

**SILVER SCREEN:  
How Films Shape Public Perception of Financial Regulation  
November 1, 2011**

**DAVID LIPTON:** Good afternoon and welcome to the SEC Historical Society's program on the "Silver Screen: How Films Shape the Public Perception of Financial Regulation," broadcast on [www.sechistorical.org](http://www.sechistorical.org). I am David Lipton, Professor of Law and Director of the Securities Program at the School of Law of The Catholic University of America. I am pleased to be the moderator and a presenter at today's program.

Those who know me know that I typically do not speak from a script, and the fact that I have one on my lap today suggests that there are things I have to say. Those who know me well know that there are things that I should not say. And finally, I will disclose to you that there is not a tele-prompter available, so pardon my script.

For those of you familiar with the virtual museum and archive at [www.sechistorical.org](http://www.sechistorical.org), you will recognize that today's broadcast is a departure from the museum's usual program. We are looking today at feature films and how they may shape the public's perception of the regulation of the financial markets. Specifically, the speakers will individually explore the following subjects: the image of the financial markets as portrayed in films, the nature of the financial misdeeds as seen in the cinema, and the role of regulators and self regulators in responding to these misdeeds.

We would like to thank Harvey Pitt of Kalorama Partners LLC and a former SEC Chairman, who first suggested our producing this program.

Today, we will be showing clips during our discussion from the following films: *Being There*, *Boiler Room*, *Fletch*, *The Godfather Part II*, *The Other Guys*, *Rogue Trader*, *Too Big To Fail* and *Wall Street (1987)*. Because of copyright limitations these clips will be seen only during this live broadcast. You will not be able to access them in the museum archives.

I am delighted to be joined on this panel today by two friends of mine and two well-known current and former regulators from the securities industry. Both are talented lawyers who obviously have interests that extend beyond the immediate boundaries of the law. That was not a required statement. I would like to introduce you to, on my left, John Stark, Managing Director and General Counsel of Stroz Friedberg...

**JOHN STARK:** Deputy General Counsel. Thanks for the promotion though, I appreciate that.

**DAVID LIPTON:** Stroz Friedberg is a digital risk management firm, John informs me, and when this program is over, you could contact him and ask him what that means. John was formerly the Chief of the Office of Internet Enforcement at the SEC. On my right is Brad Bennett, the Director of Enforcement at FINRA and formerly a partner at Baker Botts. Welcome to you both and thanks an awful lot to you both for coming today.

Today's program is coordinated by the SEC Historical Society which shares, preserves and advances knowledge of the history of financial regulation through its virtual museum and archive at [www.sechistorical.org](http://www.sechistorical.org). I would like to thank the contributions of Loren Miller, a Ph.D candidate in history from American University who has served as intern for

the development of the program. Loren is also the author of the paper on this topic, now in the museum, which provides a comprehensive look at how films have shaped our perception of financial regulation of the year. I would also like to thank Carla Rosati, the head of the SEC Historical Society, who stands behind the curtains usually but makes all of this possible. Thank you, Carla.

We will discuss today's topic in three segments each accompanied by selected film cuts. As mentioned above, we will first examine the image of the financial industry portrayed in the cinema. Then, we will explore the method by which the film industry conveys the misdeed, which the regulators or self regulators must then discipline. And finally, we want to see how the specific work of the regulator is depicted on film. Let us begin by John, who is going to discuss the image of the financial markets.

**JOHN STARK:** Thanks, David. Great to be here. The SEC and media have always been something that interested me, especially having been on the staff for almost 20 years. The relationship of the public to financial regulators has always been a complicated one. I don't think the public has really understood who the regulators are and what exactly they do. When I started at the SEC, I really didn't understand it. I think it dawned on me maybe six months or a year in. When I had just started I was in my early 20s and here in Washington DC at SEC headquarters, and I was dating a woman; this is before I got married and had my beautiful two kids. I was dating this woman in New York, having a long distance relationship. I called her one day and I said, "How's it going, Allie? How are things?" And she said, "John, I am so miserable without you. It is almost like you are here." I think that pretty much sums up the relationship of the public with its financial regulators.

Just to try to understand what the SEC does is a complex undertaking. I teach at Georgetown and I always say, "Is it a judicial agency, an executive agency, a legislative agency?" It is really all three because they make rules. They have huge rule-making authority. They issue guidelines which are just like laws. They enforce the law, which makes them part of the executive branch and they also have administrative law judges. Chief Judge Murray rendered an opinion just recently; it was a big piece of news. So they are in all three branches of government. And then you take the Division of Enforcement and it is even more complicated. Because, as opposed to *Law and Order*, where you have the police who investigate crimes and the district attorneys will prosecute them, pom-pom, here at the SEC you have the Enforcement Division staff who investigate the securities violation and then they turn around and prosecute the case. So it is a very complicated place to understand, and it gets an extraordinary amount of attention from the media. The reason for that, I think, above all else is that most major periodicals have a SEC beat reporter. They become their own SEC historians and they watch the SEC closely and they look for stories almost every single day. So there is an extraordinary amount of attention put on the SEC, which is relatively small.

I think today, when we try to pick out the image of the SEC, we have lots of movies to choose from. We chose what we thought was a variety that would give different lessons. This is a very unique program. I think we all would agree that this is about one of the most different talks we have ever given and we are really excited about it. So with no further ado, why don't we roll the clips and we will take a look at our first set.

Scenes shown from:

- *Being There* (1979)
- *Fletch* (1985)
- *Wall Street* (1987)
- *The Other Guys* (2010)
- *Too Big To Fail* (2011)

We will get to *To Big To Fail* in a few minutes. I think we all have a lot to say about that scene. Let us start with *Being There*. This was a clip that I used in some of the training that I did when I was at the SEC and they talk about kid lawyers. There is a lot of truth to that I think both from the SEC side and from the private defense bar nowadays. Of course they are kid lawyers and that's how the SEC recruits people. They say, "Come to the SEC and you will get more responsibility than you ever would in any other place." That is pretty exciting for a young attorney who just started there. My very first case in the Enforcement Division was against Harvey Pitt, who you mentioned in your introduction, who later became Chairman and at the time was probably one of the most important members of the defense bar. It was a front page insider trading case, lots of important things going on in that matter. You contrast that to the D.C. U.S. Attorney's Office, where I also worked for a short time period, and there they have a four-year rotation or so which you go through before you take on the major matters of crime. But the SEC treats it differently. I think there are good things to say about that and there are bad things. But one thing that I have noticed is, Rob Khuzami, the current director, wanted to solve some of the issues with kid lawyers doing too much, when he set up these specialized groups which he did this past year in the hope of trying to take some of the more important matters that the SEC is doing and put those in the hands of more senior attorneys. Brad, did you have a similar experience when you started?

**BRADLEY BENNETT:** I think the attraction of the SEC is exactly that. If you are young, energetic, smart and you want to learn how to be a lawyer, it is a great place to go because actually you get to exercise your judgment which in my view is the key to advance in the profession. On a bigger note, I will just say all of these clips tee up for me the fact that as Linda Thomsen said, "The SEC has no natural allies". It is truly independent and there is no natural defendant. There is no constituency beyond us as alumni that can really come to the defense of the agency.

**DAVID LIPTON:** I wonder for both of you, is there a federal agency that doesn't get criticized in today's media? Is there one that is immune from attack? And you think of anyone that is currently portrayed in the film that is immune from attack? Are these attacks more characteristic of how we look at government today rather than how we look at the SEC?

**BRADLEY BENNETT:** If you are pro-regulation, you want additional regulation, you will say the SEC is incompetent, it needs more money. If you are anti-regulation, you would say the SEC is incompetent and can't regulate. So it is heads I win, tails you lose.

**JOHN STARK:** Does some of that arise though from the fact that these attorneys are pretty young and can make mistakes? When I was at the Commission as the Chief of the Office of Internet Enforcement, certain issues would come up. I remember one regional office sent out a voluntary request via email to Canada to an internet service

provider seeking transactional information that they weren't entitled to under the Electronic Communications Privacy Act. You can't send a voluntary request or even a subpoena to a foreign country and you needed a subpoena to seek this information and even if you had one, you couldn't. I see some analogies nowadays as well. I see the staff getting very aggressive now that I am in the data handling and digital forensics business. I see the young staff, who are very smart when it comes to digital forensics, stepping in and seeking things, for example, seeking subpoena in electronic storage devices and asking to preserve a hard drive, and also seeking information on unallocated space, if you deleted something. Does the SEC even have authority for that? I don't think so. Brad, if one of your clients, when you were a defense lawyer, deletes something and now the SEC is saying, "Well, not only do you have to preserve it but you have to produce it to us even though you have deleted it," and it was in this unallocated slack space, it is in some artifact or running space.

I think those are situations where the young staff attorneys really need some adult supervision, not in a negative way. They are getting aggressive in the right way because they are trying to get to the bottom things and do justice. But at the same time, you can push the envelope and I think you need some seniority to do that.

**BRADLEY BENNETT:** I will also say that the burden falls on management, because the job of a good manager is to provide room for someone to grow. The mistakes you identify, certainly they are catastrophic in the microcosm but they are not ones that are going to jeopardize functioning of the agency. You allow the staff attorney room to grow, so that they make mistakes. My experience in life has been there are few mistakes that can ultimately be fixed. You are harnessing that enthusiasm with macro controls to make sure you achieve the mission of the agency which in large part is deterrence and catching the big things.

**DAVID LIPTON:** We are talking about the film's depiction of the SEC and both of your experiences are vital to understand that. But when we looked at the clips, it struck me that the harshest depiction of the SEC really didn't have anything to do with young attorneys or necessarily junior in competency. You could take *Fletch* perhaps as the one that touched on young attorneys. But the harshest criticism of the clips we examined actually focused on a very senior player and that is Chris Cox.

**JOHN STARK:** Yes, and that was painful to watch for anyone who was at the SEC during that time. Whether it was fair or unfair, I think lots of people can debate that, but the reality is, the SEC at that time was sort of portrayed as out of pocket and not involved in handling that crisis, was detached from it. I thought that was a shame because if you contrast that to when Harvey Pitt became Chairman, when Stephen Cutler became the new Director of Enforcement, 9/11 hit and the SEC suddenly had no New York office and the markets were in turmoil. You know what happened the next day. Chairman Pitt took a bunch of advisors and somehow got himself to New York when all roads were blocked. Through sheer might and through the staff's sheer will, the SEC got the markets up and running again within four or five days. It was a very proud time to be a part of the SEC, not just the media's portrayal but there was a feeling that the SEC was really leading things. And then with *Too Big To Fail*, it is obvious from there that the portrayal is that the SEC wasn't really leading things and that might have been true at that time.

**DAVID LIPTON:** Well, this might be heresy to say. But I remember in 2008 giving a talk saying that the SEC's responsibility and authority did not extend to many of the financial policies and instruments that created the financial crises.

**JOHN STARK:** I agree.

**DAVID LIPTON:** And that is a very, very subtle point to try to explain in film and I think perhaps one of the shortcomings that we are going to see repeatedly in our clips is that films don't handle subtle points.

**JOHN STARK:** I agree with you 100%. What that clip also shows is Chairman Cox doing something very courageous, which the SEC does on a daily basis, and we touched upon this earlier, which is that the SEC is a remarkably independent agency and very different from virtually every other agency in Washington. You don't ever see any government appointees. You take the Department of Justice where almost all the senior officials are political appointees. You contrast that to the SEC, you have got five Commissioners, yes, they are appointed but in terms. Then you have got the staff of the Enforcement Division where I don't even think there is a single appointee. You got a few, maybe in Legislative Affairs, maybe in Public Affairs and that is it. So the SEC prides itself on being independent and prides itself on standing up to other government agencies that tell it what to do. As a citizen, I really admire Congress's scrutiny of the SEC because I want to make sure that my tax dollar is being spent correctly. But as a former SEC lawyer, I also admire the SEC's stand when they say to Congress, "No, we are not going to tell you certain information because that would compromise an investigation that is going on right now, and we just don't do that." The reality is when you are at the SEC and you do battle with Congress, you will always lose from a public relations standpoint. There was an old saying that just went on and on, "Battle Congress and you will lose. And you will lose badly."

But you can see it, Rob Khuzami sent a letter to Congress saying he wasn't going to produce certain information concerning certain referrals. That is a tough thing to do because you can get hit in the press, you know Congress is going to be upset with you and they are going to hit your budget. But you do it anyway and you can see in this clip Chairman Cox demonstrating that same sort of feeling, which I always loved about the SEC and I always loved about working there, because I never felt any political pressure to do anything other than the right thing.

**BRADLEY BENNETT:** I will also postulate for you, David, if we got together in 2007 in the law school class and thought about if this is hypothetical what is the right answer as a matter of law? The right answer we all had agreed on was what Cox did. So this tees up the difference between being a good lawyer and being a leader. Leadership sometimes requires you to step out of what you were trained as lawyers to do as a matter of law.

**DAVID LIPTON:** It also tees up, as you practitioners like to say, the tension between what looks good on film and what happened in real life. Frankly, I thought former Chairman Cox looked very good on that film in terms of what a lawyer should do.

**JOHN STARK:** I did too. As a staff member says that is typical of the SEC, turning to someone in the General Counsel's Office who is going to say to you, "No, we don't have that authority and so you can't do it." I have heard of these complaints from defense

lawyers now that I am on the outside, that sometimes staff can see a film like this and get inspired and maybe tell a company to fire somebody or not to fire somebody or to take other actions. The reality is, the SEC doesn't have that authority. But you could see a staff invigorated and inspired and wanting to turn things around and looking at the expectations of the public because the public thinks this dichotomy between criminal and civil, the public thinks it is a criminal agency, it thinks it is a lot larger than it is and thinks it has a lot more authority than it does.

**BRADLEY BENNETT:** I would just add, in many of the crisis type cases leading up to 2008, the strength of the SEC versus maybe some of the other entities that got involved was they were, ready, fire, aim. They were ready, aim, fire, so they didn't do what you said at the drop of the hat suggest people get fired, lose their jobs or after some assurance the management has to get realigned where certain people have to get sued. And that is, to me, that is the essence of the principle behind the SEC and what makes it a very principled and proud place.

**DAVID LIPTON:** Guys, I want to make sure that Brad gets to give his one-third at the end and I know that I will probably talk endlessly in between. I thank you very much, John, and I will share with the archives and the viewing audience that I was surprised that John spoke about those pre-marital days. Many of you don't know this but John was listed in People magazine as one of the twenty...

**JOHN STARK:** We can move on from that.

**DAVID LIPTON:** Twenty most eligible bachelors in Washington. There we go. Good, it just brought back memories. I am going to now discuss how Hollywood has chosen to portray the actual wrong doing, that is invariably the focus of films about the financial industry. Hollywood has been at this for a while, and they have a sort of routines. To portray a misdeed, you need to make it cinematic. The accuracy of the misdeed perhaps is less important. What matters most is the impression cast by the misdeed and whether it will grab the attention of the audience. The films that I will be using to illustrate my point are the 1987 version of *Wall Street*; *Boiler Room*, the story of a pump and dump operation with Giovanni Ribisi; and *Rogue Trader*, taken from the autobiography by Nick Leeson, in which he tells the story of how his unauthorized speculative trading caused the collapse of Barings Bank in 1995.

What do you need to grab the attention of the audience? Is there a formula? There does appear to be a fairly well defined prescription. It consists of some exhortation or description of the actual temptation, the pitch. Then we need a portrayal of the misdeed and finally every film that I have seen, including *Margin Call* that has come out quite recently, everyone has a moment of hesitation or remorse. Why these three? Well, the misdeed typically has a lot of action in it. You will see the appropriate bells and whistles to make this seem to be a misdeed. In some instances you can almost feel the tension, feel the excitement. In at least one instance *Boiler Room* is very personal and that makes it even more effective.

But we see a misdeed, why do we care? There are always bad guys. This ain't you, this ain't me, we are not bad people. We are not going to do it. We have to believe that maybe you could do it. Maybe you are going to be the next one to jump. There has to be an allurements which might take you in. The attraction is typically money. Now, again in *Margin Call* it is interesting to see that the attraction seems to be just comfort and the

continuity of family life as previously known which has a lot to do with money but was depicted differently. So we need the misdeed, we need the pitch and finally we have to make the character believable. The character has to hesitate. The character has to have some remorse. We have to show that this character is potentially a decent person, just like you or me. I speculate that when the first movie comes out about Bernard Madoff, we are going to find him, and maybe appropriately, portrayed as a decent man gone wrong. We have to believe that the character has principles. If we can't identify with the character, then all we are saying is bad people do bad things and that could be kind of boring. What we want to know is what makes a good film.

So let us look at some clips. I am going to start off with examples of the pitch. We will see Gordon Gekko pitching his wealth to Charlie Sheen, as Sheen tries to make it into Gekko's inner circle. Then we are going to hear Ben Affleck telling the new rookies at his firm, which include Ribisi, how rich Affleck has become from his misdeeds, though he doesn't characterize his deeds that way. And finally in *Rogue Trader*, we will find a manager of Barings exhorting the troops to go out and make money, lots of it. Will you please run the picture clips now?

*Scenes shown from:*

- *Wall Street (1987)*
- *Boiler Room (2000)*
- *Rogue Trader (1999)*

You could see there is a temptation involved, one that might even drag one of us into the game. Now we need to show the misdeed, and the misdeed has to be understandable by the average person. We are going to look at three misdeeds and in each one of the misdeeds you will see that there is a high deal of activity. The first one I have chosen is *Wall Street* and we will see high pace spreading of rumors and buying of large blocks by Charlie Sheen in order to manipulate up the price of the subject's security. This is followed by a good clip from *Boiler Room* showing the fraud of unsuitable recommendations made to a customer. It is a senior broker in *Boiler Room* who is making it. In this clip, the personal relationship becomes very poignant. Finally, we will see Nick Leeson learning how he could gamble with the bank's money, hide the losses, get away with it and then he goes out on the floor and does his thing.

*Scenes shown from:*

- *Wall Street (1987)*
- *Boiler Room (2000)*
- *Rogue Trader (1999)*

Thank you. Those three are perhaps the best parts of each of those films in terms of realism. The *Boiler Room* operation is incredibly realistic. What we don't get to see is the doctor coming back and actually asking for more shares than what he had been offered. It shows you the power of the particular sale effort that was being made.

So we have the notion of great wealth and the attractiveness of great wealth. We see how it is absorbed by each one of our protagonists. It is actually Ribisi who sets up the doctor to have the ultimate sizzle made. Each one of our characters has fell victim to the potential wealth that they could earn. Now we want to see that they are human, it could be you, it could be me. We could feel a certain sympathy, a certain empathy for these

characters. So we are going to see each one of them expressing either hesitation as to whether going into the original misdeed was the right thing to do, or remorse for having gone there.

We are going to see Charlie Sheen right after Mike Douglas gave that pitch in the car about being a player. Sheen gets out of the car, it is raining, he is not quite sure that he wants to go along with it and Douglas is about ready to tell his driver to move on, and Sheen knocks on the window and says, "Okay, I am in." Now he had hesitated for about a minute and a half. Douglas has this beautiful smirk on his face as if to say, "I knew I could get you." But the important thing is that Sheen was not certain, he had to think about it a bit. He is human.

Then we are going to see *Boiler Room* and Brad is going to show another clip later on which also shows a certain amount of remorse. Ribisi knows the firm is going down. He has spoken with the Feds and he brings in one of his colleagues and says, "Look, we got to make this guy whole." It is just somebody who he had taken in, he had taken him along, pitched a lot of bad securities and now he wants to make him whole. So we feel, okay, he is a decent man. Finally we have Nick Leeson. I would say of all of the three protagonists I am looking at perhaps had the least remorse but he too had some hesitation and some concern. I think they had just come back from a vacation and he turns to her on the beach and says something to the effect, "Look, if I wasn't this wealthy, if I was a total failure, would you still love me?" And you could see there he is asking himself, "Is this something I should be doing?" Each one of those illustrations of remorse or hesitation makes these characters more real to us and makes the misdeed more powerful.

*Scenes shown from:*

- *Wall Street (1987)*
- *Boiler Room (2000)*
- *Rogue Trader (1999)*

There is a formula for making a movie about a securities fraud or any misdeed and sometimes they are going to be tweaking events and reality to make it work better. A good example of how you tweak reality is how the specific misdeed is sometimes not handled with accuracy. And the one that I want to focus on is one of the misdeeds from *Wall Street*. *Wall Street* dealt with manipulation but it also dealt with two instances of what was referred to as insider trading. You heard one of those instances being discussed by Sheen and Douglas in the car where Douglas asks Sheen to go and follow this British investor and find out what he is doing and report back to him. Douglas gets information from Sheen, that Douglas is able to fit together with his own knowledge and figures out what this trader is going to purchase and Douglas and Sheen together act on that ahead of time. That is referred to as insider trading. As a technical matter it probably is not legally insider trading. There was no gathering of information that was not publicly available. Sheen didn't trespass, he didn't steal, he didn't shoot with a telephoto lens or get a sound recording from a great distance and that most likely did not generate the kind of breach of fiduciary duty that is necessary for insider trading.

We are also going to see the clip where Sheen does breach a trust and probably a trust that would satisfy Rule 10b-5(2); it is information that he learned from his father about a decision that is going to come down from the FAA regarding his father's airline. He

shares that with Gekko and Gekko acts on it and makes some money on it. Now that is almost certainly insider trading.

**JOHN STARK:** Movies are never going to get that right. They never will.

**DAVID LIPTON:** I am going to argue that they shouldn't worry about getting it right. Because when we look at these clips, the breach of duty isn't as powerful as watching him run around on his motorcycle collecting information.

**BRADLEY BENNETT:** They should make clear what your duties were to your family members.

**DAVID LIPTON:** Let us run those clips on insider trading and you could see how perhaps the non-insider trading looks a little bit more exciting than the actual illegal insider trading.

*Scenes shown from:*

- *Wall Street (1987)*

You might notice the prescience of the director there with a little insert shot of Zuccotti Park as the helicopter flew off, he probably knew that Occupy Wall Street would be the subject of the news in 20 years. What do you guys think? Do you need to make the crime real in order to be satisfying for an audience? Is it better to have it real or is it better to have it cinematic?

**BRADLEY BENNETT:** I think it is better to have it cinematic, because you are at the movies. I think for most people they would regard either one of those as probably wrong. The scenes with his father and Wildman are very reminiscent of the cases SEC are litigating now against some people who watched M&A types come and go in a railroad yard and concluded that the railroad they work for is subject to some kind of play.

**JOHN STARK:** My theory is that wasn't insider trading. I think it goes both ways too. I think for the SEC, the portrayal of the SEC which I have been studying for this panel, they were always bouncing around between criminal authorities. Some movies make it look like the SEC has criminal authority; some may make it look like the SEC does primary surveillance, which the SEC doesn't. FINRA, formerly the NASD, does surveillance. I was part of the Office of Market Surveillance and the SEC's Inspector General's recommendation was to change the title of the office because the SEC didn't do surveillance. They felt that the portrayal of that including in places like the movies was misleading everyone.

But there is a lot of truth to that. Anyone will tell you I had a big poster from the movie *The Untouchables* in my office in SEC Internet Enforcement. That was really to send the message that I wanted our group, just like the SEC, to be an organization like *The Untouchables*, where everyone had different skills, because when you are working on an investigation you have all different kinds of experts. The relationship of criminal and civil authorities and with FINRA, who cares who does what? The way it works is you have someone like Cam Funkhauser, who is a senior VP at FINRA. He sees something intense going on and he calls me at 9.01 am to tell me that something is really important. Then I get moving, I talk to the FBI, then we all start working together and it is all about

those relationships. So putting everybody in the same room and not necessarily labeling who does what, I don't think it hurts either side. I think it is good for the SEC staff to see that kind of portrayal. I did a million insider trading cases when I was at the SEC, every single one was different. Every single one of them had some crazy wrinkle in it that made it the first of its kind.

**BRADLEY BENNETT:** I would also say its amazing how circular things are. If insider trading is really a crime, who was hurt in what he did, other than his family relationships? Is insider trading really a crime? There are willing sellers or buyers on the other side of the transactions. Was anyone really hurt? I also want to know, was there ever an academic study showing whether there was a relationship between *Wall Street* and the SEC getting penalty authority five years later? Because at the time of that movie, talk about historical, you can even penalize people saying anything.

**JOHN STARK:** There was certainly some impact of that movie because if you take a look at Regulation FD - I was part of that because it had a lot to do with the Internet - was that the SEC wanted to make sure that we weren't discouraging people from going out there and doing exactly the kind of due diligence that Bud Fox was doing. And we talked about that doing fair disclosure, that if you want to go out and put yourself near your company headquarters and see how many cars are parked there on a Sunday afternoon. Because when the Internet came, that is what started happening, people started doing that to companies figuring out just what they could publicly view and then post it onto the website. I think the General Counsel's Office in particular didn't want FD to deter analysts or anyone else from doing that kind of due diligence.

**BRADLEY BENNETT:** I think the key word of FD was "mosaic" and the scene with Wildman was classic mosaic. It brings together a bunch of immaterial pieces to form a material conclusion.

**DAVID LIPTON:** It is interesting that both of you have suggested that the movies have impacted upon the behavior of attorneys or the regulations at the SEC. Do the movies create a public kind of pressure on the SEC or public pressure on the government to alter the SEC? Do you think the movies lead to a restricted SEC budget?

**JOHN STARK:** That is a great question because that is absolutely true that the staff are put under extraordinary pressure from things like the public perception which is put in the movies. The best example of that and this is something I really admire Rob Khuzami, the current director for trying to change is, I am sure Brad got the same lecture. The week of training that we got at the SEC when we started before they sort of threw you into it, the last speaker was Judge Sporkin. Judge Sporkin, probably the greatest Enforcement Director the SEC ever had, and really a legendary man and just a person of extraordinary character, will get up in front of the staff and he always says the same thing at the end which is, "You should be just as excited to close a case as you are to bring a case." That is a hard thing for a staff member to understand because you are measured on how many cases you have brought, not on how many cases you have closed. If you remember in *Fletch*, he turns around and closes the case right then and there. That is not going to happen, especially given today's pressure to keep cases open by the staff. But the reality is, Judge Sporkin is dead right. You were there to do justice at the SEC and you should be just as excited to close that case. And one of the things I know that Rob Khuzami has put in place is a metric so that you aren't judged by how many cases you have brought.

**BRADLEY BENNETT:** I will say with my job that the key to good regulatory enforcement is that you have done your job if you have investigated, you have gathered the relevant evidence, you have talked to the relevant witnesses, you have formed a view of what the evidence shows, and the right thing to do is close the case. Giving your staff the confidence to be able to do that is perhaps like one of the key roles as a leader. That also tees up our final section on the role of the regulators. How do you bring matters to a conclusion? Who is the most effective at providing real deterrence, how the criminal authorities get involved? We have a series of clips that attempt to capture that. The first one is a little tongue in cheek from *The Godfather Part II* which I think represents what the average defense lawyer tells me it is like to negotiate a settlement with the SEC or a regulator. Then we have a series of interesting clips from *Boiler Room* where the criminal authorities try to flip a witness. We also then have clips from *The Other Guys*, on working with the SEC, including the issue of the “revolving door.” And then we end with *Too Big to Fail* and lessons regulators can learn and when the regulators feel that they have done their job and it is time to ride off into the sunset, to mix some metaphors with western movies. But why don’t we run those clips and then we will be back to discuss.

*Scenes shown from:*

- *The Godfather Part II (1974)*
- *Boiler Room (2000)*
- *The Other Guys (2010)*
- *Too Big to Fail (2011)*

**BRADLEY BENNETT:** I think that it is a little more than ironic that in this time of Occupy Wall Street, where I think the theory is to the extent as Michael Corleone said, “We are all part of the same hypocrisy.” That hypocrisy goes to the regulators and the regulated have too cosy a relationship there, incapable of independence. Basically what you will always get is some kind of insider deal. I don’t know if you want to take that one on, John, with your observations from your time at the Commission, settled a lot of cases, resolved a lot of issues of importance. I have my own strong views about the way we do business.

**JOHN STARK:** The revolving door part of *The Other Guys*, obviously it is ridiculous, they take it to an extreme. But I think that there was a perception and some of it based on reality that certain people on the outside had special access. And whether that was portrayed in the movie or elsewhere, I remember in my very early days, I got a call from a big-time defense lawyer who said, “You need to understand that Bill McLucas will take my calls.” Bill McLucas at the time was the Director of the Division of Enforcement. I thought to myself I am not worried about that because I know personally Bill stands behind his people and I also know that nothing is going corrupt Bill or anyone else. But on the other hand, I didn’t like that the defense lawyer actually felt that way. I think part of that comes from this revolving door. The SEC put together in their own enforcement manual rules about that kind of access. But they still get criticized about the revolving door all the time and I think it is so incredibly unfair. I think it is true that a lot of great lawyers come into the SEC and then they go back. And maybe the perception is bad, when they go back to the same exact firm that they came from. But Congress has asked Chairman Schapiro to get experts in place and to hire the best and the brightest. Where

do you think they are going to come from? To get those people, you have to go out into the private sector and you can't expect them to stay forever. Having said that, I think there are quite a few people who actually do stay for a long time despite the fact that they could make lots and lots of money. One of our friends, Greg Faragasso, is someone who has been there for maybe for a very long time and does phenomenal work; he could walk out and maybe quadruple his salary any time he wanted but he doesn't do that because he is dedicated. So I think some of that is lost.

**DAVID LIPTON:** Greg is one of my favorite adjunct professors.

**BRADLEY BENNETT:** My co-adjunct friend, yes and co-incidentally a big movie buff.

**DAVID LIPTON:** Let me ask you guys something because you have a lot of expertise to share with the audience. But I also wanted to drive home the fact that we are looking at film and its relation to the securities industry. About a third of them were based upon real life facts. Does a film that portrays an actual event have more power either on the audience or on the SEC or on government than a film that is just theatrical?

**BRADLEY BENNETT:** I think *Boiler Room* and *Rogue Trader* totally capture the essence of where people go wrong. A wise person in the market once told me, "Your first loss is your biggest loss because if you made up and take that loss, you learn that you can live with it. You learn the lessons from that trading loss, you are pretty much good the rest of your career." But I think we have seen so many cases and in so many situations, great cases, both the accounting fraud type things and the rogue traders. They all start with not being able to accept your first mistake and thinking, "I can trade my way out of it. I can work my way out of it. And darn it, this last month was bad but the next month will be good and I can fill this hole." It becomes a hole you can never fill, and then it really becomes someone who never really set out to commit a crime. Now we go to *Boiler Room* and it didn't talk about greed is good; it talks about when greed is bad. Greed is bad when you are playing with the house's money. In *Too Big To Fail*, greed is bad. Greed is also bad when it masks and blinds you to all the flaws that you get involved in and I think what happens in a lot of boiler rooms. They are in the heart of the area that we regulate. A part of the clip we didn't show in *Boiler Room*, Ben Affleck fires and sends out of the room anyone already licensed because he doesn't want anyone to know what a real securities firm looks like. He wants you to live in this other world where people get by with this crazy lifestyle.

**JOHN STARK:** I think it was inspiring too. I remember when the movie came out, Arthur Levitt -- he really was a phenomenal Chairman in his devotion to the staff -- managed to secure tickets for a private screening of *Boiler Room*. He invited the entire SEC staff to go watch the film before it came out. I think part of that was just to inspire the staff that this is bad stuff going on.

**DAVID LIPTON:** Did they have a discussion afterwards like this?

**JOHN STARK:** I don't think they did.

**DAVID LIPTON:** That is because the Historical Society wasn't in existence at that time.

**JOHN STARK:** Right.

**BRADLEY BENNETT:** Back to the *Godfather* clip is where we are all part of the same hypocrisy and basically everything is resolved by the transfer of money. Fast forward to today when Jed Rakoff is asking a lot of questions about the \$238 million Citigroup CDO settlement, right, and he is saying, "Why haven't individuals been charged? Why isn't Citigroup forced to admit that they actually committed fraud?" Is that a problem? Do the American people have a right to expect something more than big dollars?

**DAVID LIPTON:** I have a slight leg up here because I actually worked with Jed back in the '70s, before you were born, Brad. He is an eccentric, in a good way, fellow and has a novel take on things, I loved watching him as a judge. He just raises the question that has always been in front of us. I neither admit nor deny, but, by the way, here is a quarter of a billion dollars to make do. So I am not quite sure how I play that into film. I have introduced that concept into my classes. I have had my classes look at some of Jed's opinions. They are usually very short, fortunately, and they strikingly reflect thinking out of the box. Of all the films we have shown, I don't really know if there is one where somebody was thinking out of the box, the way Rakoff, in my mind, does.

**BRADLEY BENNETT:** Let me move on to another topic with John. The *Boiler Room* clip ends with the take down, getting him to work as informant. There is serious criminal action; they are going to search and seize everything on the property. They are going to use that paddy wagon to take away all the brokers. With *Wall Street*, we didn't show the clip where they arrest Bud Fox in his office and take him away with handcuffs. Is that what really effective law enforcement comes down to? Does it have to result in a criminal case? When you were at the SEC, is the criminal case the end goal that you should work to? Is that the only way to really stop some kinds of conducts?

**JOHN STARK:** I don't think it is. I think the way you do deterrence is to bring big cases whether you are the SEC or criminal authority or otherwise. I think that I have always felt that 90% of the cases that I worked on could be criminal. I remember having conversations with assistant U.S. attorneys who would want to know, "How bad is this case? Does this need a criminal attention?" You hope that everyone is working together in a cohesive way. But I think that getting back to what David said is, when you are talking about individuals, you are talking about people's liberties and you are talking about people's reputations, I have always admired the fact that everybody wants to charge individuals. Brad, you are now Director of Enforcement at FINRA. I don't think there is a moment that goes by in your day where you say, "Well, let us just charge the companies. We don't really want to go after the individuals today." Fraud by itself against the company always seems like a legal impossibility. It is a reality because you can dig into these big financial morasses and just not be able to find the kind of culpability that you want. You can charge the individuals if you want to. You can ruin their lives, try to take away their liberty and then just lose the case when it goes to trial. I can completely appreciate Judge Rakoff's outrage because it is outrageous that there just haven't been individuals brought to justice in a lot of these cases. But the reality is a lot of the individuals who are brought to justice just don't make the headlines and it is very hard to prove. I think SEC takes a very careful and thoughtful approach to that.

**BRADLEY BENNETT:** One of the areas where these are very impressive is the criminal prosecutor has now realized in insider trading case you could turn people. Roger probably could have gotten off if it wasn't for the tapes, if it wasn't for his own voice, if it wasn't for kind of using blue collar tactics on a white collar crime.

**DAVID LIPTON:** In 450 instances.

**BRADLEY BENNETT:** Right. I think also kind of quaint back in the days when I was at the SEC, the big concern was that criminal prosecutors didn't want to take securities cases. They thought they were too complex, they thought the jury wouldn't understand them. And now I think we see a plethora of criminal prosecutors that are ready to pursue these kinds of cases.

This brings me to the last clip and a question for you, David. The *Too Big To Fail* clip seems to say that the marker for whether it was really good regulation was that the New York Times liked it. Is that the marker to which history will judge the regulatory efforts of the last 20 years?

**DAVID LIPTON:** I think that encompasses also the question that I wanted us to focus on a little bit earlier of whether we should be moved by films and whether or not we are moved by films? Should we be moved by a film's portrayal? I am a little bit more comfortable being moved by a New York Times account if it is factually accurate. But the truth of the matter is we are probably moved by both.

**BRADLEY BENNETT:** I will give you a sum up that goes to another distinguished staff member, Jim Doty. As he went through his career and catalogued up his victories and minor defeats, he said, "At the end of the day you try to look back on your career and say to yourself, you know I put a few shells on the reef that may one day save capitalism." I think that is kind of a good thing that really effect members of our Historical Society and I think it is a good thing that a lot of us can say, son, you have built a big section on the reef, some did a few things here and there but all in all it added up to make some difference. I hope that is what we are doing going forward but I know that is the mission of the Historical Society and call to celebrate that. I think in these times of trouble we forget there is a lot to celebrate, because a lot of good has been done since the first movie in 1987.

**DAVID LIPTON:** I think that is probably close to our sayonara call and I want to thank you, John and you, Brad very much for being here and I am sure that the audience appreciates your efforts, I know I do. I am awfully flattered to have you both on the panel.

The broadcast will be available on the virtual museum archived at [www.sechistorical.org](http://www.sechistorical.org) in an edited format without the film clips as I had mentioned before because of copyright reasons and a transcript will be added later on. This program happens to conclude the 2011 broadcast season of the SEC Historical Society. I thank you and the audience very much for being with us here today. Thank you, guys.

**BRADLEY BENNETT:** Thank you.

**JOHN STARK:** Thank you.