

Securities and Exchange Commission Historical Society
Interview with Harvey Pitt
Conducted on May 11, 2007, by Kenneth Durr

KD: This is an interview with Harvey Pitt on May 11th, 2007, in Washington, D.C. by Kenneth Durr. I want to start with your background and your education. You went to St. John's for law school?

HP: I was a graduate of St. John's University Law School. Actually, I think it's School of Law. Before that I had graduated from Brooklyn College City University, so I was the product of a public education. As I remarked when I had my confirmation hearings for Chairman, I was a first-generation American, first-generation college student, first-generation lawyer in my family.

KD: I was interested in whether there were any professors along the way that set you in the direction you went—inspired you to follow law, and corporate law?

HP: The interesting thing is that when I was in law school, my thought was that I was going to be a labor lawyer. I took a lot of the electives I was allowed in labor and arbitration, and things of that nature. I got into corporate and securities laws almost by a fluke. I was representing my law school in the National Moot Court Competition. In the final round, we argued a case, which was based on a then district court case called Fisher against Kletz—K-L-E-T-Z—which was an accounting defalcation case. And we argued it; and I argued it along the way in front of several representatives of the SEC. I was going to go clerk for a federal judge, but the SEC staff people asked me to come down to the SEC and be interviewed for a position. And I did, and was offered a job in a number of the divisions. In those days you had to take a test, which I took; and a number of divisions offered me a job. But the General Counsel's Office intrigued me, and I was persuaded that, rather than clerking, I should go to the SEC. And the rest, as they say, is history.

KD: Who were the people who saw you do that moot court? Do you remember?

HP: In particular, yes, and there are interesting anecdotes about that. One was Mike Eisenberg—whose real full name is Meyer Eisenberg, but everybody called him Mike—and Donald Feuerstein. Now, what was interesting is that Mike ultimately was my boss when I first started at the SEC—one of my bosses, as was Don. But when I became Chairman, I became his boss, because he was back in the General Counsel's Office. Don Feuerstein left the SEC and became general counsel of Salomon Brothers. And then Salomon Brothers had a bit of a flap over certain treasury bonds and I wound up representing Donald before the SEC.

KD: You chose wisely.

HP: Well, it came out well for him. But in any event, I just thought it was funny how things sort of came full circle, as it were.

KD: So you chose the General Counsel's Office.

HP: Yes.

KD: It just looked more interesting—looked like more challenges? What was the reason?

HP: I was very impressed with what the General Counsel's Office did. It was more my style. And I suppose, in part, I was intrigued by the fact—I think this is correct—that nobody from St. John's had ever gone to work for the General Counsel's Office at the SEC. And so I just thought it looked like a very exciting place to work. The SEC was an agency that had the highest reputation, anyway; and I thought the General Counsel's Office might be a good spot for me, so that's what I wound up doing.

KD: I wanted to get to that idea of the SEC's reputation. More specifically, what was the culture, or the morale, inside the Commission when you came in?

HP: The morale and the culture were fabulous. I think people believed in the mandate. When I came to the SEC, which was in August of 1968, Manny Cohen was the Chairman. That was a very special kind of thing, because Manny had grown up at the SEC and, I believe, was the first staffer who became Chairman. I may be wrong about that, but I think I'm right. And of course, he was also from Brooklyn, which wasn't lost on me. And shortly thereafter, with the change in election, Hamer Budge became the Chairman. But the spirit that I saw there was: people were very much persuaded that their mission and their mandate was crucial to our capitalist system and economy. And people worked well together. It was a small agency at the time—it's grown over the years—but people knew each other; they liked each other. There didn't seem to be a lot of internecine warfare going on. Maybe it was because I was so new, and so young, that I missed some of that. But I don't think so. I think I would have felt it, or heard it, or seen it, if it had existed. So I thought the culture was great; and I formed some lasting friendships there.

KD: Well I hope we talk about some of those as we move along.

HP: Sure.

KD: But I want to talk about your boss, the General Counsel at this point. Who was it?

HP: Phil Loomis. His full name was Philip A. Loomis. Phil was legendary. I have to say, I thought he was brilliant. We would work on briefs, and Phil would review the briefs after they'd been really worked over by one of the two number two people, either Walter North—Walter P. North—or David Ferber; I think it's David E. Ferber. And it would be interesting, because Phil would call us in, and he would sit there, and call in his secretary, who was Ethel Tashman, and dictate to her without looking at a single piece of paper—complete paragraphs with citations included. I mean he was unbelievable. Phil was a bit of a character.

KD: In what way?

HP: Well, at some point—I think by the time I got there, or shortly after—he lost his wife. And they were very, very close throughout life; and so sometimes he became forgetful about things, and so on. It was clear to me she must have taken incredibly good care of him, but there were always stories. At one going-away party—I don't know that Phil gave the gift to the right person, so that created what they called the 'Phil Loomis Rule', which was you always had the departing person leaving the General Counsel's Office sit immediately to the right of Phil. It was just things like that. But as I say, Phil was brilliant, and a very decent person. We went out to lunch, groups of us, almost all the time: Dave Ferber, myself, and some of the other people, like Dick Nathan. And Phil Loomis would often join us. It was great camaraderie and great spirit; and I think everybody admired Phil as a true intellect.

KD: On those lunches did you talk shop?

HP: Oh, yes.

KD: Did you talk about the cases?

HP: Oh, we always talked about things. In fact, eventually one of those lunches, many years later, got me ultimately kicked out of the General Counsel's Office. This was, I think, when Brad Cook was General Counsel for a period of time, or maybe when he had gone downstairs to be Director of Market Reg—but I spun some theory about institutional membership on stock exchanges; and the next thing I knew, I was involved in a massive case involving institutional membership which we were very successful in, and eventually I became the first Chief Counsel of the Division of Market Regulation. So, that's how—

KD: It didn't get you kicked out necessarily, but—

HP: Yes, well, not kicked out in a bad way.

KD: I know that institutional membership became a huge issue a little later on. What kinds of things were you focusing on in the '68, '69 era?

HP: Well, I remember in that early period we had a huge number of broker/dealer cases. The Commission had really cracked down on boiler rooms and things of that nature. And so there were a lot of appeals from Commission decisions involving putting broker/dealers out of business, and sanctioning individuals. I had a lot of those cases, which I found exciting. We had cases involving the exercise of extra-territorial jurisdiction. Then I know we had cases involving the offer and sale of securities by various means, and the like. And there were big issues on market structure. Market structure was a very big issue in '68. When I first got there, the Commission was looking at fixed commissions. And ultimately, when I was Executive Assistant to Ray Garrett, the Commission would

up abolishing fixed rates. But this was starting in the late '60s, and it was a fascinating process, so that was a very major area of concern as well.

KD: Was the Commission, in your estimation, pretty much completely behind fixing commission rates? Or was there a lot of debate?

HP: I think there was a lot of debate. And to some extent, although I think we take it for granted today—and I have no doubt that was the right decision—it was difficult, because the way the fixed rate structure worked, institutional transactions, which were then not nearly as dominant as they are today, basically subsidized individual transactions. And so you got a fixed rate. And there were issues about whether investors would do better or do worse under those circumstances, and the like. But I think by the time the issue really evolved, it was clear that unfixing rates had to be the right way to go. Even by the time the Garrett Commission did it, it was fairly self-evident. I still think it was changing two hundred years of history. And so, doing something like that is no small feat.

KD: Well, in the area of market structure—another big issue that, I know, came along and peaked in the early '70s, was the idea of a centralized market, or allowing traders to go off of the New York Stock Exchange onto other exchanges. Was this also surfacing at this time?

HP: Oh, yes. There were a lot of rules. For example, in those days, the New York Stock Exchange had Rule 394, which then became 390. They changed the numerology, and that does create confusion. The SEC has done it too. There used to be a Rule 2E, and now it's a Rule 102E, and so— But the Exchange had a lot of rules that required people who were members of the Exchange to do all trades in New York Stock Exchange listed securities on the floor of the New York Stock Exchange. This was troublesome because the so-called third market was evolving. And one of the difficulties you have is that if you can trade in a stock in multiple markets, there will be competition on the prices. But if you have a rule that prevents people from doing that, or at least some people from doing that, that may prevent people from getting the best price or the best execution that they're capable of. So this was a very significant issue. And it really dictated a major change in the exchanges, which we're still undergoing. It's still ongoing. But ultimately, 390 was repealed, and the ability of people to trade listed stocks in venues where they weren't listed, or unlisted trading privileges, became taken for granted. And at one point, the New York Stock Exchange had a hundred percent of the volume in New York Stock Exchange listed securities. Today, I think that number's about fifty percent, or sixty percent; so it's clearly made a huge difference, and people are constantly looking for other venues. That competition has worked ultimately to reduce transaction costs and the price of securities. So I think it's all been very positive; but again, when you go back in time and are confronting the change, it became very difficult, so that whole market structure issue is important. With respect to a central market system: the Commission also looked at how you tie together all of the various marketplaces, and how you provide more competition. What was interesting is that in the '75 Act amendments, which were, before Sarbanes-Oxley, the major revision of the securities laws since their inception— Congress decided to call it a national market system instead of a central market system.

That was the source of much humor at the SEC. I think some people thought a central market system sounded communistic in some ways, and so on. So a national market system sounded more patriotic. But particularly under Bill Casey as Chairman, the Commission really started looking at a lot of critical issues; and market structure was very definitely a major area of concern: fixed rates, off floor trading, who could be members of exchanges, and the like; all of which led to all sorts of activity by the SEC. I think it was an incredibly active period in the agency's history.

KD: Well, getting into that, your career had a small jump, where you became a legal assistant to one of the commissioners.

HP: Oh, yes. Well, I started in '68, and in early '69, Frank Wheat, who was a commissioner, needed a legal assistant. I was recommended, probably by Don Feuerstein and Mike Eisenberg, I don't know; but I was recommended by people in the General Counsel's, I'm sure, because I didn't know Frank at all up until that point. So he interviewed me and decided to bring me on as a legal assistant. That was absolutely a phenomenal experience for me, because I was at the agency maybe six, seven, eight months, and had seen it through the prism of the General Counsel's Office; but seeing the agency through the prism of a commissioner was really eye-opening, and for me, quite dramatic, because the commissioners saw everything. And the way the Commission operated in those days was quite fascinating. Frank was a Democrat on the Commission; and he had been a very highly respected corporate lawyer in private practice at Gibson Dunn. I had to do just about everything, cover all sorts of subjects; and Frank taught me a lot about how the Commission operated. He was, I thought, just an incredibly gifted human being. He's very smart. But he's also a very decent person. He was somebody I enjoyed working for. I admired him; and I suppose, in some senses, he was one of my first mentors.

He had a number of quirks in his personality. The first day I went to work in my new office, I got in early, and all of a sudden I heard this huffing and puffing, and wheezing; and I got up to see what was going on, and it was Frank. His office, which was in the building at 500 North Capitol Street, was on the 7th floor; and Frank would never take the elevator. He would climb the steps two at a time, at a run. He was into mountain climbing, and hiking, and things of that nature. So by the time he had taken seven flights two steps at a time, he was clearly out of breath, so that was one of his quirks. The other quirk, that I found eye-opening, was that Frank had a very strange filing system, which I'm told many old-time lawyers did; he kept all of his piles of paper on the floor, surrounding his desk. And so if you went over to talk to him, you had to be very careful not to knock anything over.

But Frank was just interested in so much. He had done the Wheat Report, which was a major contribution to the development of the federal securities laws, by combining the 33 and 34 Act approaches to disclosure. The concept in the statute is the 33 Act governs the issuance of securities, and the 34 Act governs the trading. And the effort was to integrate the disclosure process so that there could be referenced to and reliance upon disclosures made in each area. That was an idea that had been circulated in '64 by Milton Cohen, who had an illustrious history as the director of the SEC's Special Study of the securities

markets. Frank turned that idea, with his governance of the Wheat Committee, into a reality. It was a brilliant job. A lot of the disclosure achievements and developments that the SEC has presided over were started by Frank. Anyway, I got to Frank after he had finished the Wheat Report, and started working with him. Frank was just into every issue. I learned from Frank how a Commissioner is supposed to function. You just would watch him; he read everything meticulously; he knew a lot; and he would tell me to raise any issue I wanted. And I took him literally. Sometimes he had to restrain my enthusiasm, but I just learned worlds from him, as a result of working with him.

KD: Did you see the Commission in action?

HP: Oh, yes.

KD: Did you sit with Frank Wheat?

HP: Yes, I would sit in the back of the room with the other legal assistants, and watch what would go on. In those days, commissioners only had one legal assistant. I think today they now have three. And I think the Chairman has four. I think I had four when I was Chairman; I don't know. But in those days, I was it. I was his law clerk. And I watched the Commission. One of the things that was most interesting was that Frank, as I mentioned, was a Democrat, but the person he was closest to on the Commission was Dick Smith, who was a Republican. That showed me that the securities laws were really not supposed to be about politics, they were supposed to be about substance. And so I enjoyed watching the interaction. There was Frank, Dick Smith, Manny Cohen, Hugh Owens, and Hamer Budge, who became the Chairman after Nixon became President. But the Commission functioned quite well, I thought; and they all seemed to respect each other; but there were little intrigues that would go on—people were trying to get ahead of issues—and the great thing about Frank was he was always interested in getting involved in important issues. So he just would dispatch me. The first lesson he taught me was: “Never ask anyone to come up to your office. You always go to somebody else's office.” And Frank would do that. He felt that being a legal assistant to a commissioner, it might rub some staff members the wrong way if you summoned them, or seemed to be summoning them, to your office. Instead, his instruction to me was I was always to go out and walk to whoever's office it was, and meet them in their office, and show them the respect; it didn't matter who it was. So in all the time I was his legal assistant, the only time I ever had meetings in my office were with people from the General Counsel's Office. The General Counsel's Office was on the seventh floor, and Frank Wheat's office was on the seventh floor; and I had held onto some cases that I had been working on in the General Counsel's Office, so sometimes people would just wander in, and we would talk about cases. But that was at their urging, not at mine. Otherwise, the only thing I used my office for was just to sit there and do my reading, and so on. We didn't have computers, of course, or anything of that nature. And in those days, the Commission had a lot of tasks that they've since delegated away—and mercifully so.

KD: What kind of tasks?

HP: Well, every public offering had to be declared effective by the Commission. And in those early days—in '69 when I was there—the commissioners each had a vote on these things. That meant that their legal assistant had to read every registration statement that came through. As you can well imagine, there are more important things for the Commission to be doing; but in those days, it was significant. And for me, it was a great time to get there because having never worked in the Division of Corporation Finance, I was able to learn about the Division's important tasks, even though I wasn't part of the Division's team. And that was very valuable to me. So I don't regret that. But I laugh now because, given the issues that the Commission has to deal with, it would strike me as Byzantine to require the commissioners to read registration statements. But we did have to do that in those days.

KD: The workload would be—it's just unimaginable.

HP: Yes.

KD: Did you work with people in Corp Fin?

HP: Oh, yes. I worked with a whole variety. One of the people I worked most closely with, who I became very good friends with, and went through some travails together with, was Dick Rowe. Dick Rowe left. He was my predecessor as Frank Wheat's legal assistant. And after the Wheat Report, Dick went down to Corp Fin. I think he had come from Corp Fin. But in any event, over the years Dick and I became very close. He became Director of the Division of Corporation Finance, and I became General Counsel. He and I had one incident when we had foreign payments problems where we were issued a forthwith subpoena by members of Harley Staggers' investigations committee, and John Moss, in particular. We were hauled over there and had to testify. Dick and I went through a lot together. We were also both pipe-smokers, at the time. I gave up smoking many, many years ago—I don't know that Dick has—but in those days we both were pipe-smokers, so that was another bond we had.

KD: Well, we get to when you came back to the General Counsel's Office, and you're a special counsel to the General Counsel. And this would be the Casey years, I guess. Is that right?

HP: Well, I guess—it was three years in, so it was about '71, thereabouts; I think Casey was Chairman. I became a special counsel in the Office of the General Counsel. I worked under Dave Ferber most of the time, although there were occasions when I worked for Walter North. I began supervising younger attorneys in the General Counsel's Office, particularly in connection with briefs, and so on. In those days, everyone did everything in the General Counsel's Office. It has increased exponentially in its size since those days; and you now have very discrete units: some people that do amicus briefs, some people that do appellate briefs, some people do legislation, other people do counseling; so there are a whole variety of different functions. But in those days, everyone did everything. And that meant it was a very well-rounded education. But in those days, you became a special counsel, or became eligible to be a special counsel, I guess, after three

years. I started as a GS-11, and then as a special counsel I became a GS-14, so that was good. But I'll never forget: we had one incident because—we always played musical chairs with the offices in the General Counsel's Office; there was a steady progression. And I had an interior office, although it was in the back bullpen, in the General Counsel's Office. I had a big poster of a window in my office, which I thought was funny. I don't know whether others agreed with it. But in any event, one of the things that I recall vividly is Dave Ferber coming into my office and telling me that somebody had left, and now that I was a special counsel, I could move into a certain window office. And it really wasn't that important to me; and so I said, "Well, I appreciate it, but I think I'll just stay here." And Dave got the crossiest and most stern look on his face; and he said, "I have just spent a half an hour arguing with Walter North over which side of the office is going to get that office. And you are moving!" So I moved. But the efforts that we had in working on, major briefs and things like that—working with Dave Ferber was just an incredible education. He was a true dedicated civil servant. I think he came to the Commission in '42. Working on a brief with him was tough love, and painful; but incredibly educational.

KD: So you'd give him a draft, and he'd destroy it—that sort of thing?

HP: Well, first you'd give the draft to one of the supervisors. When you were a staff attorney you'd give it either to special counsel or an assistant general counsel. Those were the two levels. You didn't have both, but you had one or the other. And then from there, it would go in to Dave. And Dave worked on briefs the old fashioned way. He basically would sit there and make you go over every single word in the brief. A Ferber brief was so thoroughly reviewed. And if you made any factual statements in the Statement of Facts, Dave's requirement was you had to be able to prove, by citing to the record, every single fact that you put in a brief. I mean he was truly a master. And in those days, of course, everything was cut and paste; there were no computers; there were no electronic typewriters at first. And this created problems because in the Southern District of New York you had to file a ribbon original, which was not easy to achieve, and so on and so forth. But Dave's secretary was a woman named Diana Barry, and she was magnificent. She put up with Dave's persnickiness—as we all did—but his briefs, he was very, very proud of. This was very important to him, and by definition it meant it was important to all of us. I don't think anybody could have gotten a better education on how to write than I got from that process. Don Feuerstein was brilliant, and a brilliant writer. I found that his work got changed far less by Dave Ferber than many other people's. And that, of course, was the game you played with yourself: I was going to write a brief that nobody would change. And you kept striving to get there, but it was just a phenomenal education for me.

KD: You mentioned earlier that when Bill Casey came in it was a very active period, and a lot of things were happening. And this would have been that time, when you were working in the General Counsel's Office. Was Bill Casey's philosophy of regulation different from what had come before? Did he change the sort of cases that the General Counsel's Office dealt with?

HP: No, not really. Because effectively, the cases the General Counsel's Office had were dictated by what was in the pipeline, either through the Enforcement Division, or through the opinions section, where the Commission would issue opinions. The Opinions Office was headed by a fellow named Leonard Helfenstein; and people used to refer to Leonard as the sixth commissioner. He was an outstanding writer, and his opinions were great. When Casey came in, I think Leonard had retired; and Casey appointed Bernie Wexler to head up the opinion writing office. Bernie Wexler had been a speech writer for Casey, and he'd been a bankruptcy lawyer, and so on. Bernie was a real character. He was very smart, but he was definitely a character. And when Ray Garrett became Chairman, he would tear what little hair of his was left when he would read some of Bernie's opinions. Bernie was given to great poetic license and flair in these opinions. I don't think the opinions of the Commission ever read as well as when Bernie was there. But for a conservative traditionalist like Ray Garrett, it was definitely hair-pulling time.

So Casey didn't change the workload of the General Counsel's Office all that much, but he did change, in my view, the Commission's perspective on things. Bill used a lot of advisory committees—something that went out of vogue when Congress passed the Advisory Committee Act, and now everything had to be done in public instead of the way Bill's advisory committees did. But he not only looked at market structure, he looked at the Enforcement Division, which had theretofore been almost untouchable. And Bill wound up reorganizing the Commission by separating Trading and Markets into two divisions: the Division of Enforcement, and the Division of Market Regulation.

KD: What was behind that decision? There had been no division before, so he created one.

HP: Right. I think there were a couple of things behind it. One of Bill's concerns, first and foremost, was that agencies that regulate shouldn't be able to use enforcement as the vehicle for changing the law. And separating enforcement would, number one: make certain that the Enforcement Division couldn't be in a position of, in effect, creating laws; also, I think he thought it would be far more efficient. Each division had its own enforcement staff, and he consolidated them all into the Enforcement Division. That meant that you had people who were focusing on how to try cases administratively, or how to bring cases, doing it better; and by splitting Trading and Markets, he ensured that the market regulatory function was given full attention. He saw the world moving—I think it was a good vision on his part—and was very much concerned that a division not be diverted with its own enforcement dockets. That was a very major change in the way the agency operated. I think it was very constructive and for the best. He had a review of the enforcement process by John Wells, who was a partner at Rogers and Wells—what became Rogers and Wells—and that led to the so-called development of Wells submissions and the like.

Today, we take it for granted that if somebody is going to be sued by the agency, the agency usually gives that person a chance to address why he, she, it shouldn't be sued, and why they don't think their conduct violated the law, and so on. That was initiated by the Wells Committee. The Wells Committee made a lot of recommendations for enforcement, many of which were adopted, some of which weren't; but was a very novel

approach to enforcement. These were the types of things that Casey was doing in engineering; it was really very impressive.

KD: You were talking about Casey's advisory committees, and eventually you went into Market Reg; but before you did that, there was something called the Institutional Investors Study that you were associated with.

HP: I think it was '68, or thereabouts; maybe it was '70—Congress had directed that the SEC study the trading activities of institutional investors, and make a report to Congress with recommendations.

KD: Why?

HP: The percentage of institutional investors was increasing. In those days, it was mostly mutual funds. But there were large institutions: bank trust departments, and the like, and other forms of collective investment; and so the concern was: we didn't really understand a lot about this, and the Commission was directed to do a review. The Commission hired a number of econometricians, and they did the report; and after they had done it, people discovered that while these people were very good with theory and with numbers, they weren't quite as good with words, in every case. And so you had a report, but it really wasn't ready to see the light of day. So Don Feuerstein, who had gone to work for the Institutional Investor Study, corralled four staff attorneys—and I was one of them—and we were given chapters of the report. We were told not to change the conclusions, obviously, but to put it in English. And that got me into a whole new world of institutional investors. I worked on chapters involving the thesis that maybe there was parallel trading by institutions, the thought that most institutions traded in the same direction. And of course, that was completely disproved by the study; so the chapter was really very important in explaining that institutions were like any investors: some wanted to buy, some wanted to sell; they provided liquidity to the marketplace, and so on.

KD: I was trying to figure out the idea of all trading in the same direction. So you're saying the expectation was that all institutions would buy at the same time, and sell at the same time.

HP: Right. And that was completely disproved by the study, which stands to reason, of course—but nonetheless, it was. So I worked on a couple of chapters on the study, and revised them, edited them. I had to really get myself into a whole different area, because I had not dealt with this before; but also I had to learn to read an economist's views and then translate it into English; which for some of the people who worked on these things was clearly a second language.

KD: This would seem to be very difficult, coming in at the end when the thing's essentially done.

HP: Yes, it was. But it was fascinating, and it was very enjoyable. And as I say, there were four of us who did it; it was incredibly broadening for me.

KD: I know that when most folks have contrasted the Institutional Investor Study with the Special Study—the legendary Special Study—the Institutional Investor Study comes up short.

HP: It does.

KD: Looking at the way it was dealt with there, how do you think it should have been handled?

HP: The notion was that the institutional study should be an economic study. That's a decision with which I agree one hundred percent. But by definition, since the Special Study was a legal study, and to a large extent a case study, but not really an economic study; it was more in the mode of: What's wrong with our markets? How do we fix them? The Institutional Investors Study was: How do institutions affect our markets? And so you start from a very different point of view. I think that the Special Study was groundbreaking because it found abuses in the way the markets worked, and provided case studies, and so on; and so it deserves its exalted status. But I think the Institutional Investors Study probably deserves better than it got; but it wasn't ever intended to be this wild exposé, and it wasn't approached that way. So I think it obviously was a very different type of study. The commissioner who was assigned to oversee the Institutional Investors Study was none other than Dick Smith. And he and Feuerstein were very close as well; and that's one of the reasons why Feuerstein became one of the deputy directors of the Institutional Investors Study. And I thought he did a terrific job.

KD: Well, after that it was into Market Reg. And here, you're really looking at the structure of the markets.

HP: Yes. Part of the problem had been that Casey's notion was that there was an inherent inconsistency—which I think is correct—between having fixed commission rates on the one hand, and yet having institutional membership on the other. The regional exchanges had been charging fixed rates, just the way the New York Stock Exchange, American Stock Exchange, were; but they were allowing institutions to join, and thereby lower the price of trading, because the intra-member price was not fixed; that was a subject of negotiation. Casey's thought was: either you should get rid of fixed rates—which nobody seemed willing to do quite at that time; as I say, that took Ray Garrett to do—or you shouldn't allow institutional membership. Casey went to Congress and tried to get Congress to give the SEC authority to preclude institutional membership. And Congress turned it down. I couldn't understand why Casey wanted legislation, because I thought the SEC already had the power to do it. And that was my luncheon discussion with Brad Cook. Brad mentioned it to Casey, and the next thing I knew, I had been put in charge of this entire proceeding on institutional membership. And the advantage was that I was able to start from the concept and work all the way through, including the litigation. And what I enjoyed about that was, first, coming up with the theories as to why the Commission could do this; then, structuring the hearings that we held on institutional membership; then writing what, at that time, was a huge release—it was just shy of two

hundred pages and had five hundred and thirty-seven footnotes—and developing a rule; and then, of course, the Commission got sued over the rule.

KD: Is this 19b?

HP: This was 19b-2. The Commission got sued, and of course, having engineered this whole thing, I worked on the brief. I remember we argued the case—I argued the case—in the Third Circuit. The Justice Department was opposed to the SEC. The State of Connecticut was opposed; the Philadelphia—then it was the PBW, the Philadelphia, Baltimore, Washington Stock Exchange—was opposed. So everyone opposed the SEC. And I wrote the brief; Ferber edited it. Ferber was never going to argue that case because he didn't really understand how the markets operated; and I had been through this, so he suggested that I argue it, which I was willing to do. And I did argue it in the Third Circuit, and the Commission won the case. It was just a fascinating experience, not just in developing a rule, but in creating the entire process to get to that rule, which was very enjoyable for me.

KD: You set yourself up to be sued.

HP: No, I set myself up to win a lawsuit. In other words, the advantage I had was that at the same time that we were setting this up, I knew we were going to be sued. There was too much money at stake. The people were going to sue us. So my thought was: 'Well how do I constantly limit the possibilities for successful suit, even though what we wanted to do was going to cause a lot of screaming and yelling?' Which it wound up doing. And that's what I found so much fun. So we didn't set ourselves up for suit; we set ourselves up to try and win the lawsuit, because no step was taken without thinking through what the implications would be on litigation. I have to say I was very fortunate to be able to work on that; and I really enjoyed my efforts there. And they were successful.

KD: What was the theory behind 19b?

HP: The theory was this: that if you are going to charge people fixed rates, then you couldn't somehow allow some people to escape that, but others not to escape that; you had to be fair to people. So we said that if somebody is going to be a member of an exchange, what they should be doing is using their position to serve the public; and if they weren't doing that at least eighty percent of the time, then they really weren't truly a member of an exchange, they were something else. They were somebody who had found a way, by paying a membership fee, to get reduced rates; and that that was something we were going to avoid. Section 19b gave the Commission the power to change the rules of any registered national securities exchange, either by rule or by order. And some of the arguments that people were making were that we had to do it by order, because this was adversarial. We took the position that we would ultimately adopt a rule, but we did allow limited forms of cross-examination. In other words, we have people give statements and then we allowed people to suggest questions, and so on; but we never fully went the route of doing this as a full-blown trial type proceeding. And that was one of the issues that we confronted in setting this up. And the Commission had really never done a proceeding

like this under 19b. It was the first one; and it was, for all intents and purposes, the last one quite like this; because even though there'd been more 19b rules, in 1975 Congress revised the statute and changed the process significantly. But by that time, we'd already unfixed commission rates; and we'd decoupled membership from compensation for transactions, and that was what was critical.

KD: How long did this process take?

HP: That's a good question. I think our rule-making process took about a year or so, and then because there was a direct appeal to the Court of Appeals, I think it may have taken another six months or so. But I worked very closely with a fellow named Bob Lewis, who had been in market reg with me. He was a special counsel, and ultimately became an associate director. Bob and I started at the SEC on the exact same day, in August of 1968. And we remained friends up until his tragic passing a number of years ago. But Bob and I were very, very close, and we had a lot of fun working on the Commission's release that adopted the rule. And between the two of us, we pretty much crafted most of 19b-2. Bill Casey was so interested in this that he actually reviewed our drafts. We had friendly competition, because Casey was not an editor by any means, but he would make little marginal notes; and we compared how many 'excellents' each one of us got. We worked round-the-clock, but it was a very intriguing issue and problem; and we figured out how to use the laws we already had to get the result we wanted. And that was what the Commission was looking for, so it was great fun.

KD: Well, let's move up a little bit again. I wanted to talk a little bit about Chairmen. Bill Casey: clearly, a pretty strong leader.

HP: Yes.

KD: Now I understand that Brad Cook's whole approach was essentially to continue what Casey had put in play. Did it work out that way?

HP: It's hard to say because he wasn't in the job long enough. Brad was only there six weeks. Brad was the youngest Chairman, I think, in the agency's history—or if not the youngest, one of the youngest. He was definitely very young. He had been General Counsel, then he'd been Director of Market Reg. I had expected, when he became Chairman—because I had worked with Brad so much—that I was probably going to go up to his office and become his executive assistant. For very selfless reasons, he didn't bring me up to his office. He already knew that there were problems going on, and decided that he wouldn't promote me; because if he did, and something wound up happening, that he would taint my career. So it was a very selfless act. I am very, very fond of Brad. I think he was a very astute person. I think he has a very good heart, and I was very disappointed to see what happened happen; but like many of us, Brad was somebody who came to the agency and fell in love with it. I had been at the agency since '68, and this was probably around '72, I think. I just adored the agency. I'd come giving the agency a three-year commitment; and when I understood that I had to give the three-year commitment, it seemed like a long time to me. But after three years, I was completely hooked. I guess

you could say I was addicted on the SEC. I just thought it was a great place; the people I met were great; the issues were fascinating. Brad's rise to become Chairman of the agency, I thought was both fabulous for the agency; and I thought was going to be personally fabulous, because I worked so closely with him. And unfortunately it didn't turn out that way. But his goal was to continue a lot of the Casey initiatives; he just didn't get the chance.

KD: Well, you got the chance, for the executive assistant position.

HP: It was interesting, because Ray Garrett came in—and I didn't know Ray from a hole in the wall—but Ray was determined not to keep on anybody who'd been in the Chairman's office before he got there, given some of the circumstances—which is why Brad's selfless act made it possible for me to move up. In any event, Brad recommended me; I think other people recommended me to Ray, and Ray interviewed me. It was interesting, because he said he wanted to hire me to be his executive assistant; but he also said he was thinking of hiring another executive assistant, and that I would be overseeing substance, and this other executive assistant would be overseeing political relations with Congress, and the like, which nobody ever assumed I had any knowledge of. What was fascinating about it was, although he interviewed a number of people, he quickly decided that it was just going to be me. We did bring in a fellow named Ted Burrow to be director of Congressional relations. But Ted worked for me, as well as under Ray. So it was a great opportunity. Ray was really like a surrogate father to me. My own father had a sixth grade education and had very little understanding of what I did, or what the securities laws were all about. Ray was quintessentially one of the most brilliant lawyers of all, and he took me under his wing. Part of what happened with Ray, was his wife, and a lot of his family were in Chicago; and Ray lived out of an apartment at 3 Washington Circle—the hotel there. And so Ray was here alone. His family was away; and he basically worked here from Monday to Friday. Just as he was sort of a surrogate father to me, I sort of was a surrogate son to him. His own son had problems; he'd had some drug and alcohol problems, and so on. Ray and I just became incredibly close. I admire that man as much as I think I could admire anybody. And he was somebody who had turned down the request to become Chairman several times. Then finally, when Brad resigned, Al Haig, who was Nixon's chief of staff, called Ray, and finally made the one appeal that Ray couldn't resist. He appealed to Ray's sense of patriotism. Ray was a very conservative, very patriotic person; and when Haig said, "Your country needs you," Ray could not really turn that down. So he came in. He did insist that the Democrat that was also a slot vacant be Al Sommer. Ray and Al were very close—originally, in private practice; but on the Commission, they were exceedingly close as well. Ray was just a remarkable human being, and I loved him dearly, and was very, very grateful for the opportunity to work for him. He was just an incredible teacher, and somebody who you could learn from just by keeping quiet and watching.

KD: What did he want to do with the Commission?

HP: The most important thing he wanted to do with the Commission was restore its morale. Ray was just a very down-to-earth person. As brilliant as Ray was—and he was

brilliant—and he had this deep, mellifluous voice—and his vocabulary—and so on—he was—he was incredible. But he was so down-to-earth. He was an MCP, a male chauvinist pig. And all of the women on the staff loved him. And by that, I mean he just thought that you were courteous to women, and polite; and he would open doors for them, and so on. He appointed women to senior positions at the Commission, so he wasn't biased or anything; but he was definitely Old School. And he was very, very conservative—just in terms of his approach to life; I'm not talking politically. So I'm saying that this is a man who was very impressed with doing the right thing, and behaving properly, and things of that nature. So it was eye-opening. My life with Ray changed dramatically because: first of all, I was not much of a drinker. I often thought that if I could put Ray into competition against anybody in the world, we could make a fortune. Because Ray had a very good appetite. And so I learned to drink martinis from Ray; I'd never had a martini in my life until I went to work for Ray. I learned to fly first-class.

In those days, SEC Chairmen flew first-class; and as his executive assistant, I flew with him. I'd never been first-class on a plane. I didn't do that much traveling. I pretty much went everywhere with Ray; and did almost everything on almost all the issues with him. It was just such a learning experience. It was incredible. I even named my younger son after Ray—my younger son's middle name is Garrett.

KD: He came in at a point when all these issues that had been bubbling along, are really getting ready to bubble over. What was his position, for example, on the idea of unfixing commission rates—which is not a conservative thing to do?

HP: No, it's not a conservative thing to do. But in addition to being a conservative, Ray was a pragmatist; and the way he explained it—and we had to write speeches on this, so I remember it well—he said, “Rates are going to be unfixed. And either the Justice Department or the courts are going to do it to the industry, or the SEC is going to do it.” And he said, “From everybody's perspective, it will be a whole lot better if the SEC does it, than if either Justice or the courts do it.” That way we could have a phase-in of unfixed rates. I remember the commissioners—it was Ray, Al Sommer, Phil Loomis, John Evans—I'm trying to think—first it was Hugh Owens, then maybe Irv Pollack—but the Commission met in my house in Potomac to discuss unfixing rates. They didn't want to do it—in those days there was no Sunshine Act—but they didn't want to do this in front of the staff; so it was the Commissioners. And Ray led the Commissioners through the issues. It was unlike any Commission meeting you ever saw, because everybody had their points of view as to what to do. Through a series of meetings—we had several of them at my house—the Commission worked it out. And so I was a witness to—you know, I'd like to say that I played some role in this, which I did—but this was leadership of the most incredible sort; because Ray knew where he wanted to go, but he wanted all of the commissioners to get there. He wanted it to be unanimous. One of the things I saw from that Commission is that all of these people idolized Ray. They all thought the world of Ray. So they were five very different people, but they worked so constructively together. There were differences. John Evans was an economist on the Commission—and I became very close with John; I like John a lot—John and Ray were not often of the

same view on a lot of issues. John wasn't as conservative as, I think, Ray was. But John would always watch to see whether Ray cared or not. If Ray didn't care, John was very vocal. If Ray cared, John would find a way to compromise some of his views, making sure that Ray understood what some of the countervailing considerations were. And I saw that through all five of them. It was, I thought, one of the golden eras of the Commission. When Ray was Chairman, the staff would come up and sit in the room to watch issues discussed that had absolutely nothing to do with their day-to-day functions. It was an incredible education. People just sat there and watched Ray and Al and Phil do all of their activities. Irv was brilliant, John Evans, as the economist—it was just a magical—I think it was a very magical time. Ray succeeded in elevating the way the Commission approached issues, and I think he was a very, very popular Chairman. Bill Casey was a very, very effective Chairman. But when Bill was out of town, other Commissioners would swipe, because Bill was not only very effective, he was somewhat authoritarian. Ray was very much down-to-earth, and sometimes to the point of doing things that would shock me.

I remember one time—I don't remember what the matter was now, and it probably doesn't matter—but there was an enforcement recommendation on the calendar; and Ray and I would talk about every item on the calendar before he went into the meeting. And he was particularly incensed with this enforcement recommendation. It was really over-the-top. And I have to say: I agreed with him. So he talked about it; and he said, "This is just going too far." They go into the meeting—I sat in the back of the room and watched—and Ray called the matter. And unlike what he usually did, he called the matter, but invited others to speak. And I noticed that both John Evans and Irv Pollack were looking at Ray, and Ray wasn't saying anything. Except finally, he sort of indicated that he disagreed with the recommendation. By this time, all four of the others had pretty much come out in support of the recommendation, and the vote went four to one. Now this was a vote he could have won. And so when we walked back into his office, I looked at him, and I said, "What the heck were you doing out there? I mean you had that vote won." And he said, "I know, Harvey." He said, "But sometimes it's important for the Chairman to lose." And that made a very important impression on me—the kind of person. Ray had zero guile. He could not put on any pretense; he couldn't affect any air. He was smart enough so that he could have if he wanted to—that voice would have made Walter Cronkite jealous. I mean he just was phenomenal. But Ray was definitely not one to sort of put on airs, or put himself over anyone. He knew almost everyone on the staff by name. Everyone called him Ray—which was important to me. When I became Chairman, I wanted everyone on the staff to call me Harvey.

KD: So there were a lot of lessons learned at that time.

HP: I could not have learned more lessons at all. Ray was just stupendous. His life was cut very short, because he was a constant smoker. But I figure if lung cancer didn't get him, then maybe liver cancer would have gotten him at some point. But Ray was somebody who lived life to its fullest. And he was just a great human being, somebody I loved very deeply.

KD: Well, I have appreciated this. I think this is probably a good place to stop.

HP: That's fine.