

Securities and Exchange Commission Historical Society
Interview with Harvey Pitt
Conducted on May 12, 2008, by Kenneth Durr

KD: This is the second part of an interview with Harvey Pitt on May 12th, 2008, in Washington, D.C. by Kenneth Durr. Let's start around 1975, where we finished up last time, and talk a little bit about your appointment as General Counsel of the SEC.

HP: Yes.

KD: Was that Rod Hills who did that?

HP: No, no. It was Ray Garrett. Ray had come in after Brad Cook resigned after six weeks, and made me his executive assistant, chief of staff. My relationship with Ray was very close. He's definitely one of the most pervasive influences on me as a lawyer, as a regulator, just as a person. He really had a big impact. In any event—and this is probably more than you need to know, but I'll just do it—he asked me after a going-away party for Walter North if I would go to dinner with him. He said that he'd like to go have Chinese food with me, which immediately tipped me off that something was up, because Ray never had Chinese food. He hated Chinese food. But he claimed he wanted to go to my favorite. So afterwards we went, and he said that Larry Nerheim, who had been acting as General Counsel, had told him he was going to leave, and that David Ferber, who had been on the staff since about 1942, had been told by Larry that Larry was leaving, wanted to be General Counsel. Ray wanted to make me General Counsel. But he wanted to talk about it, because he was concerned. In any event, he talked about it. It all got worked out, and eventually he appointed me as General Counsel. I was thirty years old, and probably he should have found somebody far more experienced, and so on and so forth, than me. But it was a dream come true. And so I became the Commission's General Counsel in September of '75. I served about three years—which was pretty much the average, aside from one of my successors, Dan Goelzer, who served for over seven years, and I think was the longest tenured General Counsel in the SEC's history. But it was a fabulous job. We were very active in those days on a lot of issues, including unfixing of commission rates, then the '75 Act Amendments.

KD: These things would have just taken place, at the time you're coming in. What would the General Counsel's Office's role have been on something like the unfixing of commission rates, and the fallout from that?

HP: Well, it's interesting that you ask that; because part of the problem that I think Ray perceived was that I was doing a lot of work as Ray's executive assistant that I think he believed ultimately should be done by the General Counsel's Office. So, for example, on the unfixing of commission rates: the Commission at that time met frequently, but met outside its building. They wound up meeting in the house I owned at the time in Potomac, Maryland, where the Commissioners deliberated—this is before the Government in the Sunshine Act—and hashed out a lot of issues, got position papers

prepared for them. People knew what was going on, but they just didn't want to be meeting where there would be interruptions, and the like, and so on. It was interesting because there was a case that made it to the Supreme Court, *Gordon v. the New York Stock Exchange*, which challenged the New York Stock Exchange on its having fixed commission rates—which, of course, the Commission had, in May of '75, directed be unfixed. There was a lot of work done in the General Counsel's Office, but I did a lot of work on the brief, as Ray's executive assistant. I think Ray felt those were efforts that should get done in the General Counsel's Office. So, that's one of the reasons why I think he wanted me to take that job.

KD: Was this an amicus brief that you were preparing?

HP: It was an amicus brief, yes.

KD: For Gordon, I guess.

HP: Not for Gordon, for the New York Stock Exchange. What we argued was that we had gotten such pervasive power in the '75 Act Amendments, and we had dealt precisely with this issue, that there shouldn't be a plenary anti-trust action—which is the action that Gordon was bringing. And that view was sustained; and interestingly, in a case I worked on as Chairman, which involved IPOs and so on, the Supreme Court last year again held that the Federal securities laws effectively pre-empt the anti-trust laws, and there's no plenary anti-trust action. They cited the brief that the SEC had filed in District Court, which was a brief that I not only had approved as Chairman, but I actually physically worked on—there were only two Commissioners who could sit on the matter: me and Paul Atkins, and we both saw eye-to-eye on that; but I worked with the young people in the General Counsel's Office to craft the brief.

KD: This is while you were Chairman.

HP: While I was Chairman, yes. Well, once a brief writer, always a brief writer.

KD: Right. Can't resist.

HP: In any event, I became General Counsel. There were all these major issues. And as it turned out, Ray did not stay much longer. And so I wound up serving a total of three Chairmen, as General Counsel. I served Ray, Rod Hills, and Harold Williams. And they were all very, very different individuals.

KD: Were they different in their approach to what they wanted out of the General Counsel's Office, and the Commission in general?

HP: No. No. I think all of them wanted a General Counsel that they perceived was independent from the rest of the staff. And that meant that, in a sense, as the chief legal officer, I had to balance two potential clients that I had to deal with on every issue. One was dealing with the divisions themselves; and there, we worked out a system which was

designed to let the divisions know if we had any problems with positions they were thinking of recommending, so that they could at least consider our views. They weren't obligated to change their views, et cetera. And then we had to advise the Commission. And what all three of them expected from the General Counsel was someone who would come upstairs to the Commission meeting and tell it the way the General Counsel's Office saw it—that was particularly true both vis-à-vis regulatory initiatives, because the Commission wanted to know whether it was meeting its legal obligations and so on; but it was also true regarding enforcement cases, because the Commission wanted to know before it authorized an enforcement action that it was acting appropriately and prudently. And so, that, in effect, caused me to work very, very closely with all of the division heads, but in particular two, with whom I was very, very close. One was Stan Sporkin, who was the head of Enforcement at that point; and the other was Alan Levenson, who was head of Corporation Finance. And so the three of us worked very closely together on just all sorts of issues. And there were a lot of major issues at that time.

I remember one thing in particular: I wrote a memorandum—a legal opinion, which we published, on why the Commission had the authority to require independent audit committees of public companies. So long before Sarbanes-Oxley we had taken the position that we had the authority to do that. And indeed, the New York Stock Exchange adopted those requirements, and so on.

KD: What was driving that? Was that the fallout from the questionable payments, and all of that?

HP: Questionable payments, and also—I think all three Chairmen were interested in the subject; but Harold Williams—it's interesting; if you go back and read some of Harold's speeches, Harold was very focused on the independence of directors and their oversight responsibilities, and the like. It was thought that this was a very important issue, and how did we deal with the statute—yes, it's obviously written a long time ago, now even longer—but didn't really come completely to terms with all of these issues.

I was asked by Harold Williams to do a memorandum on the Commission's authority over attorneys who appear in practice before it. And this was a very controversial subject because the legal profession was very much concerned that their advocacy could be squelched if the SEC could sanction them in the courts of representations. I wrote a detailed memorandum, which came up with the theory that the Commission had the right to take action with respect to lawyers, to protect the integrity of its processes. And later on, Ed Greene gave a speech to that effect—I'm sure using my memorandum. But our notion was that the Commission should not be bringing what were then known as 2E actions against attorneys unless there was a direct threat to the integrity of the Commission's processes. And that was the philosophy that ultimately wound up being adopted.

KD: Is this related to the lawyer and accountant type cases that were going on at that time?

HP: Yes.

KD: Was this also something that you were involved in?

HP: Yes, I was very much involved in this. Yes.

KD: Did this memorandum that you put out in any way settle the subject, or give the Commission some firm footing?

HP: Yes. First, I would say the one thing you recognize is that with a government agency nothing you do ever resolves any issue permanently. It's only possible to resolve issues for the foreseeable future. In that particular case however, I would say I gave the Commission an approach which I think they all felt comfortable with: namely, that we weren't saying there were no circumstances in which they could take action against attorneys, but that because of the potential for inadvertent mischief, that there really had to be a set of standards that the Commission applied. And so, that was the way the Commission ultimately saw it.

KD: Okay. Tell me a little bit about ways in which you worked with Alan Levenson.

HP: Alan was head of Corporation Finance; and he, Stanley, and I became very close friends, I have to say. Alan had all sorts of issues that he was dealing with. One issue, which I wound up having to argue in the courts myself, was the issue about how much the Commission was obligated to do to require public companies to disclose the environmental effects of their operations. When I was a very young attorney, I had written a private article with another Commission attorney, Ted Sonde, which took a very expansive view of the Commission's powers. The Commission saw fit not to go anywhere near as far as my article had recommended. And then, by the time I became General Counsel, I wound up having to defend what the Commission had done. The National Resources Defense Council was represented by a fellow named Roger Foster, who had been the effective equivalent of General Counsel at the SEC much earlier. And I had known Roger, and we got along just wonderfully. He was the litigator for the NRDC. I represented the Commission. And I remember at one point, appearing in front of Chuck Ritchie, who was the judge—Roger Foster described me as a prophet, not without honor, save within his own agency; because I was then defending the fact that the Commission did much less than what my very young and overly exuberant article had recommended.

KD: Was that your argument? That you were young and overly exuberant?

HP: No, because that would have been personalizing it. My argument was that the Commission had the discretion to define what issues were most important to it; and so even though I sympathized with the plaintiff's concerns, they weren't warranted. Judge Ritchie was not terribly enamored of the SEC. And despite the fact that I thought we had had the best of it at oral argument, we lost. I think we lost a couple of times, if I'm not mistaken. And finally—the first time we lost, I think we tried to accommodate the judge's opinion as best we could. But the second time we lost, we just decided that this was never going to go away, so we appealed. I think it was one of the last cases I argued before I left the Commission; and the Court of Appeals ruled in our favor, and said what

we had done was sufficient, and that the District Court shouldn't have been trying to get us to adopt rules along the nature of the things that I had recommended as a young lawyer. So, it turned out I had the advantage of being right on both sides. And I like that.

KD: Just with a few years between.

HP: Yes. But with quite a few years. Yes, I got older; I got, hopefully, a little smarter—though maybe that's debatable. I worked with Alan on that. I worked Alan on shareholder proposals. We worked on all sorts of issues. We worked on the foreign payments problems together.

KD: Okay. Which, of course, would have come out of Stanley Sporkin's jurisdiction.

HP: Yes, but and also emanated out of Alan's. Alan came up with—he just had a way with describing things, so he came up with the phrase 'a declaration of cessation.' That was his big thing. And in essence, we were giving the equivalent, I suppose, of amnesty if companies would disclose what they had done, making appropriate and full disclosure, and agree that they weren't going to do it anymore, et cetera, and so on. But Alan was most concerned about this—as was Stanley, I suppose—from the perspective of the integrity of a company's books and records. And so if you look at a lot of what was done in Sarbanes-Oxley—and it actually had been done previously by the Foreign Corrupt Practices Act, which the SEC had pretty much driven; and Rod Hills was very, very involved in the Foreign Corrupt Practices Act, and was a real mover in terms of making certain that we took our positions, and that we dealt with this in a way that was both effective and also faithful to what our disclosure mandates were; that we weren't changing the disclosure mandates to deal with an issue *du jour*.

KD: Right. Well that gets to the question of the voluntary disclosure system that had been set up. Now that came out before the Foreign Corrupt Practices Act, right?

HP: Yes.

KD: And that would seem to be a pretty novel thing, this voluntary disclosure. Was that something that your office had to take a hard look at?

HP: Yes. I give a lot of credit to Alan and Stanley, obviously; but yes, we were—my office had to be involved. We had to opine on that. And of course, we had to look at all of the cases that the Enforcement Division wanted to bring. Well, one of the things that we set up, which got followed after I left as General Counsel—but one of the things we set up was to have briefing meetings before the actual Commission meetings, in which we would invite all of the legal assistants to the various Commissioners; we would go through the cases, and matters, and rules that were going to be on the calendar; and we would discuss what our reactions to them were, what questions the legal assistants to the Commissioners could ask. That became a relatively permanent fixture in the General Counsel's Office. In fact, I think when Ralph Ferrara took over, he set up an entire branch of the office to do that kind of work, which he called the counseling group—

which I think was an excellent idea. But we had started the process, and it really gave us an opportunity to sort of weigh in before the Commission meetings on important issues. I thought that was the way the General Counsel should function. So I was pleased with that.

KD: Now, at this point, the Enforcement Division must have been providing you with a lot of your business, as far as the things that were going to come to the Commission; because Stanley Sporkin was clearly—the record shows he was very active in these years.

HP: He was.

KD: Tell me a little bit about some of the things in which he had to pull you in, and that you worked most extensively with him.

HP: Well, let me say that at first, the divisions—and particularly Enforcement -- wasn't all that anxious to run their memoranda through the General Counsel's Office. And so what happened was there were a couple of meetings where we disagreed, but we didn't have a chance to alert the division, because they hadn't sent the memorandum to us until it went to the Commission. So we went to the table, and those issues were resolved at the Commission table. I'm sure some might accuse me of having a selective memory; but I can't remember any issues where we had a serious reservation about a theory where our view didn't prevail. Stanley and I had known each other for a very long time, and were good friends; and so we worked out a procedure where his folks would come to us first. There were others issues that came up which I think got some of my folks in the General Counsel's Office perturbed a little bit. Stanley had a very clever idea, which has since really blossomed; but it was to set up a trial unit. His view was that he wanted to develop real expertise in trial work, so that when cases went to court, people understood the SEC would not be a pushover. I thought that was a great idea. Now, in the past, the General Counsel's Office, in theory, would supervise this; and that made no sense. So, basically, Stanley set up the trial unit; I was very much in favor of that. I think the first head of this trial unit was the same fellow I wrote the environmental article with, Ted Sonde. And I remember we had some cases that came up where the Commission was sued, in connection with some of its foreign payment cases. I can't remember whether it was Lockheed—I don't remember which cases it was now. But I had my associate general counsel; and so apparently, Ted Sonde and my associate general counsel, Mike Wolensky, came to me because they wanted to know—since it was both a case the Commission had brought, which would be handled by Enforcement; but also a case in which the Commission had been sued, which would be handled by the General Counsel's Office—they wanted to know who's responsible. And my view was: Just work it out, the two of you. We don't have to say one office is over the other. What I wanted was the offices to work together—which is the way it ultimately came out. But some of my folks were unhappy, because they thought if there was going to be a sort of a direction that we do things equally, that we'd wind up being the losers. I just didn't see it that way. My goal was: How do we best get the job done, not who's got the turf, and who's in charge, kind of thing. It came up in another area, which was interesting, because it became a matter that was raised at the appellate level; but in the three years I was General Counsel,

I invited Stanley to argue an appellate case in each of those three years. I wrote a long letter when Stanley was nominated to be a judge, years later, talking about Stanley and this—to be blunt about it: I wasn't going to give Stanley easy cases. But we had some really tough cases, and I thought: Why not let Stanley argue it? And my theory was: It would help the Enforcement Division if they had to defend their record on appeal. The brief would still be written by the General Counsel's Office, so there would be an independent review. And so, Stanley argued three incredibly hard cases, and he won them all.

But in one case, which was the **Arthur Lipper** case, the lawyer for Lipper, a fellow named Jack Dudley, filed the brief claiming that nothing could be greater evidence of the fact that the SEC's General Counsel had lost his objectivity than by allowing the Director of Enforcement to argue an appeal. Needless to say, it didn't help Jack win that case. I was absolutely impressed. Stanley took it seriously. I think Stanley just has a very brilliant and creative mind. And it was great fun.

When I had been a very young lawyer in the General Counsel's Office, starting out, I got to work directly with Stanley on a case, which at the time was a very major case: the **Parvin Dorman** case, and that was a case where Stanley was going to argue the case in District Court at the outset, at least the very first day, because we had all of the biggest guns opposed to us; and the complaint was definitely a bit of a new kind of approach to some issues, and so on. Stanley and I had gotten very, very close, just working together on that.

We also worked together—and this also involved Alan—very closely on the New York City Report. The SEC, before the '75 Act Amendments, I guess, went into effect—but the SEC had done an investigation of New York City. And it also did one in Philadelphia. I remember Harold Williams was the Chairman at the time. I was General Counsel; Stanley was head of Enforcement. Our New York office was having trouble putting the report together. It had become a bone of contention in the mayoral election that year. I think Abe Beame was the Democratic candidate. There was a guy named, I think, **Harkness**, who was an Independent, and who was trying to get a hold of the Commission's report, because he said it would be very relevant to the report. Harold Williams was Chairman, and I remember meeting in Harold Williams' office. We were just getting blasted, because this report hadn't appeared. I remember Harold looked at Stanley and me—we were sitting there—and he said, "I've got a Hobson's choice. We can either look incompetent, or we can look political." Harold looked at both of us and said, "I'd much rather look political than incompetent." And so he dispatched Stanley and me, and actually Ralph Ferrara, who was his executive assistant, and we all went to New York, where I lived for three weeks. And we wrote the report, obviously with the help of the New York office.

KD: Now was this when you were General Counsel?

HP: Yes. I was General Counsel. And what was fascinating was we had an FOIA suit. The suit sought to get the drafts of our report. This was a very big case for the Commission, so I wound up arguing it, even though—in District Court; and I had the misfortune of arguing in front of Judge Vincent Broderick, who had been police commissioner, but who had just been appointed to the bench. He had ruled in favor of this guy **Harkness**, or

whatever, that he could get the drafts—which I actually thought was a bad decision on the law. I just thought it was wrong. So I discussed it with the Commission, and the Commission told me that I was to go into court on the day we were supposed to turn over the drafts, and I was to tell the judge that—as respectfully as I could—that the Commission had directed me not to turn over the report, and to ask for a stay of his order so that I could seek a mandamus from the Court of Appeals. Now doing this to a new judge is bizarre. This was not the first time it had happened. It actually happened when Bill Timbers was general counsel in a case. He ultimately went on to sit on the Second Circuit. But he went into court, and the court incarcerated him. So before I went into court with Judge Broderick, not having any idea how he would take to this, because it's—in one sense, it's insulting. He's ruled, and I'm saying: The Commission is not letting me respond—So, I had two of my hotshots from the General Counsel's Office sitting in the back of the courtroom with habeas corpus papers, so that if I were held in contempt they could get me out, and I wouldn't have to spend very much time in jail. Fortunately, Judge Broderick was a very decent human being. I'm sure he could see my legs quivering when I had to tell him that despite the fact that he had ordered me, as counsel to the Commission, to turn over a document, my client wasn't going to let me do that. It's not the way lawyers are brought up, obviously, because you're taught to have respect. And if you go back to cases like *United Mine Workers*—I forget now the name of the case, but that's where a district judge had enjoined the labor union from striking, which, of course, was a violation of the labor laws. The order was unenforceable. It went all the way to the Supreme Court, and the Supreme Court said: It may be unenforceable, but until you get another court to overturn what the first court said, you have to obey. So, going in and doing this—and I was very, very young: thirty-two, thirty-three—the only thing that saved me was fortunately Judge Broderick was such a gracious person. He said, "I will grant you the stay, and you can go seek mandamus." We did seek mandamus. And the court held an argument on mandamus, and it was one of the great moments in judicial lore—L-O-R-E, not law—because the chief judge looked at me—I'm not sure who it was—but he looked at me, and he said, "When do you think the report's going to come out?" I said, "It should be done in three weeks." And I could—I knew that, because I was one of the people writing it. And so the court said, "Okay, we'll take it under advisement." They issued an order calling for full briefing on the mandamus petition set for three weeks after we had asked for an additional stay. And of course, what they realized they were doing was—they weren't going to rule on the merits, they were going to moot this whole thing out; they were going to wait until we finished the report, and then Harkness, and whoever else, would see the final report—which, in fact, is what happened. But it involved all of us because—Alan, Stanley and me—because there were disclosure issues for the City of New York; there were enforcement issues: how far does one go with respect to a municipality, which is a sovereign form of government—the SEC.

What was also interesting was, at the same time that that all was going on, one of our folks in what was then the Philadelphia branch office—a fellow named Tom Monahan—had called the City of Philadelphia and asked them to provide us with all sorts of details, including the documents they had used to sell securities. I don't think he actually subpoenaed them. I think he only asked for the documents. The City of Philadelphia sued the SEC. And they got a three-judge court, which was presided over

by Colin Sites, who was the chief judge of the Third Circuit. I remember it well because my pitch to the court was, this was an easy case to resolve quickly—which is that they—we haven't done anything, so you can't sue us. Before I got to my oral argument—and that was our position, and we had filed briefs on it—Chief Judge Sites started by saying, “I know this is an important case, Mr. Pitt, because otherwise, why would you be here arguing it in front of the District Court? You're the General Counsel.” So, my whole theory was sort of out the window when I showed up to argue my theory. But fortunately, we did prevail. It went to the Supreme Court, and cert was denied. But it was another instance in which the Enforcement Division got me into court defending all of us for what we did.

KD: Well let's jump ahead. We've gotten through Harold Williams, and you decided to leave in 1978.

HP: Yes.

KD: Was there any special reason behind your decision to take off at that point?

HP: Yep. I went to see Harold. I was incredibly fond of Harold, and I think he was fond of me. I went to him, and I said, “I think I have to leave.” And he said, “Why?” And I said, “Because the job is starting to get easier. I think you're entitled to a General Counsel who doesn't find the job easy.” It was interesting, because Harold said—and this was sort of prophetic at the time—he said, “You really shouldn't leave. Stick around.” He really, I think, legitimately wanted me to stay. He said, “Don't leave.” “Stick around,” he said. I think Irv Pollack was going to retire from the Commission, and he said, “When Irv retires, I will recommend to the White House that you be appointed.” Harold was a Democrat; it probably meant he didn't realize that I was a Republican, but it didn't much matter. I looked at Harold, and I said, “Mr. Chairman,” I said, “I'm very flattered,” I said. “But I have to tell you: Other than the job I have right now, there is only one other job at the SEC I would want.” Harold smiled, and he looked at me, and he said, “I'm really not ready to leave yet.” I said, “I wasn't suggesting that you should. But that's, in part, why I'm leaving.” And so I left to go into private practice. But I had been at the Commission for over ten years. I'd been General Counsel for a little over three. I just felt that I wanted new challenges.

KD: Right. And the challenges that you got are enough to fill many other interviews.

HP: Well, yes. I won't do that. But I had almost twenty-five years at Fried Frank. I was very, very lucky and fortunate. I represented some terrific people, some people whom the government thought weren't so terrific. I handled a lot of different matters. But there was a piece of me that always longed to go back as Chairman. I think, having worked as closely for Ray Garrett as I did, and admiring him so much, and then having been General Counsel to three Chairmen—I just thought: Wow, it would really be wonderful to go back to the Commission as Chairman. I actually thought I had my chance in '89, when I had been told by people that it was very likely I might become Chairman. But it turned out a young fellow who was a counsel to the President, Richard Breeden, decided

he would like that job. He was already in the White House, so he got the job. I went on my merry way again, practicing law, enjoying the practice of law. I really never looked back. But then, in 2000, the stars sort of aligned. George W. Bush became President. I was not—and am not—very political. My sole effort on behalf of the President was to contribute two thousand dollars to his primary, and two thousand dollars to his general election. I didn't raise any money for him. But after the dust sort of cleared—

KD: We're getting into 2001 at this point, I suppose.

HP: Yes. After the dust had cleared, and he was clearly going to be President, various people said to me: You've always wanted to go back, why isn't this necessarily the right time? And so I let it be known that I was available, if anybody wanted me. And much to my surprise, they did want me. It worked out. I had thought that the Chairmanship would go to Jim Doty, because he had actually represented the President in connection with some insider trading issues. All of the papers had suggested that he was the odds-on lock. I think he would make a fabulous Chairman, and I'm very, very much admiring of Jim. I think he's very able, very capable, and I consider him a very good friend. And what was interesting was: the White House has its own ways. I was told—and I adhered to this—that I had to keep my mouth shut. I was not to say anything, even when I was pretty sure I knew that I was going to get it. I never uttered a word. And suddenly there were stories that started to appear. One appeared above the fold on the front page of the *New York Times*, which indicated that I was going to become Chairman. I have no idea how that story got printed. My assumption is it came from the White House, and that they were leaking it as trial balloons, and so on. But what was interesting was: I got into my office—for some reason, I thought it was a Tuesday—because I think I was actually nominated the next day, which was a Wednesday—but I got into my office, and the first call that morning was from Jim Doty, telling me how fabulous he thought it was. That is the definition of a class act, in my view. I was incredibly impressed with Jim anyway. But I just thought his doing that was very special; because, as I say, he had been rumored for the longest time as being the one.

KD: Did the President speak to you at any point?

HP: Oh yes. Oh yes.

KD: What did he tell you about what he was looking for?

HP: Well, it was very interesting. The way it worked was: I knew a lot of people; and the White House personnel office called me early on, to say that they understood that I might be interested. They wanted to confirm whether I was or not. I told them I was. And they wanted to start a process. I got to meet the President on April 24th. And although that meeting ended with people saying that they would get back to me, that's when I knew I would be Chairman.

KD: Why?

HP: Because the President can't afford to interview multiple people. My view was that meeting with the President was a good sign, and I thought the meeting was—I was sort of in awe, in a sense, because I grew up a poor boy in Brooklyn, and meeting with the President of the United States—I don't care who you are, or where you've been—that's pretty impressive in and of itself. But I met in a room—and there were five people in the room: it was the President; Vice-President Cheney; the chief of staff, Andy Card; the head of personnel—his name is Johnston—I can't remember his first name right now; it'll come to me; and the head of the financial services sector of the personnel office, Dina Powell. But the only person who spoke in that meeting was the President. And just sitting in the Oval Office—you see it on TV, you know—it's not the same. I just looked at the President, and we met, and we shook hands—this was the first time I ever met him—and so on; and I said, “I have to tell you, Mr. President, this is daunting.” He looked at me, and he said, “You know? I feel that way every morning.” He's a very easy person to talk to. I won't bore you with a lot, except to say that, unfortunately, the press draws its own conclusions, and then they purvey it.

KD: But did he talk about the SEC, and what he was looking for from his Chairman?

HP: Yes, yes. He talked to me about issues that he had been hearing about. But he also—because apparently, wherever he went, people were talking to him about SEC-related issues; and he wanted to know—he said, “I gather you are interested.” Obviously, I was. And I said, “Yes.” He asked me to tell him why. I told him about my background; I told him about what I thought the SEC needed; my views on how the agency should run. And we had a conversation. He asked me a whole bunch of questions. It was clear to me that he could not have been relying on being prepped. I'm sure he was prepped, okay. But this was like two people talking, just like you and I having a conversation. And as daunting as it was, he had a remarkable ability to put you at ease. I knew I liked him, because I agreed with what I thought he was running on. But I have to say, having met him—and that carried through, I must say, until the day I left—he was always very, very gracious, and always had ideas and thoughts. He'd ask about—What about this? Or: What about that idea? And so forth. And so on. And one of the things that impressed me was: I thought, given the composition of the SEC, and the fact that it was down to two people by that time, both of whose terms had effectively expired; I said, “I think—I could be wrong on this historically—I think you are going to be the first president since Franklin D. Roosevelt to be able to appoint all five Commissioners of the SEC at one time.” I just said, “That's really an historic kind of thing, with respect to the agency.” There's only so much time you get with the president; it was about thirty minutes, or something like that. But, I have to say: It was really incredible. He was very, very kind of special. And as I say, he did all the questioning, and none of his people did. It was clear: He was in charge. And if I was going to get appointed, it was because of him. And as President, I think it's important that appointees know that. So, I knew that.

But we talked about the independence of the agency; we talked about some of the things I thought had to be done, and there were just a lot of issues that I thought would be coming up. I never thought that any of the issues that I got hit with would actually be the issues that would come up. But as I've said to people: Every day I'd go into the SEC, I would have to look at the bottom of my shoes, to see what I had stepped in; because it

was unbelievable. I was never officially sworn in. You don't need to be. I had one of the very special HR people on the Commission staff, Jayne Seidman—who's now head of investor education, but at the time, she was like deputy executive director, or what-have-you, and she did all the personnel functions—I came in, and she swore me in. I had expected to be sworn in by the Vice-President in the Indian Treaty Room, which is a wonderful room. That was set for the 17th of September, when his schedule would permit it. I was going to have a swearing-in at the SEC. I was going to ask Dave Ruder to swear me in for the staff. But neither of those ever happened, because 9/11 hit, and we were off and running. In your wildest dreams, you could not have envisioned that something like that—it's not just the terribleness of the terrorist attacks, but that it would threaten our whole capital market system was—that is not what one thinks about as the issues I'm going to go to work today and face. It just couldn't have been further from my contemplation.

KD: Tell me a little bit about hearing the news, and your thought process about what the SEC needed to do.

HP: I will tell you a little bit about that. I got into the office on 9/11 early. When I say early—I worked bizarre hours all my life—it wasn't that early; I got in at around 7:00. But I was supposed to go to New York that day. I can't recall exactly what I was going up for, but I know I had a meeting in New York. So I got in early, because I wanted to take care of things before I went off for the day. I don't remember when the first plane hit, but my deputy chief of staff, Lisa Panasiti, who now works for Alan Greenspan across the street, Lisa came in and said, "You're not going to believe this, but some plane crashed into the World Trade Center." And so my thought was: Some dork flying a small plane must have gotten off-course. It seemed a little weird. We have TVs in our offices. She was watching it in her office. I think Mark Radke, my chief of staff, was in some time after that. And they were watching it. But I must say, it still didn't register, until we heard about the second plane. And then we understood. And at that point, we went into crisis mode.

By and large, I spent most of the day meeting with various SEC staff people, and talking on the phone to both markets and other regulators. I think the first person I talked to was Dick Grasso, and so on. Their communications had gone out, and I told Dick—you know, he said, "I think we're going to shut down. We're not going to open." I said, "That makes enormous sense. I'm pleased that you're going to do that. I think we have to get a real beat on what's going on, and so on. I'd like you to stay in touch with me. I will talk to the other market centers, because with New York shutting down—" at that point in time, it's not as true, ironically, today as it was then; but with New York shutting down—pricing very much is derivative of what New York's prices were on major equity securities, and so there were all sorts of issues about whether the other exchanges even could. But I got on the phone. I was talking to the heads of the AMEX, NASDAQ, options exchanges, and so on. I was talking to the Fed, and to the President's economic advisors, and so on. We worked late into the evening.

What I thought was critical was that I had to get up to New York the very next day, and be certain that we knew what the real situation was. And that turned out to be a critical decision. Dick Grasso was quoted as saying that on 9/11, the first person he

spoke to that morning was me, and the last person he spoke to before he went to bed was me. I had known Dick—I had actually represented the New York Stock Exchange in connection with the floor brokerage problem. Dick really had his head screwed on correctly. The two of us understood that there were lots of issues that were going on, not just the ones that people could see. But we had competitive issues. My biggest fear, which didn't get allayed until September 17th, was if we got the markets back up and running, would they collapse again? Because I thought, given the extraordinary circumstances, we could survive the markets having gone down once; but what was motivating me almost from the get-go—and I told that to Dick—was we can't afford to have the markets go down a second time. It's one thing if terrorists strike, they knock out your communications networks, and so on and so forth—that's okay. It's not okay, obviously; but it is rational that the markets would shut down after that happened. What we couldn't tolerate was getting the markets back up and running, and have them break down for some reason; because then it would be on us.

We had a sort of a working group. I had, in addition to Mark Radke, my chief of staff, and Lisa Panasiti, my deputy chief of staff, with me; we had David Becker, the General Counsel, somebody who I think the world of—and I may have inherited as general counsel, but I pleaded with him to stay for as long as he would. I knew David from when we were both in private practice, and I thought the world of him. He's a very, very smart fellow. And I had Annette Nazareth, who was head of the Market Reg division. I also had Bob Colby, who was the deputy director of Market Reg. My decision was, we were going to go to New York. I wanted to meet with not just the heads of the major brokerage firms; but also the heads of the major New York exchanges. I wanted to meet with both the mayor's and governor's emergency crews. I wanted to meet with Verizon and Con Ed people. And that was important because what was just—you could have predicted it, but even so it's still unfortunate it happens: the firms were almost all macho, "We can open back up." But I already knew what the condition was of the communications network, vis-à-vis the exchanges: New York and AMEX. But, having Verizon and Con Ed there: that made it so much better, because they could tell me what was involved. And basically, eighty percent of the communications network at the stock exchange was gone; it was just knocked out. And those firms couldn't have reopened, even though they were telling us they could. In addition, the mayor's and the governor's emergency administrations told us that if we reopened the exchange and had fifteen thousand people start returning to the financial district—and this was, I guess, a Tuesday, 9/12—that we might lose some people who could otherwise be saved. And that was not even close in my book. To me, saving people was what was critical, and we were not going to get in the way of that, and so on and so forth. But, I didn't want this to be a situation where government says: Okay, you must do this; you must do that. What I tried to do—and I might add, I also brought up Peter Fisher, from the Treasury Department; I had been working with Peter, and I thought it was important to have the administration represented, as well as having me, an independent agency represented, and so on. And it was so gratifying. I can't tell you how special that time was. It restored my faith in humanity. The private sector, and other government agencies—and we all worked flawlessly together. You could not have asked for better.

KD: So, did you create a framework where the exchanges and the brokerages could decide when they were going to go back up?

HP: We did. But, we wanted—the way we did it was, we would all decide together. My first meeting with the heads of all the exchanges, I said, “We’re in this together. We’re going to work cooperatively. We’re not looking for enforcement cases.” I said, “If you guys commit serious crimes, we’re coming after you. But,” I said, “we’re going to work together here, so that when the markets reopen, we have a level of confidence—all of us do—that we’ve all done as much as we could.” To be continued.

KD: Okay. Great.