Securities and Exchange Commission Historical Society
Interview with Norman Poser
Conducted on January 17, 2007, by Kenneth Durr

KD: This is an interview with Professor Norman Poser, January 17, 2007, in Brooklyn, New York, by Kenneth Durr. I want to start where I always start, which is with your early background, your training. I understand you went to Harvard Law.

NP: Yes, I went to Harvard College and Harvard Law.

KD: Can you tell me a little bit about Harvard Law? Did you know you wanted to get involved in securities law at that point?

NP: Yes and no. I took corporations with Louis Loss and then securities regulation. He was an amazing guy. Years later I wrote a review of the Loss-Seligman treatise, and I kept my notes from my class with Lou in securities reg. And in the review I listed all of the issues that he brought up at the time, which later became Supreme Court decisions. He was so prescient in things such as insider trading, but many other things. He not only invented securities regulation as a field, but he invented the term "tippee." That was his. So I was very interested in securities reg, but it really wasn't what I had planned to do when I left law school. I was more interested in what is now called intellectual property, copyright and so on. I went to a law firm in New York called Greenbaum, Wolff and Ernst, which did have a lot of clients such as Edna Ferber; Temple Fielding who wrote the Fielding's Guides, the travel guides; and people like Anthony Perkins. They did a lot of copyright. Morris Ernst was a major figure there; he was a great civil liberties lawyer from the 30s. So that's what I did for three years.

KD: What was it about intellectual property rights that attracted you?

NP: I'd had a period of seven years between college and law school. What I wanted to do when I left college was to be a journalist. I did work on a newspaper down in Florida, and on a magazine in New York, so I had different thoughts about whether I wanted to be a journalist, a magazine editor or possibly get into publishing. So it's a field that interested me.

KD: But something about the Louis Loss subject brought you back.

NP: Again, yes. It's a little more complicated than that.

KD: Well give me—

NP: I'll tell you what happened. I graduated in '58 from law school. Three years later when Kennedy became president, I thought I'd like to go to Washington. I thought it would be an exciting time to be in Washington with a new President. I'm sure other people thought it would be something sort of like the New Deal, and it was to some extent, new. People regarded the years before, Eisenhower's administration as nothing much happened. That's not really necessarily true, but that's the way we looked at it. So I was anxious to go to Washington, and I interviewed down there with several agencies, including the SEC, but they didn't have too much to offer me. This was, I believe, February of '61. And finally, I got a job with the Atomic Energy Commission in their General Counsel's office. And that took a while because I had to be cleared in order to go there, and it wasn't until July that I actually started working there. Meanwhile, the guy who had hired me had left the AEC, and I got put in a pool in the General Counsel's office, and I hated it really from day one. I thought atomic energy was something new, relatively new—it would be an interesting agency, but it was super bureaucratic, and I wanted out almost from the first week I was there.

And then Dave Silver, who you mentioned, was a classmate of mine in law school and also worked at Greenbaum, Wolff and Ernst for a while with me. So I knew Dave very well. Dave had left to go to the SEC maybe six months or so before then, sometime in 1960. Dave came over one Sunday while I was working for the AEC—would've been in August of '61—and told me about various things that were going on and that a proposal had been made for the Special Study. And, meanwhile, he was working on the investigation of the American Stock Exchange, which was a terrible disaster. They were almost put out of business. And asked me if I – they were hiring. I called Ralph Saul, who was associate director of what was then called the Division of Trading and Exchanges. I got a job with the Division of Trading and Exchanges. I was only at the AEC for two months. I remember one guy, Bob Block, who was the chief counsel of what we call T&E, Trading and Exchanges. I heard that he was very doubtful about whether to hire me because I seemed like somebody who was floating around a bit too much, having only worked for a month or two at the AEC. I remember writing a letter—in those days people wrote letters—to a guy called Leo Rosen who had been the partner at Greenbaum who I'd worked for, and asked "what should I do?" It seemed I didn't like my job but I was leaving after a month or two. And I remember what he said. He said "never temporize with an unsatisfactory situation." And so I left, and went to work for the SEC. I had an interest in it, a real interest, but it wasn't just that I went right from law school to the SEC.

KD: That's interesting. That's not what one would guess, knowing that you went to Harvard Law, studied with Louis Loss and things like that.

NP: Yes. And then I remember at that point, Loss had just published what I think was called the Second Edition of his treatise, three volumes. I must have it here somewhere. I lived in an area of Washington called Glover Park which was pretty far from 2nd Street where the SEC was, so I would ride the bus every day back and forth which was, I don't know, a 45-minute ride. And I just started on that three volume thing. I started reading about securities law. I'd taken a course, but you know, I wanted to really steep myself in it.

KD: One of my questions was going to be when you first heard about the Special Study, and it sounds like David Silver told you before you even came in.

NP: I don't think the bill had been enacted yet that authorized the Special Study. But I think what he told me was that it was very likely that it would be. And even though I was hired to go to T&E—the Special Study didn't exist at the time—I was slated to go to the Special Study. Ralph Saul was slated to be the associate director of it. So it was clear that that was what I was going to do when I was hired, which was—I think it was September 25, 1961. Yes. And the Special Study didn't really start until early '62, I believe.

KD: So you had a few months to get acclimatized and that sort of thing.

NP: Well, that doesn't really reflect what happened.

KD: Tell me what happened.

NP: We were in the middle of the AMEX investigation. I joined the SEC on a Monday. On Wednesday, Dave and I were on the floor of the American Stock Exchange. I wasn't just sitting around getting acclimatized, I was really thrown into it. And I helped write the report which actually came out the first or second of January of the following year. So I was involved with—not very actively because I was a total newcomer—but sitting there and in hearings. For example, there were three public governors of the AMEX at the time, and one of the questions was what the hell were they doing while all of this, the Re and Re, which you probably know about, and Gilligan Will and some of the illegalities at the AMEX were going on. We took testimony from William Zeckendorf, the real estate mogul, and Mary Roebling who was a public governor. Her claim to fame—she was very rich—was that she was the daughter of the man who built the Brooklyn Bridge. It was around that time that it became known that Ted McCormick had been involved with a stock swindler named Sandy Guterma; they'd gone down to Cuba together. This was in the days of Batista.

KD: McCormick was the head of the AMEX at that time?

NP: Yes, a former SEC Commissioner. He and Guterma, who was the CEOof three AMEX listed companies, had gone down on a sort of gambling, and maybe some other things, trip to Havana. I think Guterma had paid McCormick's gambling debts. I remember we took McCormick's testimony, and that led to his downfall. And there was a group of rebels on the floor of the exchange, particularly a guy called David Jackson, who were trying to clean up the Exchange and prevent it from being put out of business. So that was what I was doing just before the Special Study. And then once Milton Cohen was appointed as head of the Special Study, a staff was brought together, including several people from the staff of the SEC, including some old timers, but some people like myself who were newcomers, and then people from outside.

KD: How did Cohen do this? Did he bring everybody together in a big room and have a kickoff and say here's what we're going to do, and here's who's in charge of which area?

NP: Well, I don't remember that. I don't remember exactly what happened. I do remember the way he organized it, which was that there were several projects and each one had a head. I was the head of one of them but at the same time I was working on some of the others too. I don't remember a meeting of that kind. I think that Milton's way of doing things was not to have big meetings and do that. I think probably he and Ralph would call people in. I think so. I don't have a terribly clear memory of that.

KD: Did you have a sense—and the people that you were coming into this project with—did you all have a sense that this was a good opportunity, something you wanted to do as opposed to staying and working on the regular caseload at the SEC?

NP: Absolutely. Absolutely. I think we all, at least I and people I knew, felt that this was a wonderful opportunity in a sense, a personal opportunity, but also an opportunity to really find out what was going on in the markets. Yes. Certainly, there was never a question in my mind that that's what I wanted to do while I was at the SEC. And as I said, it was not a surprise. I mean when I was hired, that was what was contemplated.

KD: Well, my understanding is that one of the opportunities you got was to look at publicity and financial information. Is that right?

NP: Yes, right. That was the project I was the head of.

KD: Tell me a little bit about that kind of work. What were you looking at there? You weren't looking at tombstone ads, I suppose. Were you looking at analysts?

NP: We were looking more at corporate publicity and public relations, financial public relations firms, and how they got paid and their impact on the market. And what we did was we took a few companies, a few situations and did rather in-depth studies of not only the publicity that they put out, but their relationships with public relations firms, and also the trading, so we then went to the brokerage firms and found out who was doing the trading. One of the really interesting parts of this was that—I forget how this began, but there was a company called Technical Animations. They were over the counter, and since this was before 1964, they did no filings or anything. Only exchange-listed companies had to file. We started looking at the publicity it was putting out. As I remember, what we were trying to do was to link up publicity with the trading and the market price of the stock. And, of course, we were also trying to see whether some of the insiders who didn't have to report because they were over the counter companies—didn't have to report on their own trading—whether they were trading and whether the financial PR people were trading. And this company—as I remember there was no publicity really. And yet the movement of the stock was quite pronounced. And then we decided well, let's—I was working with a guy called Ira Pearce—have you heard of him?

KD: I haven't.

NP: Ira remained a long-term staff member of the SEC, wonderful guy, and we were looking at the trading. And we noticed that there was a pretty nice article about the company in *Time* magazine. Then when we got the trading, we found that the business editor of *Time* was trading. Then we went on and found he was trading through a certain firm, a very small New York Stock Exchange member. And so we then got all of their trading, and we discovered that a whole coterie of people were all trading in this stock. And then we found out that it wasn't the only stock that this was happening to: that the guy from *Time*—his name was Purtell, he was the business editor of *Time*—that he was putting out a very nice article about mostly small, unknown companies that were traded in the over-the-counter markets. But before they did that, this whole group of people bought stock in the company. And then when the *Time* magazine thing came out, then they were selling, they called it scalping. And, actually, this was something which many years later was being done at the *Wall Street Journal*, and led to…

KD: Foster Winans.

NP: Foster Winans. But this was really the same thing.

KD: Yes.

NP: And interestingly, though, to my knowledge, there was never any discussion even at the Commission about bringing an action against him. The only question was, were we going to put it all in the Special Study. And the answer was yes. It's all in the special study. And as a matter of fact, a guy called Murray Teigh Bloom wrote a book a few years later called *From Rogues to Riches*, and he has a chapter about that episode.

KD: I'll have to look for that one. I haven't seen that one.

NP: Yes. And I questioned this guy Purtell, and some of the testimony is in the book. So that was one of the cases. Another one was Barchris, which later became a *cause celebre* and huge—it was a company that made bowling alleys about 1960, I guess, when pinball machines were invented. Instead of having guys down there setting up the pins, you know, it became the hot industry at the time.

And it led, later on, to a—which I had nothing to do with—about four years later or six years later, a major case which is still being read. I teach it in my course about the liability of different kinds of people, such as underwriters and attorneys and so on. But that was one of the situations with them putting out totally false publicity.

KD: So you were really looking at insider trading in a way when you were looking at—

NP: That wasn't the real focus of it. That Purtell case really was a kind of insider trading situation, but it was more about false publicity. And one of the firms was—Tex McCrary was very much involved. I don't know, this is real old stuff.

KD: Oh, I've heard the name. He was one of those larger than life entrepreneurs.

NP: Yes. He was retained by one of the companies. And it's all in the Special Study. It's a short chapter. It's chapter 9 of the Special Study. It was not really in any way the center of what the Special Study was doing, but I had a lot of fun with it and I was very flattered once when at a Commission meeting, Bill Cary, who was then the chairman, said that that chapter was a tour de force [laughter]. But people like Gene Rotberg and Dave Silver, what they were doing was so important and really so future-looking at the whole structure of the industry, fixed commission rates and so on. I got involved in that to some extent, and also more with the self-regulatory role of the New York Stock Exchange. I was very much involved with that. But the publicity thing was sort of my baby.

KD: So you, essentially, got to write that chapter. Is that the way it worked?

NP: Yes, definitely.

KD: Okay. And I assume that Milton Cohen and others might have dipped in and done some editing or something like that?

NP: Oh, sure. Sure. And Dick Paul, who was the chief counsel of the study, who died many years ago, when I took Purtell's testimony in New York, he came up with me, but he just sat there. He let me do the whole thing. And I remember him asking me about writing it. And

I said well—I was very young, I wasn't that young. I was 30 but I feel that I was very young then, now I feel I was very young.

KD: Of course.

NP: And I remember saying to him "Well, you know – I'm just going to go ahead and write it." He said "You can't do that." He said "You've got to really organize and outline everything you do." This is what I tell my students now.

KD: Of course.

NP: So, yes. Certainly, I got editing.

KD: You talked about actively investigating the exchanges. At least you did that a little bit with Dave Silver.

NP: Quite a lot.

KD: I guess you used subpoena power to do some of this. Is that right?

NP: I don't remember that we did. I think we went up there and we went through their records. We went through all the customer complaints. We talked to the people, particularly the head of the department of member firms there. I don't remember that we had to use subpoena power. We used it, I think, a few times in my investigation because there we weren't dealing with regulated people. But I don't know that we ever had to with the stock exchange. I think they were cooperative in the sense that they knew we could go through all their records and they did.

KD: They had good reason to be cooperative, I guess.

NP: I think so, yes.

KD: Well, essentially, you're doing two things. You're doing this in-depth study, I think you said to see how it worked, to see what the securities industry was really like. On the other hand, you're also providing some set of recommendations: "Here's where we think it should go."

NP: Yes.

KD: Looking back, which one of those functions do you think ended up being the most important?

NP: I think the first. I think really understanding what was going on, say in the area of commission rates, in the area of the relative autonomy of the stock exchanges, I mean the recommendations were important, but I think that being able to know what was happening. I think the Special Study is still cited even after over 40 years for what it found out. And I mentioned Gene Rotberg and Dave as two people who were particularly prescient. They really understood things, and they also understood or felt that the way things were at the time wasn't necessarily the way things had to be. And also, that, for example, on fixed commission rates, that the fixed commission rate was really full of holes and rebates and so on. Gene was very much involved with that, but he was also involved with the new issue market. I think he was head of the study of the new issue market. And the recommendations for changes in the law—for example, in the new issue market—were very, very minor. As I remember, the only legislative change, which was in the 1964 amendments, was that while you had to deliver a prospectus for 40 days after the issuance; if it was a new issue, it was 90 days. My recollection is that was the only legislative change in that area. The big legislative change was in bringing the over-the-counter market into the whole disclosure situation, what was then called Freer- Fulbright, because Senators Freer and Fulbright had introduced a bill some years earlier that would've done that. And so we called it Freer-Fulbright. That was the main change in the law. I don't minimize that at all because I think it was hugely important. But I think that the changes in the structure of the industry, particularly the abolition of fixed commission rates, that didn't happen until the seventies.

KD: Right.

NP: But it was the study that got it started. And then in, I think in '68, Gene Rotberg - he was still at the Commission then - began hearings on the subject. But it was a long process started by the forward-looking people at the study. And here I mention them—I don't mention Milton but of course Milton was behind it all. Milton was very, very conservative. He didn't want to go too fast or too far. He had a real sense of what was practical. And I think that's probably true of that period that people weren't willing to make enormous changes. They said "we want to do things slowly and get them done." I think that was the atmosphere of—at least what I knew of the Kennedy years. And in mentioning people, Cary is one of the greatest men I ever knew, Bill Cary.

KD: Did you get to meet him?

NP: Oh, yes. I knew Bill. I call him Bill, but I didn't know him as Bill. There's nobody I can think of that I have so much respect for. He was straight as an arrow. I'll just give you one little thing. One other aspect of my career was going down to Brazil and so on. And that was after I left the Commission. No, it wasn't after I left the Commission. It was just before. Cary had gone back to Columbia as a teacher in '64, and Manny Cohen became Chairman. When I came back in '66 I was still with the Commission. I really was thinking about getting into teaching, and I went up to see Bill Cary because he offered to help me if he could in getting into teaching. He told me to bring my resume with me. Now when I was at Harvard College, I was on the *Crimson*, the daily paper. And we called ourselves *Crimson* editors, or to shorten it, "Crimeds," we called ourselves. And so on my resume, I wrote *Crimson* editor, which was technically right. And Carey looked at my resume, and he said "Were you *the* editor of the Crimson?" I said "No. Actually, the editor of the *Crimson* was called the president. We called him the president. There was a president and a managing editor." And he said "You can't put that in your resume." He said "Regardless of what you called yourself, that's misleading." That's just an example of the way he thought.

KD: Yes. No cutting corners whatsoever.

NP: Absolutely.

KD: With what would otherwise be a pretty normal kind of resume approach. [Laughter].

NP: Yes. I wasn't trying to deceive anybody, but—

KD: Putting your best foot forward, so to speak.

NP: Right.

KD: Well, you got right to what I wanted to talk about, which was the leadership of the Special Study. And you talked about the fact that Cohen and Saul might work with people on an individual basis, but I guess there wasn't a lot of hoopla—rallying folks around this project.

NP: What do you mean?

KD: Well, I talked about the idea of a meeting, getting people together. I get the sense that really it was more folks working together on a one-on-one type of basis.

NP: I think so. There must've been meetings, but I don't really remember. Milton was—how should I describe him? He was very, very down to earth, very, very practical. You always felt that—I don't know whether he had a sense of humor or not, but he didn't engage in it very much, if he did. [Laughter]. He was very much focused on what could be done, and he got it done. And he was tremendously effective. Clearly the success of the Special Study as a real lasting document, which I think it really has been, was due mainly to him, to his way. He certainly kept tremendous control over the study. I remember there was a guy—he was, needless to say, perhaps, a tireless worker. And we would have to turn in to him reports on what we were doing, and drafts. And he went over everything. And some of those drafts were very, very long. And there was a guy, really great guy, later became a litigator with the Milberg Weiss firm, his name was Richard Meyer, I think M-E-Y-E-R, I think, or Meyers. And Rich Meyer wrote a report, and he was a little bit of a wise guy. So in the middle of one of these gigantic reports, he wrote something, whether it was obscene or funny or something, it had nothing to do with the report, to see whether Milton would catch it. He did. [Laughter].

KD: Just testing.

NP: Yes.

KD: Well, just a little bit more on the Special Study. Of course, while all this is going on, you've got the Commission, and you talked about Cary, but how about the rest of the

Commissioners? Was there any sense that they were engaged in this process or interested in this process?

NP: Oh, I think so. I mean you had on the Commission, unlike commissions in more recent years—well you have Annette Nazareth now, who's a former staff member, or Harvey Pitt who worked his way up through the Commission to be General Counsel long before he became Chairman.

KD: Right.

NP: But somebody going from the staff to the Commission, or somebody spending years on the staff, and then going on the Commission, that was much more common then than today. So from '61 till the time Cary left and afterwards, you had Manny Cohen, who was on the Commission from '61, you had Barney Woodside, who was on the Commission the time I was there. So you had two Commissioners who were professional staff members, had been. Trying to remember who the others were at the time. I have a picture on the wall here of the Commission. Let's see. That's a little later. There's Barney Woodside. This is later when Manny Cohen was Chairman. And they were really interested. At least that's my recollection. During that time, I didn't really have much connection with the Commissioners because I wasn't one of the top people there.

KD: Right.

NP: I was on a level of what they call senior attorneys, although I wasn't very senior. But I wasn't one of the directors so I don't remember very often going up to the Commission table, but I did sometimes because part of what we were doing was the follow-up of the AMEX report in '62 and maybe '63. But that was assigned to a guy who was also a classmate of mine in law school named Arthur Rothkopf. Arthur became the liaison between the Commission and the AMEX, the new administration of the AMEX, a guy called Edwin Etherington who became the president of the AMEX. But I'm really not answering your question. Although I'm not really the right person to ask, my recollection and impression is that the Commission really was involved with it. And quite a few people from other departments, divisions of the Commission did work on the Special Study, like Mike Eisenberg, and I think Alan Levenson, who was head of Corporation Finance. He died. I don't know whether you know, but he died a few years ago. Mike Eisenberg went back to the Commission and worked there for a number of years, and now he's retired from it.

KD: Well, you're getting to the last question I asked.

NP: Yes.

KD: Which is, maybe it's just because a lot of the folks are still around, but it seems in retrospect that there must've been a lot of young people, relatively young people, working on the Special Study.

NP: I think most of us were.

KD: Yes?

NP: Yes. Cary and Milton Cohen did bring in other people as consultants and so on, but they weren't old. Walter Werner was brought in, he later became a professor at Columbia through—I think Cary had something to do with that. And then there was a guy called Bob Leavell who was a teacher from the University of Georgia, and another guy who was at Michigan, but I've forgotten his name. But they were people, maybe they were 40, but they weren't much more, and maybe they were even less, maybe they were younger. I was in my early 30s then. But it was a young group, yes.

KD: Do you think there would have been any implications to that, that that could have helped make the study, perhaps, more effective or more adventurous?

NP: Well, I think it was a bunch of people who were very enthusiastic and— people I keep mentioning, Dave and Gene Rotberg—who weren't hampered by having a long history at the Commission and having an institutional interest in leaving things the same. I mean Gene had been with the Commission with Corporation Finance, but I don't think for very long. I think Gene is younger than I am. He was a young guy too. But you're right. It was something; I haven't really thought about that. On the other hand, Ralph Saul was older. He wasn't that much older, but he was probably 40 at the time, and Milton Cohen was a veteran from the 30s. He'd been involved in administering the Public Utility Holding Company Act back in the late 30s. So he was older. But by and large the staff was young.

It was largely lawyers. It was all men, no women. There was one woman, Helen Steiner, who was an economist. She was the only woman professional on the study, but that was considered normal in those days.

KD: Let’s take you out of the study and back into the Division of Trading and Exchanges.

NP: Okay. By the way, they changed the name of it around that time because it wasn’t just exchanges, and it became Division of Trading and Markets.

KD: Who was the director?

NP: Ralph Saul was the director. Phil Loomis had been the director. When I came in, Phil was head of the T&E. Phil, at some point around then, became General Counsel, and I remember meeting with him and some others on the question of Purtell and what to do about that, and they weren’t happy. They weren’t happy with the fact that they might have to come up against *Time* magazine. It was clear that they weren’t happy, but to do them credit, they didn’t quash this thing. If you look at the Special Study, you’ll see it’s all out there, that episode. But Ralph became head of the Division of Trading and Markets after the Special Study, and then they set up a group, which was called the Division—they divided it into two parts, it was Division of Enforcement, which was under Irv Pollack, I guess, and then Stanley Sporkin succeeded him. And it wasn’t a division, it was an Office of Enforcement. This was all about 1970 or ’71. Bill Casey, when he became Chairman, reorganized the staff. But at that time, there was the Division of Trading and Markets. It had an enforcement department and a regulation department. Arthur Rothkupf became head of regulation, but that only lasted a month or two because he was asked to go to the Treasury Department when the Kennedy Administration adopted what was called the Interest Equalization Tax, which had to do with avoiding capital leaving the country. I won’t go into it because I don’t know that much about it, but it created the Euro Bond market.

KD: He was trying to combat what was creating the Euro Bond market—the capital flight of the 60s.

NP: Yes. Well, I’d better not talk about it.

KD: Yes, that’s fine.

NP: But the point was that at Arthur Rothkopf's leaving, I succeeded him. For a few years I was head of that office. And that was the predecessor of what is today the Division of Market Regulation. Our job was to oversee the self-regulatory organizations, to get involved with rule making. We also were involved with market surveillance, keeping an eye on the market. I'll tell you a story about that in a minute. So we then created the first time that there was any real system for overseeing the stock exchanges, the NASD. Before that it was nothing. So we put into effect regular inspections of the exchanges. And Marty Moscowitz, I think he died, but Marty who was one of my deputies or assistants. He particularly was involved with the NASD. He more or less did that and I was more involved with the stock exchanges and participated in a number of inspections in the New York Stock Exchange, AMEX and so on.

KD: So this is where you're getting into the structure of the market being your area of expertise?

NP: Well, no. I wouldn't say that. It was more making sure that the stock exchanges did their job of regulating their members and protecting the public. I was not really too much involved with the structure of the markets. I think Dave Silver—I think his job was assistant to the director. He was not in the line of command, but I don't think Dave had anybody technically working for him. But he, and I think maybe Gene Rotberg—I don't really remember what Gene was doing in the 1963 to 1968 period. But my work was more supervisory over the self-regulatory organizations.

KD: Did you have any serious challenges in that time period, or were the self-regulatory organizations sufficiently chastened by things?

NP: No, I wouldn't say they were chastened. Actually, the powers of the SEC were very limited. For example, a stock exchange could adopt a rule without having to ask permission of anybody. And we put in a rule, it was called Rule 17a-8, I believe, which merely said that they had to give us a certain amount of notice if they were going to adopt a rule. It wasn't until 1975 that the SEC was given the power to disapprove a stock exchange rule.

KD: Is that the Williams Act?

NP: No, the Williams Act was tender offers. The provisions that I was talking about were amendments to Section 19 of the Exchange Act.

KD: Okay.

NP: The stock exchanges weren't chastened. They were very independent. And when we did get involved with the whole commission rate question they said we're not going to do what you want us to do. It took years of work and hearings before all of the realities of what was going on came out, but that was after I'd left the Commission.

KD: What did you want them to do about commission rates?

NP: We questioned the whole system of fixed commission rates, especially since the big institutions got around them by various ways of rebating commissions. But market structure really wasn't the main job that I had.

KD: What was behind the decision to move on from the Commission?

NP: Let me just tell you about one other thing.

KD: Go right ahead.

NP: Have you ever heard of the Texas Gulf Sulphur case? This is an anecdote I tell to my class because Texas Gulf Sulphur is one of the cases that most corporation students read these days. We had a little room where there was a ticker tape, and what they call a broad tape, the Dow Jones news tape. And we had a woman, she was actually a German woman named Ingrid Nelson, and her job was to sit there and watch the market. There was also a guy called Peter Freed, maybe she worked for him and he worked for me. He was in charge of market surveillance. And the Dow Jones tape would have all these news stories. And then every now and then she would tear it off, and she had a hook on the wall, and she'd hang these things on the wall and keep them for a while. I'm not exactly sure why, but sometimes it was interesting to go back and see what was said. So one day, she came into my office, and she was carrying these two sheets. Now one of them she'd just gotten off the Dow Jones tape. The other one had been hung on the wall four days earlier. And what she noticed was the Texas Gulf Sulphur had announced this amazing find of ore up in

Northern Ontario. And something jogged her mind, and she said "I just saw a few days ago another one up by Texas Gulf Sulphur that didn't seem quite the same." So she riffled back and found it where they totally pooh-poohed any rumors of anything and so on, and brought these two sheets into my office. And that's how the Texas Gulf Sulphur case got started. Because from then on, we started investigating how come this company had issued these two things. From there, we found out that a large number of their officers and employees were doing insider trading. That's how that famous and very important case started because it was the first case that a court had said that insider trading in the impersonal open market was a violation of rule 10b-5.

KD: So you pulled the first thread, I guess, or this person in your office.

NP: We started that.

KD: Before we got onto Texas Gulf Sulphur, I started to ask about your decision to leave the Commission.

NP: Well, I never planned to be there as a career, and I was there six years. It seemed to me that if I was going to get out I should do it. I got involved with being a consultant with developing countries. Dave may have told you that he and I went to India in 1964 to look at their stock markets, and we wrote a report. And then a year later, I went to Brazil and actually spent six months there as a consultant to their central bank through the offices of AID, the foreign aid agency. And then when I got back, which was in August or September of '66, I was really looking around. I went to work for a law firm in New York—Rosenman, Cohen. Getting back into law practice was not—having dealt with all these other different things, helping people write wills and so on—some of it was interesting and some of it was securities and things I had some background in. But I started looking around after a while, and had an interview with a firm. And by that time, Ralph Saul was head of the American Stock Exchange. This would've been in the early part of '67. So when I went to this brokerage firm, I gave Ralph Saul's name as a reference. And, of course, when I got back, I called Ralph to tell him that he might expect a call. And he said well he had no idea that I was interested in leaving Rosenman, but if I was, he would like me to work for him again. I spent a little over a year with the Rosenman firm, and then went to work for the AMEX in May of '68. Right, because '67 was when I left the SEC.

KD: Right. Now I think the newspapers said that you were going to be membership compliance director.

NP: I was.

KD: Tell me about that. That's an interestingly-named title. I have images of you trying to make people comply.

NP: Well, I guess anywhere else, they might have called it enforcement. We did investigations and brought disciplinary actions. We also did inspections of people's offices. There was a small group of firms that were not members of the New York Stock Exchange but were members of the AMEX. Not talking about floor members, but firms that did business with the public. For those firms we examined their books, the kind of thing that the New York Stock Exchange does for its firms. We had a small department of financial people who did that. So that's what I did for a few years.

KD: Any notable cases that you worked on?

NP: They seemed notable at the time. I'm trying to remember. It's hard to believe, but the week that I went there, which was in May of '68, the AMEX share volume was 72 percent of the New York share volume. And they were trading a lot of very speculative stocks, and there was a lot going on. One was--well, this was a couple of years later, Four Seasons Nursing Homes, which was a big manipulation. Another was a company called Equity Funding, which was another big manipulation. And at least in the Four Seasons Nursing Home case, the specialist in the stock was involved, as was the president of the company and some of the members. So we finally stopped trading in stock and brought an action against the specialist.

I had the job that you mentioned for about three years. The Chairman by that time was not Ralph anymore. He'd left. Paul Kolton was my boss, and I worked directly for Paul in the early 70's when there were two principal things that I was involved with. One was presenting to Congressional committees and to the SEC the AMEX's views on the legislation, which became the amendments of 1975. The other was, it was a very lousy period for the stock markets, and the members were hurting in the years around '72, '73, '74. It was a very depressed period. And in 1973, the CBOE was invented, and began trading standardized put and call options, or starting with call options and later put options. And we had to persuade the SEC to allow us to start trading them too, to have a second put and call market. And so that was a big job that I was involved with very much in trying to, in getting the SEC's approval of and convincing them that we could protect the investors, and developing the rules, the options rules of the exchange.

KD: How long did that project take?

NP: Well, we finally were able to do it in '75, so I would say a year or two. We started trading options two years after the CBOE did.

KD: Now did Paul Kolton think that your SEC experience might help you in this government relations function?

NP: Actually, Paul Kolton was a friend of a guy I knew. He was actually a very close friend of my brother. Paul Kolton came in as executive vice president under Ted Etherington when the AMEX was reorganized in '62, I think it was, maybe '63. Paul, because he knew of me through these friendly connections, asked me to come to the AMEX then. I was still in the Special Study; it was just ending at that time. And I didn't want to. I felt that I was much too close to the investigation of it, and I was also very much involved with what I was doing at the SEC, so I didn't. But when I finally did, which was five or six years later, Paul knew me and Ralph knew me, Ralph Saul, so that it was not a difficult jump to make at that time.

KD: Well, I was talking about whether your experience with the SEC was a benefit to you in trying to work this out.

NP: Oh, yes. Absolutely.

KD: Did you find yourself going back and dealing with people that you'd known on the other side of the fence?

NP: Yes, to some extent. More later on because, as I said, sometime around '71 or '72, I no longer was in charge of membership compliance. They promoted me to senior vice president, and I was working for Paul Kolton on what you might call policy and regulatory matters. And then I was working with people at the SEC, including some of the people that I had worked with. I just remember one – I don't know if you like anecdotes.

KD: Oh, yes.

NP: Bob Birnbaum had gone to the AMEX too, and he became Ralph Saul's assistant. He later became president of the AMEX. And a bunch of us went down to some kind of hearing before the SEC. And one of the SEC people who we'd worked with and knew very well was Sheldon or Shelly Rappaport, who died very recently. And Paul Kolton, we were on either side of Paul Kolton, he was giving the talk. And after he finished expressing AMEX's point of view on something or other, Rappaport turned to Bob Birnbaum and said "Well, what do you think, Mr. Birnbaum?" Of course, we all knew each other very well, but this was formal. And Birnbaum said "I always agree with the chairman." Bob Birnbaum was—I don't know if you've met him.

KD: No, I haven't.

NP: He was a very savvy guy.

KD: Good policy to follow. The AMEX, of course, had a bit of a reputation going back as a little rougher.

NP: Absolutely.

KD: At this stage of the game, were you actively trying to shake that reputation?

NP: Well, you asked me about the stock exchange being chastened. I think that the AMEX was really chastened by what had happened. They'd been almost put out of business, they could've been put out of business. And Wall Street, under the leadership of a guy called Gustave Levy, who was with Goldman Sachs, they set up a committee and basically told the AMEX what to do. They put in Etherington who was a white shoe guy from Pershing and Company, and they made the AMEX adopt rules very similar to those of the New York Stock Exchange, and they chastened the floor people, who were really the problem. And that lasted for a while. But my most difficult—let me just give you the chronology. After the enactment of the 1975 amendments, around that time I was really working for Paul but I was also working for a guy called Jim Walker, who was Executive Vice President for legal and regulatory affairs. Jim left, actually to go and work for Saul in an insurance company that Saul became president of in Philadelphia. And so I then got Jim Walker's job, and I was then head of all legal and regulatory affairs from 1975 to the time I left in 1980. And the really big problem occurred around—I don't remember exactly what year, 1978 maybe—when it turned out we learned that many of the specialists in options were putting on fictitious trades, and it was a widespread thing. And we really never found out why. It didn't seem to be a manipulation. I think it was a concerted effort to try to make the AMEX market a more important market than it was. We were second to the CBOE. CBOE was the principal one. But it was a widespread problem, and we brought disciplinary actions against several specialists on the exchange, which didn't endear me to the floor members of the exchange. That would be about 1978.

KD: So I suppose the options business looked a lot smaller after they stopped doing these extra trades.

NP: Well, I really don't know. I really don't know that it really made a lot of difference, but it was a real black eye for the exchange, and led to a vice president of the exchange being criminally charged by the New York Attorney General's office for authorizing this. And four of the specialists who were admittedly involved in it said that this guy, whose name, I think, was Bob Reed, had told him they could do it, to do it. And he told the attorney, he denied it all before the Attorney General, and so they then charged him with perjury. And he was tried and acquitted, and I think rightfully so. I don't think he had anything to do with it. And his lawyer was a guy called John Martin, who's now a District Court Judge in New York. But it was a very turbulent, unhappy period.

KD: So in a way, you're back to enforcement again.

NP: Well, as the head of the whole thing, I was necessarily involved and actually was personally involved, even though the enforcement department was—I had responsibility for it but I was actually in there.

KD: Can I get your perspective on AMEX and some of the other big events that were happening at this point? The back office crisis. Everybody knows what happened to the New York Stock Exchange. Did you have a similar situation, late 60's, early 70's, at AMEX?

NP: Well, you know, the back office crisis was much more of a firm problem—the problem was at the firms.

KD: Okay.

NP: And as I said before, most of the AMEX member firms were New York Stock Exchange member firms. So the answer is yes, but it was something that the New York Stock Exchange handled or, to a large extent, mishandled. Of course we were involved. And in those days, for a while, they had no trading on Wednesdays because they needed the time to catch up with the paperwork. Well, we didn't trade on Wednesdays either then. Of course we got lots and lots of customer complaints about failure to deliver and failure to get dividends and so on. And so we were involved with it, but it wasn't specifically an AMEX problem.

KD: So there wasn't—you didn't feel there was anything you could do about it.

NP: I don't think there was anything we could do about it.

KD: How about in the unfixing of commission rates in the mid-70's?

NP: Well, there again we were just minor players. I remember once—during this time Paul Kolton had, I guess he called it an executive committee, consisting of his principal officers, and we were going to go down to Washington. The question was what position would we take. I remember Paul went around the room. And the consensus was that we couldn't really take any position that was different from the New York Stock Exchange.

KD: Why not?

NP: Because our members were the same people, I suppose. I think it was in 1970, Bob Haack was president of the stock exchange, and he made a speech, I think it was to the Bond Club, in which he said that they had to negotiate, they had to abolish fixed commissions. And that ended his influence. He became a sort of non-person, even though he finished out his term as president, which was maybe a couple more years. But I just have the greatest respect for one of the few people who not only saw reality, but had the courage to speak out publicly about it, and he was so absolutely right. And those people just couldn't—I mean those people being Wall Street generally—understand their own self interest. I pointed out to my class just a few days ago that if you take the last year of fixed rates, which would be '74, the daily volume on the New York Stock Exchange, the average daily volume was about 16 million shares. And in 2005, it was 1.6 billion shares. I think the average volume was 14 million. Anyway, it was an 114 fold—not percentage, but fold, increase. And certainly, the abolition of fixed rates had something to do with it, had a lot to do with it. Not the only reason. But Haack is one of my heroes because he had the courage, it took a lot of courage, I think, in his position to tell people the truth.

KD: Why did it happen five years later?

NP: It happened five years later because several things came together. One was the exposure to anti-trust liability. Back in '61, I think it was, or '63, the Supreme Court decided the Silver case which said that there was only limited immunity from antitrust liability, and the Justice Department and the SEC and Congress were all pushing for negotiated rates. And besides that, fixed rates were just a myth by that time, by '75.

KD: This was something you saw in the Special Study, I guess.

NP: The Special Study was the beginning, yes.

KD: Another one of these big, long-term changes, the idea of the national market system. That first started to come out in the mid-70's or so.

NP: Yes, it's very interesting. I tried to trace it back in an article I wrote. After the Special Study, there was another study on institutional investment. And that study had, as a recommendation, a national market system. You won't find anything in the body of the study about it. It just appeared sort of as an add-on. And apparently, Commissioner Dick Smith had, sometime a little bit earlier, talked about it at a dinner speech, a meeting of the Association of Christians and Jews [Laughter], in which he had mentioned the idea of a Special Study. That's the first—

KD: The idea of a national market system?

NP: Of a national market system. Yes. And that's how it seems to have begun. And then, it was then incorporated into the amendments of 1975.

KD: Are you going to tell me that AMEX's position was the same as the New York Stock Exchange's position on that too?

NP: I don't know that the AMEX had much of a position on that, and I don't know that there was a great deal of discussion of it before the amendments were adopted. It really began before the amendments and I don't think the New York Stock Exchange was against it and I don't think the AMEX was against it. I'm trying to remember. I think that the real question there was—this is still an issue that has not been resolved—what is the national market system going to look like? I wrote an article, which really went through the whole thing, it was in the NYU *Law Review* back in '81. But the question then was you want to try to give investors the best possible execution. And not just the best possible execution, wherever that might be. In other words, if you have several market centers, you want to make sure that they get it wherever it is. And then the question was—well the whole question boils down to the CLOB.

KD: Right.

NP: You know about that?

KD: Yes, I do.

NP: Under the CLOB you'd have not only price priority, but time priority. And that would mean that everybody would have an incentive to get their limit orders into the CLOB. And that was what the SEC proposed in 1978. A year later, they changed their mind. They were under big pressure because the New York Stock Exchange saw the CLOB as basically the end of the stock exchange.

KD: Right.

NP: And I think that that was—and still is—the issue, although the CLOB has become kind of a dirty word now. I mean people don't even want to talk about it. And the SEC, when they adopted Regulation NMS in 2005, they emphasized that this is not a CLOB. And then they've come up with different reasons why a CLOB isn't a good idea. Their reasons are not always the same. But when I was with the AMEX, my recollection is that the AMEX took pretty much the same point of view as the New York Stock Exchange.

KD: Okay. We're getting you to put your professor hat on here a little bit.

NP: Okay.

KD: I did take a look at a good number of the articles that you've written over the years, the journal articles to get a sense of what your professional interests have been and that sort of thing. While we're on the national market system, I did notice that '81 article.

NP: Okay.

KD: I think my sense was that, at that point, you were a little bit pessimistic as to whether the vested interests would let it happen. More recently, I think, just within the last few years, you seem to have a little bit more optimism that it'll make the New York Stock Exchange move toward becoming an electronic exchange. I wonder if you can give me a sense of what you've seen change, and what hasn't changed in those intervening years.

NP: I guess there are two things, maybe three things, that have changed in the sense that they've moved on. One is technology. I think that even in the 70s the technology was there for a CLOB but you didn't have electronic exchanges. There were certainly proposals. Even when I was in Brazil in 1965 and 1966, there were a couple of guys who had the blueprint for an electronic exchange in Rio de Janeiro. Technologically I don't think it's that difficult a thing.

KD: Right.

NP: It started with London in 1986 and now every other country's stock exchanges are electronic. And then you have increased globalization so you have much more competition. And there was a good piece, actually, in the *New York Magazine*, of all places, about John Thain and the New York Stock Exchange just a couple of weeks ago. Very good. In fact, I can give you a copy of it because I've given it to my students.

So I think that the kind of thing that I've talked about and written about and so on is that the specialist system and the whole trading floor and so on are totally outmoded. But now I've got less to talk about because Thain is doing it. And my guess is that the hybrid market is not going to last very long. You know, they tried something like that in London in '86—"Big Bang." They said because there were people who were a little bit afraid of violent changes, said well look, we'll just keep the floor, and you can trade on the floor, or you can trade from upstairs electronically. We'll have both. It lasted a few weeks, that's all. They couldn't compete. The old fashioned way couldn't compete. And you see this happening with the commodity exchanges too. And they're particularly vulnerable to competition from abroad; the commodity exchanges in Europe are all automated. There are no pits anymore. And so I think that that's the big change that the New York Stock Exchange is eventually having to—in fact, I think it was three firms a few years ago, 2000, sent the SEC a white paper in which they were proposing an electronic exchange. The firms were, I think, Merrill Lynch and Goldman Sachs. I forget exactly, but really the major firms. Over a year ago, I made a Freedom of Information Act request for that white paper, which was very secret. Just today they said it's being—it took them, I think, a year and a half, they said they now granted my request sort of late.

KD: Well, that's not bad as far as FOIAs go.

NP: Is that right?

KD: Some take years and years.

NP: Yes. I'd be interested to read it, but I think it's become pretty much moot because I think they're moving in that direction.

KD: One of the things you emphasized just a bit ago was the idea of specialists. And even when you weren't talking about the electronic exchange per se, I notice that you had a fairly persistent focus on broker dealers and what was wrong with that system.

NP: What was wrong with the specialist system?

KD: Yes. And I think you had some articles in the early to mid-80's, several of them, that covered that subject, and I'm wondering where that interest came from, and why the focus.

NP: Well, as I said, I was on the floor of the American Stock Exchange on my third day working for the SEC. So I got involved with the specialist system right from the very beginning of my working at the SEC. My general observation has been that they probably take more from the public than they give. And the rules that apply to them—they're market makers, and they have a monopoly, at least on the stock exchange floor, and regulation takes the place of competition. In other words, theoretically, since they're regulated, they don't have the competition that at least theoretically you have among over-the-counter market makers. One problem is that regulation is very subjective. They're supposed to only trade for their own account to the extent necessary to keep a fair and orderly market, and they must trade to the extent necessary to make a fair and orderly market. Well, what I've seen is that they do what they want, pretty much. And they make the most money where they're least needed, which is in very active stocks. So that at least theoretically, the people trading active stocks sort of subsidize the people trading in inactive stocks where, perhaps, market makers are needed to even out flows and be there when it's necessary and so on. But I don't see that happening.

We've seen some repeated abuses by specialists going back to the day of the Kennedy assassination where the market remained open for about half an hour before they could get a group of governors together to close the market. And during that time, the specialists were making out like bandits trading with their limit orders. In other words, they had this tremendous conflict of interest. They represent the limit orders, and at the same time, they're trading for their own account, and it was impossible for the brokers or the customers to get through to the floor to pull those orders. So they were trading with those orders. Of course, the market turned around a few days later, and the same thing happened on May 28, 1962. Before that was the mini crash, in May of '62—the Special Study has a little chapter on that. I don't know who wrote this—I think it's in the Special Study—talking about the specialists and maybe the floor traders, saying the question is who is providing liquidity for whom? The whole theory being they provide liquidity. It's the public provides liquidity for them.

And you asked me about what factors have changed things. One factor which we haven't talked about is decimalization. And I think that that, by narrowing the spreads, has done a lot to end or to sort of phase out the specialist system. In fact, a former specialist told me once a few years ago, he said decimalization, that's the death of the specialist system.

KD: Interesting.

NP: You asked me about the national market system. I don't know. It's become such a really complicated thing, and I'm not as close to it because I've got a lot of other interests and so on, to really stay with it, but I think that the growth of the ECN's and then the stock exchange doing what they've done throughout their history, which is when an upstart comes, take it over. And they've done that, right? They took over Archipelago, and NASDAQ took over Instinet. And those, themselves, were products of mergers. So while there were a large number of ECN's a few years ago, now there are hardly any. I don't think there are really any independent ones. There's one called Domestic, but they were taken over by a brokerage firm. So I think that the electronic trading is here but then the question is how will it work. And a lot of people are not really happy with regulation NMS. And the SEC says well, there are two things we have to be concerned about. One is competition among orders, and the other is competition among markets. And we're trying to strike a balance. That's what they said in the NMS release. But there are a number of people who think that competition among markets is really a red herring because the really only important thing is that people get the best execution of their orders. And the best way to do that is a CLOB. And maybe one day we'll have that.

KD: Something I noticed, and I'm not sure if you did academic articles about this, but churning —

NP: I did write an article about churning.

KD: I know you had something in the *New York Times*.

NP: Yes. A colleague of mine next door, Arthur Pinto and I wrote an article together.

KD: I remember churning getting into the headlines for a while and I'm wondering were you picking up on something that was out there—how did you come to this issue of churning, you and your associate?

NP: Well, I came to it in this way. The article I wrote was about churning of options. It was in the *Business Lawyer*. One of the things I've done, starting shortly after I started teaching is

I've been asked to be an expert witness in cases. Usually they're customer-broker disputes and some of them involve churning. I was involved in a case very early on that involved options. And while some general guidelines had been worked out for deciding whether trading in stocks is churning, with options it's a lot more difficult because options are, by their nature, short term. I wrote an article trying to make some sense of that, and that got me interested in the question of churning.

KD: Was that practice commonly known about at the time that you wrote these articles?

NP: Yes. There was an article, a note in the Harvard *Law Review*, back about 1970, I think, on the subject.

KD: I think there was something in the *New York Times*, and there was a nice round of letters, you know, people saying "that's silly, this can't possibly happen because we've got all these safeguards" and things like that.

NP: Was that about churning?

KD: I believe it was. In another *New York Times*, you were talking about specialists, I think in the context of the British "Big Bang." And Roberta Karmel had the rebuttal.

NP: Actually, there's a guy—I can't remember his name now, but he was the Secretary of the New York Stock Exchange. His name doesn't come to me right now. But at any rate, I wanted to take my Securities Reg students down—maybe it was a seminar—to take them down on the floor of the exchange, and that was all arranged. And then one of these articles came out about the specialists, and he said well you understand, I can't very well take you down there. I guess he couldn't be responsible for my safety.

KD: Well, what that gets to, and the ones I just mentioned were pretty high profile things, not hidden away in a law journal that not a lot of people read. And the question is at some point, do you see your work as an academic trying to influence what's happening in the market and in regulation?

NP: Yes, I have. Talking about the national market system, the market structure and the specialist system, I feel that the things that I was yelling and screaming about a few years ago are really beginning to happen. So I don't feel so impelled to talk about them anymore because I think the trading floor is a thing of the past. I had an op ed page piece, which—I guess it was something to do with the Europeans doing something. This was maybe five or six years ago. And the *New York Times* said they were very interested in it. I was really talking about the death of the trading floor and that maybe they would use it as a—it would be a very fine museum for a financial museum or something like that. Other people have said a bowling alley and so on. Anyway, I wrote this article, and I was in a long e-mail exchange with a woman at the *Times*. And one day she called me and said "Well, I've got a few things we'd like you to change. If you have any problem with it," she wanted to get more on what effect it would have on New York and so on because we're a New York newspaper. I had no problem with it. I said "Fine, I'll work on it and get back to you," because it was going to be published the next day. And then she called me a few hours later, and I said "Well, I'm working on it. I've just about finished it." She said "Forget it. Schumer's writing an article on this subject that's going to be in tomorrow." So I could hardly compete with a senator.

KD: You got bumped.

NP: I got bumped. I was very disappointed. I guess what had happened was that day or the day before, something was announced in Europe, which made it very newsworthy. And I suppose Schumer's staff got right onto it, so it never got published.

KD: Well, I want to jump off from that and start to wrap up with another big question. We haven't talked about why you decided to become a professor and I want to get a little bit of that. But I also want to get some sense of how your experience with the SEC and on the AMEX have influenced the way you teach and the way you look at your subject, comparing yourself—maybe not by name—but with other professors who have only been in academia.

NP: Well, first of all, mentioning about my resume and Cary, my interest in teaching goes back to then. That was in '66 or so. And I did start teaching in the 70's as an adjunct, first at Rutgers and then later on NYU. And so I really wanted to get into teaching. And then after Arthur Levitt came in, he wanted somebody else when my contract expired, which I had a contract which expired sometime around 1980. So I decided that that would be the time. And I had two opportunities, one was here and the other was in Dallas and SMU. And I decided I certainly wanted to stay in New York, and so I stayed here. I think probably at the time SMU was a better law school than this, but I'm not sure that's still true today. So it was something that I long wanted to do. And I had a problem because I was already over 50, and most academic institutions, they get somebody who's middle aged, figure well, here's somebody who just wants to coast and so on. So it was hard to be credible. But anyway, I was able to. I never looked back or regretted it for a minute. I've had a most satisfying career here.

As to the other question about methods of teaching and so on, I'm not that much of a theoretician. And there are a lot of people who teach corporations or securities from a theoretical, economic point of view and so on. That doesn't mean that analysis isn't important. Of course it is. I think that one of the things that has influenced my teaching is experience and having some real knowledge of what went on, at least in the medieval era of the 60's and 70's, which now seems so long ago. I mentioned doing consulting and expert testimony, and that has been very, very rewarding because, obviously, you make money out of it. But quite aside from that I get some feeling for what's going on, and I keep up with some of my old students and have lunch with them and say what are the issues today? What's really happening? A guy who is five years out of law school and working for a law firm that's doing securities work will tell me about stuff that's really happening and going on. So I think it enriches my teaching. The way I have seen it from over the years is that really it's like a three legged stool. There's the teaching, there's the writing and there's the consulting. And I think each one adds to the other two. So other people, obviously, do things differently and have different backgrounds and have different strengths. But for me, that's been—I'll give you an example. Maybe this is – we're being recorded here, aren't we?

KD: Yes

NP: Well, I'll just tell you in general without being too specific. I was retained several years ago. Have you ever heard of the Salomon Brothers treasury bond scandal in 1991?

KD: No, I think I missed that.

NP: It was a terrible scandal. It ended with John Gutfreund and the other two top people at Salomon having to resign. Warren Buffett, who was a director, took over for a while because a guy called Mozer was, you might say, defrauding the U.S. Treasury. They said when there was an issue of treasury bonds that no one firm would be allowed to bid for more than 35 percent of any particular issue. They didn't want to have one firm corner the market. And so what Salomon did, well this guy did at Salomon, was to take 35 percent, and put another 35 percent in the name of a client and then transfer it. And the top people, including Gutfreund, knew about it, learned about it, but didn't do anything and didn't report it to the government.

KD: Okay.

NP: So it was a major scandal. And, eventually, the general counsel, who was an ex-SEC guy called Donald Feuerstein, had to resign—

KD: Yes.

NP: —because he knew about it. And I think he was acting totally in good faith because he tried to get Gutfreund to report it to the government, but maybe he didn't do enough. The SEC wrote a report about him at the same time that they found Gutfreund and the other two, Strauss and John Meriwether, who later became head of the Long Term Capital Fund—a later disaster—

KD: Another disaster.

NP: They all had to leave and they were disciplined by the SEC. So later on Salomon brought a derivative action against the three people, and there was a lot of litigation about that. I was brought in as a consultant involving that case. And it turns out that that case is now one of the leading cases on the duty to supervise, and it's in all the case books. Well, when I get to that case, I can talk about it in a meaningful way—

KD: I'll bet.

NP: —without necessarily giving away any confidences, but I really know what that case is all about. And that's just an example of being able to teach in a way that is, perhaps, more interesting to the students, and perhaps more educational. One thing I like to do is, every year or so when the Supreme Court decides a securities case, is take some students down to listen to the oral argument. I always find it a great experience to hear, even though I usually disagree with the way the court comes out. If you ever go and listen to an oral argument of a case, you never forget the case, you know.

KD: Yes. Well, is there anything that we haven't touched on that you think we—

NP: I don't think so. I made a few notes, but I don't think there's anything. No. Only thing, I guess I touched on it, but I would say that perhaps in a sense, a turning point in my life was the afternoon in 1961 when Dave Silver came over to my apartment to have lunch with us and told me about the opportunity at the SEC.

KD: Yes.

NP: He's a very close friend, and we just had dinner together two nights ago with our wives.

KD: Well, it's also fortunate—for the SEC at least—that things were so miserable at the AEC that you were ready to leave.

NP: Anyway, it was fortunate for me.