SEC Historical Society
Fireside Chat: SEC Office of the Chairman
May 12, 2009

THERESA A. GABALDON: Good afternoon and welcome to today's Fireside Chat focusing on the SEC Office of the Chairman and broadcast by the Securities and Exchange Commission Historical Society on www.sechistorical.org. I am Theresa Gabaldon, Lyle T. Alverson Professor of Law at The George Washington University School of Law and moderator for the program. The SEC Historical Society preserves and shares the history of financial regulation through its virtual museum and archive at www.sechistorical.org. The museum is free and accessible worldwide at all times. The museum and archive as well as the Society are separate from and independent of the U.S. Securities and Exchange Commission and receive no government funding. We thank the many institutions and individuals whose gifts and grants make possible the growth and outreach of the virtual museum and archive to over 9,000 visitors each month.

Since November 2007 as part of the Society's commemoration of the SEC's 75th anniversary in 2009, the Society has broadcast and preserved in the museum a series of programs looking at some of the major divisions and offices of the SEC. Today's program on the SEC Office of the Chairman is the last in that series. I am very pleased to welcome Peter Derby, The Concinnity Group who worked with SEC Chairman William Donaldson earlier this decade, as well as Leonard Leiman, Fulbright & Jaworski LLP, who worked with SEC Chairman Manuel Cohen in the 1960s. Their remarks today are solely their own and are not representative of those of the Society. They cannot give legal or investment advice.

A look today at the SEC Office of the Chairman has an unusual focus. There is a great deal of information about SEC Chairmen in the museum's collections, including the only known oral history interview conducted by Manuel Cohen, and an interview several years ago by Mary Schapiro, the current SEC Chairman. There are only a few materials currently in the Museum on the work done behind the scenes by the dedicated staff in the Chairman's Office. Here though, I will note the oral history interview with David Ratner, who also worked with Chairman Cohen and who may have a different viewpoint than the one Leonard will discuss today and the papers of Mollie Zion who began working with Mr. Cohen in the mid-1950s and stayed with him throughout his Chairmanship.

Today's program is an opportunity to add context to the collections of the work at the SEC Office of the Chairman particularly focusing on the 1960s and early 2000. Peter, notwithstanding our primary focus, I understand that you have heard a story or two about the early days of the office. Would you be willing to share a bit of the background on the work of the office up to the 1960s before the two of you began to compare and contrast your own experiences?

PETER DERBY: Certainly. Well, thank you, Theresa and thank you to all in the SEC Historical Society to inviting me here today to be with Leonard Leiman to talk about the Office of the Chairman. I did learn numerous things about the founding of the SEC to the changes in the '40s and '50s that have affected the agency right through to today. Largely that the Commission started where all five Commissioners would really work together to decide everything. There are three functions: the legislative rule making, the adjudication, and the organization's administrative functions. They would do that collaboratively all through that time. But through the Hoover Commission on organization of executive branch agencies, out of that came a reorganization plan on June 20th of 1949. You will recall Reorganization Plan 10 which had split up the role of the Commissioners where the appointment by the President is now with the Chairman and the administrative operating role was granted to the Chairman of the Commission. So that's more about stories of how those different Chairmen utilized the Reorg Plan 10 to move forward to make the agency more efficient and effective over time. Truman took the Hoover Commission and then actually implemented it. There were other Reorg 10; it's interesting that Number 9 is the Defense Department, Secretary of Defense. Number 11 is the FCC, which by the way the Senate disapproved its final version, so that did not go through. But Reorg 10 in March 13th of 1950 was passed and functions to this day.

THERESA A. GABALDON: Thank you. We will take a little jump then after the space age and I would like you to each take a minute to tell us a little bit about your personal history with the Office of the Chairman. Leonard, could you get us started.

LEONARD LEIMAN: Yes. Let me first share Peter's sentiments about how nice it is to be here with you.

I met Manny when Manny was chief counsel to the Division of Corporation Finance and I was a young lawyer practicing in New York. He was remarkably accessible to people who had questions if there were challenging questions; at least, he was not too tolerant to fools but he was very helpful to the bar. And it was not until some years later when Manny became chairman, he decided that he wanted an executive assistant, then it was called, who was more conversant with Wall Street than he was, since he had spent his entire adult working life at the Securities and Exchange Commission. One of my partners, Howard McMorris, knew Milton Kroll, a Washington lawyer who had worked at the SEC with Manny. Both knew me and Manny and suggested that I would be a good choice. He brought me down there and it was a terrific first meeting and we shook hands then and not too long after that, I was in Washington beginning work with Manny.

THERESA A. GABALDON: Peter, how did you come to work in the office?

PETER DERBY: I had met Bill Donaldson on Wall Street, actually my future sister-in-law at that time had worked for Donaldson Lufkin Jenrette (DLJ). But I really got to know him in Moscow, actually I was in Russia and the New York Stock Exchange had arrived, it was June of 1990 and he came with the delegation and I was the token American businessman trying to do something from the ground up there. I started the first private bank and personal investment firm, investment banking, mutual funds and so on in Russia at the time. We stayed in contact through the years. DLJ was involved in one of the first offerings of an IPO, SimpleCom which is a telecom IPO that they did. So we stayed in contact through that time and when it was time for me to come back to the States and to consider selling the things that I had created there. DLJ, Bill personally was very much helpful to sharing their knowledge and experience about the different techniques and approaches that I should take. In the end I did leave it to the staff and to not take pretty large sums offered by Western firms but I think it proved in the long run the right thing. But we stayed in contact and then in 2002 I saw Bill again at a cordial event and he was expressing his dismay after 50 years in this industry of what had happened about the corporate malfeasance. And I was expressing my dismay of having people from Russia call me and say, "So, you came to see your Russian traditions." I grew up in a Russian home here in the States, personal background but American values and your American values that you so prophesize here and helped embed in some of the structures in Russia turned out to be not so great in the end. So we were both in that realm of discussion and several months later he had called and told me about the President's decision to have him be considered for Chairman. And we spoke at that point and he asked me to come down, only for six weeks at first actually to help put together a plan and to how we are going to move forward, he would otherwise think about moving forward. And through that time he asked me to stay on.

THERESA A. GABALDON: One of the things I would be interested in asking about a bit later is in general how the Chairman goes about making staffing decisions and what the rates of turnover are and so forth. But I would like to get in a little more background about the office itself first. Leonard, could you tell us a bit about how the Office of the Chairman was organized when the Chairman was Manny Cohen?

LEONARD LEIMAN: It is very easy to answer that because there was a minimum of organization. There was the Chairman and everything funneled through the Chairman's office. We had operating divisions at the Commission, a few staff offices, personnel, budget comptroller, they were combined, there were few of those and then there was the Commission but everything came in through the Chairman, routine or otherwise. The Chairman had his executive assistant which was not a line position at all. I worked for him and nobody else on that Commission's organization chart. Some lists showed me as kind of floating underneath the Chairman's name, under the Commission's name. I didn't belong with the divisions and I didn't belong with the Commission. I was just there in the middle and we had one or two legal assistants in the office as well and that was it. I don't remember, it may have happened but I do not remember ever looking at any organizational bylaw or documents saying what the Chairman's office did or what the Chairman's executive assistant was supposed to do. I did what the Chairman wanted out of me and if he didn't tell me I used my imagination to find things to do and that's the way we were organized.

THERESA A. GABALDON: So you would say the tasks were not set out in writing or were particularly defined but you knew what you had to do and got it done.

LEONARD LEIMAN: Obviously I exaggerated, because there were many routine things, for example Congressional correspondence could be difficult because Senator Robertson had wonderful lines in the SEC somewhere. He knew what was going on and he might write two or three page questioning letters about why something was going the way it did. Those correspondences had to be assigned out to people to draft answers and we had to know if another division was involved, that they initialed the draft that came back to the Chairman's office. And what I did in the first weeks was really set up a system for handling correspondence and that was not an awful lot of time but it was something that I did create a routine for. There were many other documents flowing through, a lot of them routine and had to be looked at. I divided some of the responsibilities up with Manny because he knew a lot more about them than I did and could do it faster. But there was a lot of routine work that went through and I mean quite literally that when he didn't assign special things for me I did have enormous freedom to put myself into whatever current project I thought needed attention or interested me.

THERESA A. GABALDON: Peter, does that sound any different than the offices you have experienced?

PETER DERBY: A little bit in its emphasis maybe and structure but a lot of things seem to evolve or repeat itself. I still remember and everyone remembers this phrase that William O. Douglas said that the SEC is investor's advocate. That has transcended decades, he then said and we have it in our strategic planning highlighted, to satisfy the demands of the investors there must be in this great marketplace not only efficient service but also fair play and simple honesty. For none of us can afford to forget that this great market can survive and flourish only by the grace of investors. So even at its core, it still transcends decades of what our intentions are. The organization itself, the size, the volume of work and the growth of the industry has had certain challenges. Politics has played a role at times. When we arrived there was great corporate malfeasance, there was very low morale of the staff. We were there to right the ship and to do so was also to create an efficient and effectively run agency and to take all the responsibilities of the Chairman's Office, all three of those responsibilities, the only ones at heart and to reorganize them, restructure the agency. You were asking about people. I think Bill hired five people at first which isn't a whole lot. One was, all of them were with the Commission's approval, the PCAOB chairman was a very important human resource process that all the commission was involved together to bring in the Chief Accountant, Don Nicolaisen, another one especially at the time it was very sensitive. We were very much discouraged to go to the industry since the industry weren't run afoul so much. And Chairman Donaldson looked straight into the eye of those criticisms and said, "Find me someone from the industry that is impeccable." Right into the eyes of the controversy of what we weren't supposed to do and we were going to find and re-establish the core there. And he found a great gentleman by the name of Don Nicolaisen to do that. And then the office rather the role of Chief of Staff works fine in a legislative process. But when you have more than that it seems that the chief of staff desires interest role usually legal background focuses on policy creation, that is everything that the Commission decides, everything that comes up to the Commission. But how it gets implemented is left to however it happens. And it's an architect doing a drawing in the process of drawing but how it gets built sometimes has very real ramifications. And Bill felt very strongly the responsibility of the chief executive officer which is why in the first days he asked for an order of the financial statement of the SEC of which I found out to my shock and dismay is that there never had been one, no one had done in the SEC in its entire history of 70 years plus. And so he said, great, we are going to have the audit done, so let's get going on that to do that. And then there was the CFO Act in the Congress for the large agencies that gave us some teeth and momentum to actually accomplish that and the agency did within 18 months, completed its first audit ever in its history. So there were items that when we arrived needed to be handled immediately and we looked at them as to how from the Chairman's Office to set an example of things to run the agency efficiently, effectively. He was able to raise the morale of the agency at the first SEC Speaks a week later. He stood up and asked everyone in the room that was a employee of the agency to stand up and to be applauded. He felt very strongly about the quality of the agency that he's experienced in his 50 year career. He worked with the agency for many years, had a high, high regard for the professionalism and walked in believing that, that was still there and all it needed to do was to be unbridled and supported and rise up. And I think it did, because when he did leave on his last day on June 30th, the auditorium had a ten minute standing ovation for him. So and it was by and large most of the same people at the time.

THERESA A. GABALDON: Was morale the same sort of challenge during your years at the commission, Leonard?

LEONARD LEIMAN: No. I don't think it was because Manny became Chairman after Bill Cary, a Columbia professor who really started the job of reviving a not moribund Commission but certainly one that was in a decline during the Truman and Eisenhower years, probably some years before that. The Commission really didn't do an awful lot after 1940. Cary really did a terrific job as Chairman and he accomplished two things among a lot of others. The two important things were to create and virtually complete the Special Study of Securities Markets which was a big, big task force studying the way the markets worked and they were not working perfectly by a long shot. The Study resulted in the Securities Acts Amendments of 1964 which were signed on the day Manny became Chairman. Those two things laid out a blueprint for Manny's work but they were accomplished during Cary's administration. And I would say that morale under Cary was really quite good. The Special Study particularly brought in some wonderful people to work with the Commission, many of them stayed on so that the employment, I don't know if it was enlarged but it was I think enriched by the Special Study experience. And the job created for Manny and the goals for him to fulfill were there for him and he embraced them with all his energy and skill.

[May 29, 2009 Addendum from Leonard Leiman]

> I took the question about morale at the Commission when Manny became Chairman as referring to what he inherited from the prior administration. Morale was, in fact, quite high. But a complete answer would have described the huge boost in morale caused by Manny Cohen's appointment as Chairman of the SEC. Manny was the example of how a member of the staff could rise through the ranks to achieve the highest position, and it was an inspiration to all levels of the SEC's personnel. Manny was a hero to the staff, not only because of his success, but because it was clear that he remembered his experiences over the years and the friends with whom he had worked for so long. Morale is certainly at its highest when the entire staff wants you to succeed and works towards that goal.

THERESA A. GABALDON: It sounds like there was a contrast of morale but certainly a similarity as far as the theme of investor protection. What are the two things you two feel as though you worked for the same agency or was it different?

LEONARD LEIMAN: I couldn't help thinking listening to Peter and the changes that Chairman Donaldson effected, that when I went back and looked at the SEC's Annual Report for 1966, as I said you had the divisions and then you had a straight line with just a few boxes up to the Chairman with me floating around in there but I really didn't have a position. I looked at the 2003 and 2004 Annual Reports and the chart had about a dozen boxes in between the operating divisions and the Commission and even the Chairman's position has a box for the Office of the Chairman. We didn't have the Office of the Chairman. In fact, an important distinction, there was no administrative person between the divisions and the Commission. There was no executive officer or chief, or whatever it might be called who was in charge of administration. All operations separately funneled up into the Chairman's Office. Now, why the big difference? Manny came with education in law school and his longest employment was at the SEC working his way up from lawyer right up through the Division of Corporation Finance to Commissionership and the Chairmanship. Compare that with Bill Donaldson who's an MBA, who before he gets to the Commission has so many business accomplishments, you can't begin to list them but certainly chief executive of a major investment banking firm and corporate experience. To him administration was what makes things work and that was where his interests were and he really used those skills to accomplish what he wanted to accomplish. I think the problems Manny was facing were really quite different. So I don't think his lack of business school skills hurt his effectiveness but he certainly didn't have them and I don't think he could have coped with an organizational structure like the one that you worked with and helped create.

PETER DERBY: We really had a lot of offices, 19 divisions and offices in total when we arrived. So there was some structure there. There was a view that a lot of the legal work was really interesting and dynamic but people would get promoted to management for the extra couple of percent compensation and really leave what they loved to do the most and they weren't all great at management. They were great at the law and so we had to deal with that structural incentives or disincentives to an efficiently run agency. And as I said in the Chairman's Office if you, when we came in we just asked the previous chief of staff and talked to the one previous and said what do you do. They wrote down everything they did, 99% had to focus on policy, on policy creation, rule making, that's what they were there for. That's what the division directors were telling us they were there for. They would have an assistant or associate directors that would deal with the after effects, the processing, the implementation of the policy. Bill Donaldson is a great old great kind of person; he feels that the kind of responsibility across it and his experience allowed him to understand the operational part. So he took the chief of staff's position and said, one person can't get everything done especially with the plate that we were handed at the time, full of issues that had to be really addressed. At that time there was the corporate finance properly looked at all the filings because Enron and Global Crossing and what were the issues, when were the last reviews and things. So he took it and said, "We are going to create an individual who is a legal person, who's going to take all the policy issues up to the Commission, that will be their focus." We are going to have an operations management person follow after the decision how it actually gets implemented, whether the agency is using its resources efficiently, effectively in implementation of it, consistency in application, making sure that the implementation of policy and the policy creators agree that it is happening, coordinated. We have that issue always with our examination program. Whether the examiners and the rule makers believe that they are in agreement to the violations or not. And thirdly to communications and it was important to have internal communications as well as the external parts of the government. And that the communications person was there from the beginning that made it clear on how we would focus on issues, almost a collaborative way. Steve Jobs had his engineers and designers all in one room, not this conveyor belt process where you start out with trying to build something round and you end up being square or something. So we pulled all those three disciplines, we felt that was key to having a chief of staff role but put it into people who can actually partake in it and engage the staff in getting the work done in ways to communicate, it was based on the Chairman's ability to process the side, put things on the agenda and so on. And I think Patrick Von Bargen who was our policy person, who was fantastic. He was actually, speak about how he came in, he was Bill's first student out of the business school in Yale but he was a Stanford lawyer who then decided to get an MBA. And Laura Cox was from Treasury and close to the administration, since some of the Commission schedules are really White House appointments as well, so there is the politics.

LEONARD LEIMAN: I put emphasis on a difference between the two Chairmen but there was also a huge difference in the Commission itself. Your Commission was probably three times the size of the 1964 Commission and we were maybe 1,400 total employees and you were probably three times that amount. In the prehistoric times of the '60s, we got the first computer during that period that the Commission ever had. I think it came in 1965. There were no personal computers in those days. It was probably a mini-computer as tall as this room. We, as I said, came in after the Special Study and the Amendments but we didn't have the vast corporate problems that were there when you arrived. So you had a lot more people at the Commission and a lot of very complex problems to deal with. We had a statute that required a lot of implementation and lots of registration of companies that never had been required to register before. But that was done pretty much with the same simple system that had worked before with the operating divisions doing what they were supposed to do. One big difference that I think was a good difference was that we didn't have a separate Enforcement division, you may have needed one. But we didn't have a separate Enforcement division. Each operating division had their own enforcement people and I think that worked better than the separate Enforcement division. But the overall complexity of what you had to deal with certainly justified the emphasis on making sure that the administration worked effectively because you do not learn administration in law school.

PETER DERBY: And the structure issues are important and conflicts and this would be a constant, should OCIE be disbanded and put in back into the examinations of the rule making process. Should enforcement be disbanded and then put back into the enforcement of that same rule making and inspection process. There are inherent conflicts in doing so depending on how each division is run and how you deal with those. There's also tool sets, efficient tool sets if you focus on enforcement whether having a separate division provides that efficiency. And we see that in risk assessment. I mean Bill Donaldson brought in some important aspects to the internal operation, risk assessment was one of the key offices that were added. Task forces that were started. At the same time, as you say, we had a lot of issues on the table. We had a deregulatory process in the late 1990s, and then we had a re-regulatory process, Sarbanes Oxley, happened within three years. And all of that had no rules around it, not the first, nor the second and we were in a position where they had to be worked on or completed. They might have been started ways but they were not all accepted. So, there was a lot of rule making that needed to be done and to deal with some of the conflicts and some of the politics at the same time. And then we had malfeasance, corporate malfeasance, mutual fund timing cases, changing what the New York Stock Exchange and the national market system, hedge fund registration that we felt we needed to get our hands around these large pools of capital to just understand how much of it, who it is without getting into some of the other issues that were raised about their proprietary trading strategies. The risk assessment office created its first task force within months of opening called the credit derivative task force. It was done after we opened by going to the New York meeting with the five senior risk officers of the investments firms and commercial banks that had investment arms and asking them what is their one nightmare scenario, when all five said credit derivatives. It was very clear our first task force was credit derivatives. So had that sustained past Chairman Bill Donaldson then maybe Chairman Cox would have seen this problem earlier then disbanding the office down to one person. So, there were structural issues, the size, the budget, the hiring, the volume under Sarbanes Oxley, rule making under Sarbanes Oxley, corporate malfeasance, mutual fund industry issues. So we had to deal with all those different things.

LEONARD LEIMAN: Just to embellish the differences a little bit, we did get that first computer but that was all we had. There were no derivatives in those days. Derivatives were gambling and gambling was in a state law matter, and there were other differences just in every direction. For example, I was at a meeting with the Office of Policy Planning, it was called, it was quite an interesting office that we had. And we were talking about problems in the marketplace and I used the phrase hedge fund and their heads snapped around and they said, What's that? A hedge fund, what's a hedge fund? In 1965, I suppose they had never heard of a hedge fund. They existed but the size and complexity of hedge funds and the power of the hedge funds only came after a lot of rule changes made it possible for them to be bigger and better financed. So, it was not that we were without our problems, they were different problems. But I think they were much less complex, more of fighting with the New York Stock Exchange, that was not too different from what Bill Douglas was fighting about in 1937.

THERESA A. GABALDON: And you certainly described strong chairmanship in each case responding to the challenges of the day. I am curious about how much autonomy the Chairman has in restructuring the agency, making the decisions, the staffing decisions and so forth. I am curious too about whether it was the Chairman's call to buy that first computer?

LEONARD LEIMAN: I really don't know but I am sure he would have taken credit for it because it sounded like a good idea. One of the more interesting things that Manny did that I have always admired him for involved investment companies. Mutual funds were really in their infancy. Total assets in investment companies were maybe $40 billion. We are now in the trillions and multiple trillions. But he could see it increasing and the Division of Corporate Regulation that had jurisdiction over that function was a little bit understaffed compared to the Division of Corporation Finance, the largest and most admired division. And Manny thought that Corporate Regulation really had to be ready to handle a much bigger investment company community. So the way he did that was by having the Commission change the 1933 Act registration requirements for investment companies from the Division of Corporation Finance to the Division of Corporation Regulation. He transferred that function to Corporate Regulation which meant he could move people over to staff that function and he could cherry pick the people he moved over. And in typical Manny Cohen ways, we had a program to identify the people that we wanted to encourage to make that move. And since I did a lot of work with the younger people at the Commission and I was more accessible to them, so they would come and visit me early in the morning and we would talk about problems. And I had a pretty good feel for the younger people and Manny for the more mature ones. And we really made the move, not just a move of function but a move of personnel as well that transformed that division and made it able to handle a huge increase that came over the next dozen years.

PETER DERBY: I think in Bill's case, I mean you go back to Reorg 10 and actually the actually the government reorganized itself in 1939, 1945, this was the '49 Act already, it always wanted to improve the function of government agencies in Reorg 10. But it does give the Chairman quite a bit of leeway to organize the agency. I think in Bill's approach he tried to bring in really sensible things, I mean to create dash boards for people to understand and help them manage themselves. Even in the Office of the Chairman, he reorganized it to try to penetrate the bureaucracy, break down the silos, have sensible people even in his office that weren't bossing around but were creating an environment of supportive environment to help them achieve what they wanted. I know in my first six weeks I went and met all the 19 and asked them, what are their three, five, ten things that they would do if they were free to do any of it? And I wrote them all down. And when we started to move forward we took one through three for each of the divisions and offices to get them all moving so we were running on all cylinders, got moving forward and energized them. Clearly, when we got down to the fifth, sixth, seventh, eighth things that some of them wanted a year later, I guess they must have been the harder ones because we did get a lot of push back from the things that were suggested by the leadership of these offices themselves. So that's an interesting aspect in managing within the agency, when people are truly free to think about what it they want to do and then when they understand the difficulty within the bureaucracy of actually accomplishing it how quickly they fade in their interest to do it. But there were important things, I mean even on simple things, we were considered the most secretive agency. We had more FOIA requests than any one, after NSA, that's considered more secretive than the press would like to take it. And there were simple things to rectify those decisions but you needed to go through a process to do that. We brought in technology; we went to agencies that had no name on their door to ask them just for some of their toys, not all of their toys but just a couple, artificial intelligence, tech's recognition. They had video voice and text, context recognition, not just word search but if you are searching someone in the Enforcement division and you put in Bill Donaldson, you get two million pages of information. Then as you start reading them, to sell mutual funds, so it starts to bring it down to mutual funds and then it brings it down to a particular mutual timing. It allowed for efficiency to be brought in, we brought in electronic document scanning, brought in computer technology for dual screens. Lawyers loved to hold their papers and don't want to give them up. So we were allowed to after they scanned them to be able to have them but we would try to bring efficiencies in processing this information. I think Enron took 58 weeks or 56 weeks to go through with efficiencies in using the best technologies that was able to be cut down to eight weeks or so, if it was to be done again. So those are the kind of additional tools we were trying to bring in but the main thing was to try to penetrate the bureaucracy, bring it back collaboration, get rid of the stove pipes, allow to have the staff be supported and invigorated and empowered to do what they came here to do. They could have great jobs elsewhere even for more pay, they came for a purpose and to allow them to realize their intentions of being here.

LEONARD LEIMAN: I realized listening to you, that you and I both spoke about the Chairman doing things. In Manny Cohen's case he had what I would call a quite docile set of Commissioners. There was Barney Woodside who was former director of the Division of Corporation Finance. An old friend of Manny, who was devoted to Manny, which became important during Manny's tenure, hard worker but if he disagreed with Manny, it was done very privately. We had Hugh Owens who was a Democrat, former Oklahoma securities administrator; he was interested in preventing any pre-emption of state regulation and really didn't have much beyond that to be interested in. Hamer Budge, Republican, really didn't know beans about the SEC; his only interest was making sure that small broker dealers in Utah and places like that were not penalized any more proportionately than the larger broker dealers who were being punished for something. And then there was Frank Wheat, who was vigorous and intelligent, not that the others weren't intelligent but their interests were different. Frank Wheat was energetic and wanted to do things but Manny kept him busy on matters that didn't interfere with Manny's running of the Commission. I do not remember a single vote with a dissent during my two years at the Commission. If it happened, it was not important enough to remember. Manny worked for consensus and if he had to give up more than he wanted to give up, he would threaten to quit or do something terrible that would disturb the equilibrium that existed. He could do with that Commission what he wanted it to do and it made things much easier. Now my question for you is, was your situation the same?

PETER DERBY: No.

LEONARD LEIMAN: I didn't think so.

PETER DERBY: It wasn't but we approached it maybe in a holistic way. We believed that the majority should rule. We would love and do everything we could to have a unanimous decision if it took longer to debate it to discuss it, to get us there, that would be great. But if we were to appease everyone in the rule became and I wasn't really in charge of the rule, this was Patrick's domain but the philosophy was, if we were to cripple the rule just to get a unanimous decision, then we did a disservice to the American investors. So we tried as best to get unanimous decisions, if we had to move forward with an agenda that was very packed was to have a three to two. And it would differ, I mean there were times when Mr. Donaldson would have the Democrats supporting the view, there were times we had the Republicans supporting the view. I have been told our Commission then in the past had been much more polarized. That way we came in with a very collaborative, collegial desire and approach but there were agendas of different members on the Commission that were very strong and any differentiating from that, either amongst any of them themselves, there was very strong views and views towards each other at times. So that was a bit of a difference that we had to deal with and we didn't move forward and we did have a lot of split votes, but we dissenting opinions clearly were permitted as it should be and discussed. Also since another aspect of the Commission maybe one more point from the administrative side was there were a lot of new laws that came in through Congress. There was the Government Performance Results Act of 1993, GPRA, that required certain administrative functions to occur and processes to occur. I know that Chairman Donaldson when he arrived within the first week, there was SEC Speaks at the end of the week. But there was also a report, a GPRA report that had to be submitted and as a real analyst I remember he's an ingrained analyst. I remember handing him the Institutional Investor magazine and it was him on the cover; it was a pretty decent article. And he has it in his hand and he's looking very gloomy and he said this isn't doing well; it's not heavy any more. And so his natural instinct in his subconscious is an analyst, he's a research analyst, investor analyst and so at that time he was given this report, he said this is gibberish, what is this we are sending to Congress. So we looked at it and it was a strategic plan that was to appease Congress with fulfilling the wishes of different leaders in Congress that demanded certain things and they wrote in with no intention to do it at all, talking about honesty and integrity. And then the budget would finance something completely different then the actual strategic plan. So what he said is, we have to make it just straight forward, we have our strategic plan and do it for and he asked the Congress to delay the submission of GPRA by six months so we can put in the first full strategic plan, that is still on the website if anyone looks at it. And in there specifically the vision mission goals of the agency, the values that it is and then the budget aligns with the strategic plan and its one document with perfect alignment to achieve and then we can debate with Congress whether they agree with it or not. But it's not there to just satisfy the bureaucracy and move on and do something else. So it was those things in the first weeks even reflected some of the changes that were just inherent to his being and understanding of the information that was passing through him. The other thing I used to say to him, how could you read so fast. I have never seen anyone, everyone word would be an apprentice to him. And he said when you grew up in the '30s with radio and books, you learn how to read quickly, he would digest volumes and volumes of materials incredibly. And the other change I would say that was relevant by the staff coming to us in the first week was, the Chairman before us Harvey Pitt who was one of the youngest General Counsels in the Commission and knew so much about the securities law and the rules, that he would always speak first. Chairman Donaldson intentionally chose to speak last to allow all the Commissioners to speak and then to say something. And the staff at first, gee, might have been just because he's not used to it and doesn't want to look poorly. But we are noticing his contributions have always great significance even being last and that's just his style, just his approach, very open, collaborative, collegial gentleman.

THERESA A. GABALDON: Yet the issue, the possible dissent amongst the Commissioners interestingly raises for me the question of how much input do you think the Chairman might have with respect to filling of vacancies on the Commission. Is that typically something that the Chairman might get involved with?

LEONARD LEIMAN: We had no changes while I was there but Barney Woodside retired a year or two after I left and there was a Republican vacancy. It went to a young man who had been a partner of mine at the time and he occasionally dissented. I don't know if Manny ever forgave me for producing that. Manny plainly had a veto power over that appointment and that was his relationship with the White House. I don't think he could have promoted somebody unsatisfactory to the White House and obviously to the Senate but he plainly had a veto power, that's the only one I am aware of.

PETER DERBY: I think, well, I guess, how it is important to the White House in this. I think Bill's approach was that it really is the President's appointment and it is the Senate's confirmation and if there was any calls to discuss, Commissioners either from the Senate committee chair or the White House he would be involved but its not a role I believe at least and I am aware of searching for a particular individual's actively to do that. Clearly, having relations with the White House is really important even though we are an independent agency and in our case the Naval Observatory would have been better relations but still I think having a good understanding of what it is that we are doing a communication of what we are doing, why we are doing is always important and if the ideology is so strong and so overbearing that regardless of strong communication and clear and transparent reasons and we are an independent agency and I think that's the process should be where you go through the vetting of Commissioners as well as the Chairman and then you permit them to act in there with their best experience in mind and do the right thing.

THERESA A. GABALDON: I am going to be asking both of you to tell us a little bit about the landmarks of the Chairman's office as well as the major disappointments while you were there. But I want to start this off by raising two questions contributed specifically for Peter by Michael Halloran of Kilpatrick Stockton LLP, who asks first, "Do you think the CSE program was a mistake given the failures and second, why didn't secured funding issues become a part of the capital adequacy standard that was used for them?"

PETER DERBY: Those are policy issues so I cannot say, Patrick was here but I do want to touch upon the CSE issue as much as I am aware of it. I think Erik Sirri, who was the director of the Division of Trading and Markets had spoken at the National Economist's

Club on this particular issue where he tried to describe the disinformation regarding what actually happened in the 2004 amendments to issues like leverage. There was more sensationalism at the beginning and no one's gone back to retract what they have incorrectly portrayed. I guess journalists are in the habit of doing that, they just go for the kill and bum. But I think if you look at what really happened there, the CSE program, Consolidated Supervised Enterprises, we had a lot of pressure from Europe to regulate the investment firms and there was an agreement that if they came under the SEC regulation that Europe would respect that. There was no leverage restrictions before, otherwise someone was regulating them, right? Instead we strengthened and enhanced the broker dealer subsidiaries significantly and you could see through this entire crisis the broker dealer subsidiaries have been just fine. The overall leverage and what is at question here moving forward is the Basel standards, the value at risk calculations and methodologies. Those were the standards used at the time and Basel II was the latest and greatest approach. You could criticize the agency in saying, why did you take that for granted, those standards and why not reconsider them in ways that would have been different. So I think that this crisis will inevitably lead to those Basel accords being reviewed, value at risk being reviewed. But the accusation that that rule making permitted the leverage to sky rocket on the investment firms is outright incorrect. And I think Erik's speech there describes and goes through in much more detail than I would know or would be able to do here. But if anyone is interested you could certainly find it on the SEC government website under Erik Sirri's remarks there.

THERESA A. GABALDON: Leonard, what do you think the Office of the Chairman might have been the biggest criticisms and the highest praises for your period?

LEONARD LEIMAN: Praises of the office or the Chairman?

THERESA A. GABALDON: To the extent you can… I think it would be fair to say that you and Manny Cohen were the office at the time so take a little credit for yourself.

LEONARD LEIMAN: On the praise side, when I describe Manny's predominance in the affairs of the Commission. It wasn't because he wanted to bully people around, it was because he really wanted the Commission to be as brilliant and as important as it was in its beginning. He wanted it to be the best it could possibly be and he devoted all his energy to that. And he did it by involving himself in everything that the Commission did down to the division levels and below that. I had no trouble accepting those views and trying to make them as real as possible. I knew more younger people than Manny did and he had complete access to the older more established persons at the Commission and there were plenty of wonderful people there and we worked with them to make it a well functioning agency, that's the plus side. On the failures, that's harder, I am tempted to say there weren't any; I can't believe it that's true. I want to think about that one, let's ask another question.

THERESA A. GABALDON: Peter, we have just a couple of minutes. Do you think you could identify the fairest criticisms and the highest praises for the office during your tenure there?

PETER DERBY: Towards the whole office?

THERESA A. GABALDON: Yes.

PETER DERBY: I think we had a great group of people there, great staff, we had really just a good group of people that were from the Commission and came up from the staff in the Commission. I think the criticism might be that we were everywhere and doing a lot of things. We were running on all cylinders, engaging every office, every division that may not have always happened that way in the past. We were bringing in different technologies, different changes from having tip lines put in and other things including with the public. So, our criticism if anything has been all of the actions that were going on at the same time. That being said, a lot of those really had great benefits to the agency and to the staff itself and to the different offices, whether they were then taking the risk assessment process and embedding it within their own divisions and how well it worked when that was achieved.

THERESA A. GABALDON: Leonard and Peter, thank you for sharing your insights on the work of the Office of the Chairman from the 1960 until today and for adding valuable information to the collections of the virtual museum and archive. Today's Fireside Chat can be accessed again on demand in the programs section of the museum in both MP3 and transcript formats.

I invite all of you to join us again on www.sechistorical.org on Thursday, June 4th beginning at 12 noon Eastern Time. For the first time the museum will video broadcast the Society's Annual Meeting live from the SEC Auditorium in Washington DC. The Annual Meeting will begin with the State of the Society Address by Society President James Barratt. SEC Chairman Mary Schapiro has been invited to share her remarks. The program will also include a panel discussion on the future of the SEC moderated by Joel Seligman, President of the University of Rochester and a well known SEC historian. I will be one of the professors joining in the discussion with Joel along with Lyman Johnson of Washington and Lee University, Donald Langevoort of Georgetown Law Center, Donna Nagy from the University of Indiana and Robert Thompson from Vanderbilt University Law School. The Annual Meeting will be free and accessible worldwide without prior registration. It will be the final educational program the Society will present as part its commemoration of the SEC's 75th anniversary. We hope you will be able to join us on www.sechistorical.org on Thursday, June 4th.

Thank you for being with us today.