group, fourteen to eighteen people. I served on that for fourteen or fifteen years. Our job was to advise the administration, the special trade representative and the President, about the issues facing our industry and our country on trade policy.

The trade policy is very, very simple. I believe if President Obama were sitting here today, he'd say, "Yes, that's it." There are four points. Markets should be open. Trade

must be rule-based. Trade in an open market and trade that is rule-based, must be fair. If the rules are broken, trade is unfair; the rules must be enforced, just that simple. The debate is over enforcing the rules, which do you enforce and do the facts warrant enforcement and so forth? That was the environment that we faced, massive dumping, which in turn caused reduction in operations, which in turn caused massive layoffs and unprofitability.

The steel industry is an industry in which whether you sell a ton of steel or not, your costs are largely fixed. You can't turn the light switch on a blast furnace. You can't shut it down. You can't shut that massive equipment. Even if you do phase them down, your employment costs, your pensions, your healthcare costs under your labor contracts, the severance and the layoff continue. In effect, you must keep operating and you must operate hopefully profitably. I'm sorry to take so much time and overly simplify it. That's the trade issue. We were very successful in implementing the trade policy. Particularly when you got to the fourth point, if the rules are breached, they need to be enforced. We brought any number of cases, dumping cases, and subsidy cases and other cases.

**RC:** It's interesting how much that relates to the labor issue, which is another one that you're having to deal with it because they're just so tied together. One of the things that I was struck by in doing some background research is the negotiating of labor contracts and some of the different give and take that happens in that.

**CB:** I was surprised in 1988, the then-chairman and the board requested me to serve as chairman of our negotiating committee, labor negotiating. The company has a committee. The union has a committee. I didn't aspire to that. I didn't volunteer for it. Once we talked about it, we had developed a tremendously positive working relationship with the Steelworkers on trade issues and testified regularly together before Congress and met with all Presidents in the White House routinely on these issues. The thought was that if we could bring that positive approach to our contract negotiations—and jokingly if you had someone as your chairman who was totally inexperienced in labor negotiations—that would be a secret weapon. I said, “Sure, I'll give it a try.”

I have a very different approach to issues like labor negotiation, which in my methodology is just like any other kind of negotiation. You identify what the issues are. You put them on a list. You work through them on a schedule. That's the way I went to Pittsburgh. I have to tell you, the first few days I think they thought I really did not know what I was doing because it's not traditionally a disciplined process, but we insisted. The group I had, particularly Jack Kluttz, Bob Westerman, and Dorothy Stephenson, really experienced first class labor people who theretofore had handled these discussions, were enormously supportive. We negotiated. The steelworkers finally said, “Okay, we want Bethlehem Steel to be the lead negotiator for the industry in this.” We developed our contract and became the pattern for the industry.

Pattern bargaining from the union standpoint is essential because you have forty or fifty companies all competing. If you permitted one company to have a substantially different

labor contract with cost advantages, it would be very much to the disadvantage of the other companies. They always contended they were doing the industry a favor by keeping a level field. One can debate that. We completed those negotiations. I promptly went back to other responsibilities.

**RC:** Maybe this was a negotiation that you weren't involved in, but I thought some of the specifics in exchange for some short terms savings in labor involved giving stock advantages. I believe at one point the unions got to put a director on the board.

**CB:** That was a part of a negotiation. It was one of the last issues negotiated. Our position on that, and there are letters confirming this, but our position on that was that if the union wished to recommend someone for our board to consider, it would be the same we considered for every other candidate, we talk about the process, but we'd go to our trustees, directors' committee. There would be an investigation. There would be interviews. If the committee recommended it, it would go to the full board, but it had to go through that process. They could make a recommendation. We would in good faith consider their recommendations, but at the end of the day, it had to be just an exemplary individual who would bring credibility to the board.

**RC:** Did do you find that they generally put forth individuals who were?

**CB:** In our case, I don't want to breach confidences, but there were early recommendations that were not satisfactory, but they did go through the process. Ultimately I received a

phone call from the president who asked what I would think about considering someone who was a principal lawyer for General Electric and JPMorgan. I said, “Mr. Williams, you’re sounding better all the time.” It turned out to be Lewis Kaden, who was a partner at Davis Polk. Henry King, a Yale Law School friend, was then either the senior partner or could well have been the managing partner. I promptly called Henry and asked if I could come and visit with him, which I did.

I told him what had happened and that I did not want to move anywhere unless it had Davis Polk’s approval and unless he, Henry King, said, “Yes, he is the type person who should be considered.” Of course, the firm made an exception. Normally, partners in law firms don’t serve on corporate boards, but because Mr. Kaden is such an exceptional person and this was really precedent-breaking, they agreed he could be interviewed and submit his application. From that, Lew went through the process. He turned out to be just an outstanding director. He continues today—he’s one of the directors who’s continued right through the purchasing of the Bethlehem Steel assets and continues today as a director of Mittal Corporation.

Other companies had different experiences I must tell you with who ultimately came on their board. From a governance standpoint, we believe strongly and had Mr. Kaden confirm before our directors that while he was recommended by the steelworkers, once he became a director; his sole objective was the overall best interest of the corporation, not the steelworkers. He had to discharge the fiduciary duty of a director. He did.

**RC:** That's the normal process for directors?

**CB:** Yes, it is. Directors, sometimes I think ongoing but at least annually, as a director, undergo a self-evaluation which is discussed. We talk about ourselves. There is a discussion of the board and the needs of the company really, the needs for advice and direction. There is a very careful review of the existing demographics of the board, discussions about potential candidates or sources that could be discussed with to identify potential candidates. I recommend, you'll see in one of my talks, I think that the chairman of the directors' committee, the independent director and the CEO should separately meet with and talk with each director during the year privately, often over a lunch before a board meeting or after, but sometime and talk about, "How are you doing as a director, Robert? What changes do you think should be made? Who do you recommend we consider?" It's an ongoing process. We were fortunate to have I think just an exceptional group of individuals.

**RC:** There's some reorganization of the different businesses within Bethlehem Steel. Did that have a governance impact as different parts were, I don't want to say spun off, but I would think that that would change certain things about how the board looked at the company?

**CB:** You either are or you are not a part of the Bethlehem Steel organization. You either are or are not an employee at Bethlehem or a subsidiary. If you are, there's no change. All the rules apply. All the standards, all the procedures, all the codes all apply. The business

difficulties, I'm not sure chronologically where we are in the interview, but with some great difficulty on the personal human basis and something that had been discussed for some time before becoming chairman but within the first year after becoming chairman, we had six or eight underperforming divisions.

They were not and did not have the prospect of performing satisfactorily. Very publicly, publicly to the community in which they were located, to the workers, the families, we just simply said, "Look, this division is underperforming. We have three possible actions. Sequentially, we're going to follow each one of these. We need your help, Steelworkers; we need your help, Ship Workers, Railroad Workers, Pipe Fitters. We need your help. We are going to try to improve the division. Here is our recommendation, a plan to improve, maybe capital expenditure, maybe change in a product mix, but a plan a division president has planned to try to fix it.

We'll try to do that over a one to two year period. If we can't fix it, then we will sell it. If we can't sell it, then we're going to close it." It took several years to implement that. Throughout all of that, there were tremendous organizational challenges and issues and disputes and confrontations and some successes and some failures. The governance—we had not one single stockholder litigation. We had no director litigation as to our board. We had no major investigations from enforcement agencies. I think the integrity of the corporation held even though we were going through some very difficult times.

**RC:** Jumping back into the eighties, I don't know how much of an impact these two things had, but I was curious about whether tender offers and hostile takeovers were at all an issue. Was that something you dealt with?

**CB:** They were an issue, always a concern. We were absolutely prepared for them. We had, as many did, retained what was recommended to us by none other than Cravath as the leading firm and the leading person to help and work on those. That was Joseph Flom of the Skadden Arps firm. Mr. Flom personally had acted as counsel for Bethlehem, came at my invitation to Bethlehem and spoke to our board and management from time to time. I think we were prepared. I probably should not go into the specific details of particular issues that we faced because some are public and some are not.

**RC:** We're talking about tender offers.

**CB:** We were very well-educated, very well ready, I guess is the best way to describe it, from the legal defenses, from the training of our officers, particularly the chief executive officer, in how to deal with the phone call or the letter, how then to deal with it, unless it was an offer that was meritorious and should be seriously and thoughtfully considered because it'd be in the best interest of the company to consider it.

The difficulty then, and we haven't talked about this, but early on arriving at Bethlehem, I was assigned to assist and ultimately became the attorney in charge of major civil and criminal anti-trust litigation and became very active in the American Bar Association, and

was elected to the Council of the anti-trust section of the American Bar Association. That's corporate as well as litigation. It's about economics. It's about business combinations. I hadn't thought of that. That was some introduction into the real corporate world.

The anti-trust hurdles in consolidation within an industry like steel in the seventies and the eighties was just not possible. Today in the nineties and 2000s, it was just happening everywhere because of the efficiency and the need for doing it, but not in that era. The likely successful acquisition of a Bethlehem probably was not going to come from another steel company, at least another domestic steel company. I guess the best answer would be, Robert, we were ready and we were always concerned.

**RC:** One of the other issues at that time that I'm curious about is when the New York Stock Exchange moved to end the one share, one vote rule. Did that have any impact on Bethlehem?

**CB:** No. It's still a subject of interest today because you have so many different stock structures within companies. I know it's an often debated governance issue as well but you look at the classifications of stock and some of the hot tech companies who are like the *New York Times*, the *Washington Post*. I've given some thought to that. It ultimately is a matter that just has to be resolved by the state legislatures. They create the corporate ability to do these kinds of structures. It's ultimately going to be determined by the original equity founders of those companies. These are the terms on which we'll invest

and the terms on which we have been successful. Some of the voting power and classes of stock are just remarkable. It was not an issue for Bethlehem Steel.

**RC:** It's still in the mid-eighties that you served as the chairman of the Society of Corporate Secretaries. How did you come to be involved with the society?

**CB:** Because on the day that I met with Mr. Sonneman, who was my predecessor as secretary of Bethlehem Steel, he had several recommendations. On that occasion, one of his first recommendations was you need to become a member of the Stockholder Relations Society of New York City. I hope you've heard of that. The second, you must become a member of the American Society of Corporate Secretaries. He explained what they both were. The group in New York is very informal. It's a group probably of thirty-five companies so far as I know. It still meets monthly. They're corporate secretaries of the major companies. The Society of course is a different organization. I said, "Yes, of course." I believe Bob maybe went to the first meeting.

Ben Rawlins was a former corporate secretary of United States Steel. As a fellow member of the industry, Mr. Rawlins took me somewhat under his wing. He also happened to be a member of a hunting and fishing club in the Poconos where we have a cottage. Mr. Rawlins had a cottage. Ben really introduced us and then recommended me for assignment to the Securities Law Committee, I believe it was called. Then once on that, I was interested in the work of the Society and became involved and ultimately selected then chairman.

**RC:** With the Securities Law Committee, did you deal with the SEC very much?

**CB:** Yes.

**RC:** What were some of the things you were dealing with them on?

**CB:** I thought about this kind of question. I don't think there was a single burning issue as much as it was the overall advancement of governance of the corporation and the constant debate between self-governance and the regulatory governance. We can talk more about that because I continue to believe that we probably have enough laws. We probably have enough regulations. The tradition in our country when a scandal erupts is to need to fix it immediately. The way you fix it immediately is to pass a law. You appoint a committee, have an investigation, seek an indictment, and pass some new laws and regulations. That's just the way we deal with major issues. Sometimes arguably that may be necessary. Often it is not. Often we probably had the laws and the regulations already in place if they had just been enforced.

I continue to believe that when we face major issues that there is a process that can be followed. The first point in the process is defining just what the issue is and what the existing laws and regulations are that may deal with that particular issue. Then we should measure the facts of the incident, the scandal, against those existing laws. The next step is to say, "Is this something that once eliminated, once thought about, once disclosed, that

companies as companies can develop their practices and procedures to deal with it?" If it's in a regulated industry, can there be self-developed protocols or guidelines or practices or procedures that can be imposed? Can best practices be identified? Let's give the world a chance to get through that process.

If that fails, and time has to pass, so the crisis is not there beating up on us all. If that fails, then what is the minimum regulatory process rules that could be adopted? Then maybe, you get to federal legislation, maybe. That should be the last. Of course, our process once there is a truly major issue is you just collapse all of that and you do it overnight.

**RC:** I'd be interested to hear a little bit about your time as chairman of the Society of Corporate Secretaries, what that experience was like.

**CB:** Excellent. Obviously, an excellent board of directors. Many of the corporate secretaries were also general counsel. They were chief legal officers. A number of them were members of the Association of General Counsel. Many went on to very distinguished careers. The Society, as a society, provided this tremendous opportunity to get to know other corporate secretaries, not only in your industry, but across the spectrum of industries to learn truly what the best practices were that you could take to your company. There was an educational part of this. There was a way to get to know the regulatory authorities in a way where you both had the common objective to try to understand what the issues were and figure out ways to deal with them.

I found, for example, that representatives then in government, at the SEC, the Department of Justice, the Federal Trade Commission, they were very responsive to participating in meetings, general meetings of the Society or committee meetings of the Society. It gave you a chance to hear their issues, hear their concerns, and to make yours known to them. There, of course, was some traveling involved in that. It was just a very, very significant opportunity.

**RC:** Were there people at the SEC you remember working particularly closely with?

**CB:** I looked recently at a list of people at the SEC. For Bethlehem Steel as general counsel, as secretary, most of my really professional work associations would have been with branch chiefs or assistant branch chiefs at the SEC. At the commissioner level, at one time or another probably starting with Al Sommer, certainly with Rod Hills. Rod is someone I knew and respected at the Commission. His wife is a longtime personal and professional friend, Carla. She was the trade representative and we graduated from the same law school.

Ed Fleischman, I came to know Ed in a number of different contexts. David Ruder as a friend and professor, Richard Breiden I knew, of course Arthur Levitt. I was requested to—it was a somewhat challenging assignment—to testify before the Levitt Commission basically opposing the timing more than the substance of what he was trying to do in some of his accounting regulatory reform. Harvey Pitt, Harvey Goldschmid, Bill

Donaldson, Chris Cox, those are all folks over the years that I've had known or had some association with.

The working association would have been at a very different level with the branch chiefs and assistant branch chiefs. There the challenge I always found with the SEC, but the same is true in the practice of law generally and before the court generally, is establishing your credibility. If you can establish your credibility, your integrity, then you will have the precious thing you desire most and that's just access to get your issues heard and get them dealt with in a timely way. If you don't have it and you're in the midst of the filing of some sort, you're trying to seek a clearance of some sort, if you can't get access and if people don't know your background, your integrity, then you're at the mercy of a big regulatory agency.

**RC:** It's critically important to build those relationships.

**CB:** We worked very, very hard to establish our credibility and integrity with the Commission and the Commission staff at the lowest levels.

**RC:** The Society is important in that.

**CB:** No question.

**RC:** I'd like to move on to discuss your becoming chairman and CEO. Was that something that had been planned long in advance?

**CB:** No, I don't think so. Succession planning at Bethlehem was a very orderly process and something that in my experience with several chairman, because I was the general counsel and the secretary as a part of the process and the planning the process, no. Mr. Williams was the chairman and the CEO and had indicated his plans to retire. The board went about a very orderly process of considering of internal and external candidates. As that process emerged, several individuals had discussions with me about whether I would be a candidate for this. I thought about it and measured it against what the challenges were facing at the company.

What I concluded was that yes, I would wish to be considered, but only if three existing internal officers could be a part of the team of officers that would then lead the company. One was Roger Penny, who was the operations person, a terrific steel plant manager and someone I envisioned as the president of the company and the chief operating officer. Gary Millenbruch who's the financial officer, I envisioned as the CFO. Jack Jordan I saw as the administrative officer of the company and chief of staff, in fact. I saw a way that if that team of people could emerge, sure I would be the chairman and the CEO but within the context of working with these other officers, that I thought was something that I would consider and would be able to do. Ultimately, that's what happened.

**RC:** A law background is not normal for the steel business, I would think.

**CB:** Well, Robert, you should do your homework.

**RC:** Is it?

**CB:** In regulated industries, it is more common than is thought. At U.S. Steel, Chuck Corry, a lawyer, had been CEO. Prior to that, Roger Blough, partner at White & Case, had been chairman. Then you can jump to the other industries, David Goode of Norfolk Southern, Chuck Prince at Citigroup, both Pfizer and Merck. The current CEO of Merck is a general counsel, Ken Frazier. I thought often about that and have written a couple of papers about it.

Two things happen where an industry is heavily regulated: the importance of the legal function is required, and then second that person then becomes very viewed by the officers and directors of the company because he's responsible for some many issues that are critical to success of the company. If he has an interest in higher management, it can develop. Certainly in my case, make no mistake, I could not have possibly acted in the operating and financial and environmental affairs areas without the leadership of these other officers.

**RC:** Were there particular areas you found your background as the general counsel and your legal background helpful?

**CB:** Yes. International trade, labor, environment, healthcare, pensions, external affairs, testifying before Congress, meeting with members of the executive branch and the financial community. Much of this is communication. Organizing and public speaking and the analytical skills that you're taught as part of your legal training are very helpful. For a good litigator, I've said before, the first thing you know is how much you don't know. You're just never hesitant about getting help and do not get in that witness chair unless you know what you're talking about. You reach out. You create a little humility. If you have that training, that skill, it's helpful.

**RC:** The issues you're facing as chairman and CEO, they're similar to the ones that Bethlehem was facing in the eighties, the trade agreements, trade issues, labor. Are you dealing with same things?

**CB:** I think so. Different time sequences and different prioritization, but the issues, the profitability of the company, the competition, competition both foreign and domestic, both fair competition as well as unfair competition, the increased prominence of the so-called electric furnace producers, the mini mills who made steel. They could make about 50 percent of the lower grade qualities of steel much cheaper because basic steel making is—only a lawyer could have this analogy, my steel experts tell me—but it really is a lot like making soup. What you put into a good soup is what you get out.

An integrated steel producer is someone who starts with iron ore and limestone and coal and turns it to coke and turns it to iron and refines it and out comes steel. The quality of

the steel, the metallurgical mix of the steel is whatever you want it to be. If you're an electric furnace producer, you just take scrap steel, scrap cars and that's what you put in the furnace. That's what you get out. It permits you only to make about, in those days, about a third to one half of the range of quality products. What Bethlehem Steel was capable of doing was making a low quality steel but they could also make Tiffany products because you put it in. You mixed it in. You made the soup to come out that way.

There was tremendous competition by the electric furnace producers entering the market. The lower grades of steel they could make at much less of a cost. So here you had divisions who were making it—in the seventies and the eighties, they were profitable. Today with the electric furnace producer they were not. Increased domestic competition and then substitute materials—different forms of plastics is the easiest generic description—but composite materials arose. They could substitute for different steel applications. They became a real competitive threat. Dealing with competition is a major issue.

The unprofitable divisions, what do you do with unprofitable divisions? We had talked about it. We had it in different pieces but we realized we had never really through thoughtfully planning throughout the organization developed our mission and our objectives and our strategy and our values. We had a strategic plan. We had an annual financial plan. That's just part of it. In fact Carol and Jack Weber, professors at the

Darden School at the University of Virginia, guided us through that process, so just remarkable.

I have used them often, recommend them often. They got us through that as a company, at all levels. That was very important to go through that because what it told us was that we needed to focus on our core business. We make steel. That's what we do. We're not in the coal mining business. We're not in the shipping business. We're not in the railroad business. We need to do what we do best and concentrate. We need to be the premiere steel company. That's what we need to be.

That was a real challenge. Concurrent with that, we still had all the issues with the environment, with issues related to healthcare and pensions issues, not unique to Bethlehem. All mature manufacturing companies had the same issues. Automotive had it, cement; I could go through the list.

**RC:** You did a great deal of litigating before the ITC also.

**CB:** Yes, a lot.

**RC:** Could you tell me a little bit about that?

**CB:** Yes. The ITC is an independent international trade decision-making body. These are generalizations, but often the petitioner, the plaintiff, brings an international trade case. It

winds up between two different agencies, the Department of Commerce and the International Trade Commission. They each have responsibilities in adjudicating the merits of a trade dispute. The ITC is just critical in that process.

Unlike most litigation in which at the end of successful litigation, the plaintiff wins a monetary judgment, in trade litigation you don't. If you're completely successful, the measure of success is the imposition of a duty, a tariff on the party who is trading unfairly. Those revenues then went to the United States government. They didn't go to the injured party. That was the process. To start a countervailing duty case or a dumping case or other litigation, you would often file and find yourself quickly before the International Trade Commission. It's a long process. A year, year and a half would be quick. We engaged as an industry and generally as a co-petitioner with the Steelworkers, often that was the case.

**RC:** These cases come back again to what we were talking about earlier, the issues of government subsidized companies and dumping and things like that. You're just confronting them again before the ITC?

**CB:** Yes. It was different in that, you litigate by product and by country. It may be a particular product from Japan, a particular product from Germany or England or particular steel product from a particular country. That's the way you litigate. It's very product and very country specific. The proof is very corporate, is very economic. It's very anti-trust. I sometimes say that the best training to be an ITC lawyer is to be a good

anti-trust lawyer. It's all about economics. It's all about understanding the manufacturing process, sale process, cost of manufacturing, those kinds of concepts.

It's very lengthy, very uncertain litigation, to some extent, very public policy influenced because witnesses routinely in these hearings would include either for you or against you elected public officials, people in Congress, customers, suppliers, those who have a vested interest in the outcome. In our case, for example, Senator Specter, Senator Rockefeller were frequently witnesses, as were a variety of congressmen, Congressman Jack Murtha. I'm just thinking of names that come quickly to mind at hearings but they would be very, very frequently a part of that process.

**RC:** Testifying as to the effects of these trade practices?

**CB:** Yes, urging imposition of remedies, testifying to the adverse effect on their constituents of unfair trading practices.

**RC:** You won a number of these cases.

**CB:** Yes, very successful.

**RC:** When you win one of these cases, what happens?

**CB:** There's an appellate process. Ultimately, there is a final order. The final order generally is the imposition of a duty, a tariff, against that product coming in. There can be some retroactivity, but that's a different subject on how far back you can reach. Then prospectively, any product coming in that has been found to be dumped by, pick a number, 10 percent, would have an assessment of that amount against the product which had to be paid. The collection of that would go into the U.S. revenue.

**RC:** What were some of the other major issues that you were facing as chairman and CEO? Are there other things you'd like to discuss about your time?

**CB:** I really think, Robert, we've covered most of them. Diversification within steel, we've not talked about that. We did make a major acquisition of the Lukens Company, a very substantial plate manufacturer in Coatesville, Pennsylvania, a very successful acquisition. The concentration on the core business caused us to continue to reduce non-steel core parts of our business, but on the other hand to acquire a company like Lukens. Nothing comes quickly additionally to mind.

**RC:** One of the other things I was curious about is to go back to governance a little bit. By the time you're the chairman and CEO, you've been involved in governance as a general counsel, as corporate secretary. You served on the board.

**CB:** I was a director in '86.

**RC:** Now as chairman and CEO, did your view of governance or how corporate governance functions change as you took on these different roles?

**CB:** I don't think so. I think there's a certain mystique about governance and the question of who's responsible for governance. I believed from day one and continue to believe today that in any organization, the chief governance officer is the chief executive officer of the company. That's the chief governance officer. It isn't a staff person or isn't someone with the title of governance, certainly not the general counsel.

The corporation that governs best, and to me it's the only way that you have a satisfactory governance culture and compliance, is if the culture, the practices, the procedures, the code of conduct, the education, we could talk about all that, is such that each employee whether for one day or twenty years, each employee understands that compliance, accountability, governance is my responsibility. I understand that. If I'm unsure, I need to pick up the phone. I need to talk to someone and say, "I've been asked to do this," or "a customer wants me to do that," or "Joe says I should do it this way."

It's all very easy to say. I know that. Until you have that sort of corporate value—it's all about a values system. That's what you should hope to do. Every director has to set the example. Every officer has to set the example. The CEO has to lead it. Then you have your code of conduct, if you go through the steps, and what we often forget is that the era of the sixties and the seventies was anti-trust compliance. Long before code of conducts were ever heard of, there was a very rigid code that was developed in companies.

That was because of the tremendous criminal enforcement effort of the Department of Justice on anti-trust issues. My first experience with corporate codes was really with anti-trust, a very detailed anti-trust compliance guide, a certificate the people signed for anti-trust compliance, an educational program to teach people about anti-trust compliance, an inspection particularly of the commercial and the sales offices. That's the era of the sixties and seventies.

Along come foreign payments and other accounting issues in late seventies and eighties. A broad corporate code of conduct emerges. Anti-trust is just a subpart of the corporate code then. That corporate code, and it lays it out and if you're a best practice company, certainly in the eighties, it was common to have a corporate code. It was meaningful, it was the code.

Then there was an educational presentation of that throughout the organization, certificates signed by employees throughout the organization and then understanding that if you have a question, this is who you call. Everyone knew where to go, what to do. The toughest part often debated is when there were breaches. There was known enforcement. If someone did not comply, their number was called and they were out.

**RC:** Internal enforcement.

**CB:** Internally. People understood that non-compliance has its consequences. Was that always the case? No. There could be some marginal actions. Again, it was easiest in cases involving anti-trust, easiest in outright fraudulent invoicing, steps like that—but you had to take action. You had to report it to law enforcement. You had to prosecute. Sometimes those were very, very difficult decisions. It often would be easier to simply discharge the employee and let the matter go away.

But once you do that, you have impaired your overall code, your overall enforcement because you're telling people you can't enforce the rules. I know in today's environment it may seem old fashioned and puritanical but it's all about personal accountability. That's what corporate governance is all about. The corporation can't comply. The corporation can't govern, it's the people. The corporation is the people.

**RC:** You've got to build that culture.

**CB:** Absolutely. It's tough. It's very tough. When I joined the MetLife board, there were issues involving sales practice compliance. MetLife had a terrific corporate compliance program. What they did is simply move the rigor of all of that to deal with this specific issue, to deal with sales compliance, and established a very, very excellent program. This was both under Harry Kamen who was then chairman and later under Bob Benmosche. They did it in the right way, the right way that corporate performance as well as individual performance should be done. They tied it not only to your performance, but to your compensation.

**RC:** I'd like to talk a little bit about the transition from being chairman and CEO to going to Skadden Arps. Could you tell me a little bit about how you came to leave Bethlehem and go to Skadden?

**CB:** A couple years before I retired, probably in '98, I had initial discussions with the board and senior directors in particular about my wish to retire at age sixty-five, the normal age. I was asked to reconsider that given the issues facing the company, the opportunities facing the company. I said, "No, I will have been CEO for over eight years. That's longer than anyone excepting our founding fathers. I think it would be an excellent time for change, especially if we can get some further things accomplished," which we did.

That started then a really orderly process from the board's standpoint and mine as well. Some of the best advice I've ever received was to start planning your retirement now. Don't wait until six months before your retirement, and involve your wife in the process, which I did. We started our discussions very informal and over time. One decision was pretty easy to return to the practice of law. A second decision was easy. I could say all three were easy, to spend a substantial part of my time in volunteer and especially higher education efforts. We could talk about that. The third, obviously some personal family travel time, divided life into three segments.

The return to law part of it—both our sons are attorneys. I had thoroughly enjoyed my years primarily as being associated with the law. It was not appropriate while an

incumbent CEO to really have discussions either, I didn't think. A number of firms, and ultimately three in particular, had discussions with me about possibly joining them. I said, "Please, for your sake and my sake, let me retire. Then promptly we can have further discussions and decide." That was the progress against that kind of process.

One such firm was Skadden Arps. We had a lunch in New York City involving Mr. Flom, Mr. Aaron, Mr. Rogan, a product of the SEC in fact and who I think has been interviewed early on some years back for this type of interview, and Bob Lighthizer, then the Skadden partner who had been formerly an ambassador and was very much involved in trade activity. I think there were four or five of us. We had a discussion in New York. They asked if I would consider becoming associated with the firm in D.C. I was very flattered. I said, "There is one major problem. I've had no discussions, none, about this with my oldest son Kevin," who was a partner at Skadden Arps working in mergers and acquisitions.

I don't recall whether it was Mr. Flom or Mr. Aaron or someone that said, "Don't worry about it. We talked to Kevin sixteen months ago about this and told him what our hope was and he said, 'I think that would be wonderful. I don't think there's a chance that Dad will consider that.'" Then the pitch was made, it would be great to be associated at the same firm as your son, that kind of thing. I thanked them very much, returned home, thought about it, discussed it of course with Joanne and called Kevin. He said, "Yes, Dad. If you join the firm, remember you're going to be working for me." (Laughter.)

That was very special. That's generally the background. I expressed my thanks to the other firms. Most of them really understood, particularly given the family situation. I believed then, I think I said to you, and believe today that I was honored to be associated with the firm. It's the number one firm. I was at a retired partners' meeting two weeks ago and it still is, by objective opinion, not trying to make yourself feel good, but by what people say about the firm and the ratings that the firm received. That's the background.

**RC:** What sorts of things did you work on at Skadden Arps?

**CB:** Broad corporate governance, M&A, legislative, just basically being a resource to respond to issues and partners' concerns, public speaking. One of the requests I made, which the firm was very supportive of, was to maintain my membership, for example, in the Association of General Counsel, Society of Corporate Secretaries, Business Council, Business Roundtable, organizations which for I was eligible, though with a transition over to retirement, which I did and continue today.

**RC:** You mentioned earlier that you testified on some of the auditor independence hearings. Was that while you were CEO or was that at Skadden before Arthur Levitt?

**CB:** Congressional testimony was all as a CEO.

**RC:** But you said you testified before Arthur Levitt?

**CB:** That was prior, when he had his accounting, his regulatory commission. Give me a date on that.

**RC:** It would have been in the fall of 2000.

**CB:** I think it was before that. It was in New York City. It was not before the SEC. It was before the group he appointed Ira Millstein.

**RC:** The Blue Ribbon Panel?

**CB:** The Blue Ribbon Panel. That's what I testified for in New York City.

**RC:** Okay, I see. That would have been '98, '99.

**CB:** Yeah, as CEO, I testified on behalf of the Business Roundtable.

**RC:** Given that you were observing the governance changes that came with auditor independence and Sarbanes-Oxley, I'd be interested to get your perspective watching those unfold from the Skadden Arps perspective and to hear what you thought about the changes in governance in the last decade or so generally.

**CB:** I should clearly speak here now as an individual.

**RC:** Yes, absolutely.

**CB:** Not for Skadden Arps. I'm just speaking as an individual. When I look at the whole regulatory process, and it goes back to something we talked about earlier, it's trying to clearly understand what the issues are, and then clearly understanding what the existing, whether it's a statute or regulation or accounting procedures that govern that sort of area, and then trying to make an informed decision about whether any change is necessary but then if it is, what sort of change.

Before you act in a regulatory environment, you need to identify the risk. Then you need to determine the urgency of doing something. Then if it's not done well, figure out the impact of doing X and then finally the resources you have to do it with. That just repeats again and again in the SEC testimony. I agree with that, but when I apply that to much of what has happened, rather than single out particular legislative changes or just as generalities.

I found that we have often simply overreacted and overreacted unnecessarily, thereby complicating certainly the private sector's ability to effectively, efficiently operate and govern. There are stories of course coming out of Sarbanes-Oxley and stories coming out of Dodd-Frank and they're still emerging. Does that mean that those were totally wrong? No, of course not. But were there some excesses in both? Absolutely.

**RC:** You talk about risk, urgency, impact, and resources. Is there a particular one of those that you think that they didn't measure well or didn't account for?

**CB:** This is so much since 2000 almost, I'm very reluctant to get very specific because it will become very company specific as I get specific. I feel like I shouldn't do that from a Skadden Arps standpoint. I shouldn't do that.

**RC:** All right. That's fine. Looking at corporate governance from the perspective of your whole career, what are the main changes that you've seen and where do you see it going forward? Those are the big questions.

**CB:** I believe that corporate governance has been and is today and will be tomorrow only as effective as the leadership that's provided by the chief executive officer, the officers, directors of a company. It's absolutely true their personal accountability sets the highest standards of corporate governance. That effort, and this will sound critical and I don't mean it that way, but efforts to institutionalize corporate governance are well-intentioned, but the heart of effective corporate governance is just enormously personal.

The personal accountability, personal responsibility of individuals to understand and to comply with the rules of the road that affect their particular job and to meaningfully know where to go to get help and feeling that it's okay to make a phone call. "I'm confused. I don't know what to do. What should I do? I have to hate to call you because I just

observed Pete doing something on X just now and I don't know what to do." That sounds so trivial, but it's not. That's the heart of the successful governance system.

You can have all of the appointed governance officers. You can have all the rules, all the regulations. If they just get tossed on the shelf without a meaningful educational program, without a very important inspection of compliance and with consequences if you don't comply and wherever possible actually putting them in place. We haven't talked about it but I believe a corporation has its four constituencies.

You can with metrics determine whether individuals and whether the company as a whole are achieving their responsibilities to their stockholders financially, to their employees, to the customers and suppliers, to the public at large. You can put real, objective numbers behind those. Governance is one of those. How are we doing as a company? How am I doing as an individual in achieving compliance? What reported EPA and OSHA violations are there? There are ways of putting compliance right into the compensation program.

**RC:** I think that that pretty much covers everything that I have. Is there anything else you'd like to talk about?

**CB:** I think it's just going back to what we started to talk about. It's part of governance. The governance foundation I believe has to be built on a corporate structure of an enterprise that really understands what its mission is and its objectives and its strategy and its values

system. Those need to be very, very widely and effectively communicated and educated and lived, most importantly. With that, then I think in terms of governance, having your governance written products, the educational program to support them, the inspection, if you will, a verification of compliance, the certification of individual compliance, the consequences if you don't comply, those are all critical parts of a governance program.

Beyond that, I think the issues facing corporations today are very challenging. We haven't talked specifically about this and this is just one person's view, but especially in today's environment, the importance of something which other than financial institutions is relatively new in the last five to eight years, this enterprise risk assessment is something that every company, large, small, private, public, should be doing, and it's more than financial risk obviously. If you were to ask what are some of the major issues facing the corporate world today, I would put very high on that list the importance of enterprise risk assessment. It's true in colleges and universities as well.

**RC:** What do you mean by enterprise risk?

**CB:** Determining what the risks are that the organization is facing, your reputation risk, your credit risk obviously, the risk of a major incident because of the business you're in, your liquidity. Every business is somewhat different, but what are all the things that our company, our business, our school potentially face? That's not something that you're going to find in a text or a piece of legislation somewhere. It's to look at your enterprise, what could go wrong, and identifying that. That has now emerged, and it may come up

in your interviews. I hope it does because enterprise risk assessment is directly tied to governance of the company. Unless you have effectively assessed the risks facing your enterprises, it's pretty hard to govern it. A robust enterprise risk assessment and an enterprise risk plan to deal with possible incidents, risks that you may face.

The second area and it also ties directly to governance in spades—and we can talk about some examples (some are public and some are not)—is management succession, especially CEO succession because it's very hard to govern a company if you have a loss of a CEO by incident or medical without an effective succession plan that has been thought through. We hate to see old Hank go, but everyone knows, at least on an interim basis, who's in charge and it's the interim emergency succession that's so critical.

Every enterprise should have it. Some still don't, believe me. Enterprise risk, management succession, and I guess this is the evangelical quality of our discussion but this whole idea of personal responsibility, personal accountability. It isn't something that *they* should handle. It isn't something *they* should take care of. I should do it. That's my responsibility. I've got to be a part of it.

We talked a lot about trade. That I believe is as much a relevant issue today, fair trade in accordance with international trade rules, is just as critical. There's so much attention drawn today to executive compensation issues. I believe it may be much simpler, but the solutions are ones that are often not satisfactory.

Because if the businesses of the company has to be responsive to its constituents and if the constituents are, as we discussed before, the financial constituents, principally your stockholders and your financial community, if they are your customers, they're your employees and the public, then a compensation system can be structured that discloses how you are going to achieve satisfactory corporate objectives that are responsive to those constituents. They are not qualitative. They're quantitative.

For some years I have been privately outspoken, but in meetings have spoken to the misleading nature of proxy disclosure of compensation and particularly the totally inappropriate articles and headlines on executive compensation because the accurate measure of executive compensation is what we're taxed on. What we should see in a proxy statement is W-2 compensation. We should see what the executive is actually getting. Some are doing that, only by voluntary disclosure. What we are seeing are the massively inflated numbers that have nothing to do with what an executive gets in cash and what he's taxed on.

**RC:** Can you give me an example?

**CB:** Stock options, stock awards. They haven't even vested. It would be so easy to have a system in which compensation is tied to responsiveness to the four constituents with qualitative measurements in a proxy disclosure.

**RC:** You're saying what's taxed is what should be disclosed.

**CB:** Sure. That's what you get. That is your compensation. It isn't the possibility that some day you may get a restricted share of stock or it's not, the possibility that your option today is worth X and someday it may be Y. Disclose the contingent possibilities. I'm not suggesting otherwise, but the heart of disclosure and what we understand an executive gets is what the United States government thinks he gets. I really give you an assignment, Robert. I want you to read a few proxy statements and tell me how close you think they are to that executive's W-2. Can you find it through backing and filling? Yes. Can you ever understand that in the headline in the local papers or the headline that local executive makes \$30 million? That's just false.

**RC:** Executive compensation is controversial and always gets people riled up.

**CB:** The way to deal with it is to make it quantitatively determinable. You can debate whether those are the right determinants, but I think if the stockholder financial objective is to increase the value of stock by X or if it's to pay it at the end of Y but very specific, have a level of profitability. Every company will be different. The financial measurement is to reduce the unfunded pension liability by Y. The brokerage community, the investment community would agree with it. Those are the key issues. For the customer, it's X. It's quality performance.

It's on-time delivery. It's quantitative. With the employees, it's probably more in the safety, the workplace, diversity kinds of issues. The public is really what we've been

talking about is code of conduct stuff. Have you had problems with law enforcement? Have you had litigation? Then that's public. You can debate whether those are the right measurements, but for each year you know whether someone has done it or not. If they do, then they deserve to be compensated. The comp, you understand every little bell and whistle what someday contingent they may get, but he really got \$1 million. That's a lot of money. He didn't get \$30 million. I really think Robert, that's it.

**RC:** We covered a lot of ground. I want to thank you for agreeing to be interviewed.

**CB:** Sure.

**RC:** It's been a pleasure.

[End of Interview]