Securities and Exchange Commission Historical Society
Interview with Hugh Makens
Conducted on March 5, 2009, by Kenneth Durr

KD: Interview with Hugh Makens, March 5th, 2009, in Grand Rapids, Michigan, by Kenneth Durr. Are you a Michigan native?

HM: I was born in the Upper Peninsula of Michigan, about 515 miles north of Grand Rapids in Houghton, Michigan, just near the tip of the peninsula.

KD: Was that a mining area?

HM: It was heavily copper mining. If you go back to the turn of the century, the 1870s and 80s, it was one of the leading copper mining sites in the world. And Paine Webber was born there, the brokerage firm. It was based, originally, on trading copper, and it set up operations here and then in Boston, and then grew into a national brokerage firm.

KD: That was before the copper mining went out west.

HM: That was before it got too expensive to extract deep copper. There's a mine not too far from where I live, but it goes down over a mile into the earth.

KD: Where did you go to college?

HM: Michigan College of Mining and Technology, now Michigan Technological University, with a major in accounting.

KD: Where is that located?

HM: It's in Houghton. My dad was head of the Chemistry department. My uncle was head of the Electrical Engineering department, and a cousin taught in the English department. I thought I was going to go to Michigan and then found a professor that was absolutely fascinating. I was going to go one year to Tech, and then go down to U of M, but the accounting professor there absolutely captivated me, and I never thought I'd be interested in accounting.

KD: What did you think you'd be interested in?

HM: I thought I would be interested in pre-law. I love history. I took a number of courses in geology, I took courses in biology. I took a lot of extra courses because I like the outdoors, but ultimately decided that the business, and particularly accounting, side was more interesting.

KD: I'll bet that turned out to be handy later on.

HM: Yes, immeasurably. The other thing I did was I was a reporter for the college paper, and also an editor of the college paper. So those two skills have been immensely helpful for

the rest of my life, writing and editing, but beyond that, the investigative part of trying to find out what a story is, is what got me going.

KD: Okay. Did you go into the Army after undergrad?

HM: No, actually, I went to law school then with a deferment. I was in the ROTC program in college and got a three-year deferment to go to law school at Northwestern.

KD: Did you get involved with securities law at all in your studies there?

HM: Yes, I did. I took a securities course, and when I took that course, I knew that was the only thing that I wanted to do. That was the area of law I wanted to practice, and there was no other. I don't know what would've happened if I didn't get my job with the SEC [laughter].

KD: What was it? Was it the professor? The overlap with accounting?

HM: I don't know how best to describe it. It was the magic of things coming together, my background in accounting and business, the building of things, the entrepreneurial side of the securities law, the regulatory side. I used to read mysteries a lot, and the idea of ferreting out people who were doing strange and unusual things was interesting. The idea of building things, of being creative, being involved in financing that was going to create a better America, was pretty neat.

KD: Any notable professors or colleagues at Northwestern?

HM: Well, one notable professor. This is the professor that kind of took me under his wing and wrote my recommendation to the SEC. And he still, today, will either take blame or pride, depending on what I'd done at the moment, for the recommendation, and that's David Ruder. David and I stayed in touch all the way through our professional careers.

KD: Okay. He, obviously, ended up having a lot to do with the SEC.

HM: Yes, he did, to say the very, very least.

KD: Okay. So then it was into the Army for a brief period of time?

HM: Then it was two years in the Army at the Corps of Engineers. I was detached to the Army Electronics Command, and I did two things there. I worked on government contracts, and I was the Secretary of the Army Electronics Command Contract Review Board. The title "secretary" was kind of misleading. My job was to conduct the hearings for disputes between contractors and the government, and then assist the panel in rendering their decision and writing up the decision at the end of the process. Also, I did a fair amount of Courts' Marshal work on a volunteer basis, defending people, which turned out to be excellent training for me as well.

KD: So it sounds to me like you must've given some thought to trying to get into the SEC while you were in the Army.

HM: Actually, when I was in law school, I went through a three-step process of interviewing with the SEC. The SEC interviewed at Northwestern at that time. And the final interview was with one of the commissioners. And there were about twenty-five of us that applied, and the last time, there were three people that were in competition for the job. They offered me the job, and I said, "I've got bad news for you. I have this uncle who likes me to wear green clothing and to carry a gun who says he wants two years of my life." They said, "That's fine. We'll hold the job for you." And they did.

KD: So did they fly you to Washington to meet with the Commissioner?

HM: No. He flew to Northwestern. A Northwestern grad.

KD: Okay. Frank Wheat, right?

HM: Yes. He came back.

KD: Early 60s, I guess this must've been?

HM: '64.

KD: Okay. So you were ready to come into the SEC in '66 then.

HM: Yes. I had my choice of several offices. I was hired for the Chicago office, and they had four offices at that time in St. Louis, Minneapolis, Cleveland and Detroit. And I was very impressed with the man who was in charge of the Detroit office, a fellow by the name of Bill Goldsberry, who became something of a legend in his own right over the years at the Commission for both his success as an administrator and his longevity.

KD: So you decided to go to work in Detroit?

HM: Detroit was what I opted for, which was a wonderful decision because he was an outstanding lawyer and teacher.

KD: So you were a staffer in the Regional Office.

HM: Yes.

KD: Tell me a little bit about your day-to-day and what you did there.

HM: Well, Bill was very, very aggressive in pursuing cases. And he believed that one could not successfully prosecute cases sitting on your derrière in an office. So we would get a complaint, or something would come to his attention, and he would say, "Okay, you're going to Kentucky, you're going to Ohio, you're going to Indiana, you're going to Illinois,

you're going to Ontario, wherever it is you're going. Find the witnesses, get the facts and bring back the case." And that's what I would do, time after time after time, all over the Midwest.

KD: This was officially the Chicago Regional Office?

HM: Yes.

KD: And it covered all those states you just mentioned?

HM: Yes. Did I get Ohio in?

KD: You probably did.

HM: Yes.

KD: So, essentially, this sounds like a pretty open-ended thing. You find a thread and you pull it and –

HM: And you go run down the thread, and you bring the case. We brought more cases out of a four-person office than all but two of the regions in the United States over a four-year period, once we got charged up to go.

KD: Who else was in there with you?

HM: Mark Laush, Ed Haley, who was the broker-dealer examiner, Bill and myself plus one secretary. Mark would generally write up the case, and my job was to go out and investigate it. And early on, Bill would try it. And then as we progressed, Bill would turn over cases to us. Two fond memories of Bill: early on I brought in a proposed complaint and brief, and he said, "Did you make any copies of this?" And, remember, this is back in the days where you typed it up. And I said, "No." And he says, "Good," and he ripped it into little pieces, dropped it in the waste basket, and said, "Start over." And that was the only guidance I got was, "Start over."

My first trial was before Judge Levin, who was known as a terror for attorneys down in Detroit. He was very, very stern, and very demanding on procedure in his courtroom. We'd been before him before and Bill tried the cases. So we went in and sat down, and Judge rapped the gavel and said, "The SEC may proceed." Bill didn't do anything, so I gave him a little nudge, and said, "Bill, we're on." Bill says, "Not we. You." So I tried a three-day case, which we won, and at the end of the case, Judge Levin said, "Mr. Makens, I'd like to see you in chambers." And Bill started to go back with me, and Judge Levin said, "No, Mr. Goldsberry. Just Mr. Makens." And I went into his chambers, and he spent about two hours talking about trial technique, and things to do differently, or a better way to present something. He was absolutely wonderful. And it was the start of a friendship that went on until he died.

But the thing I remember most about that meeting was his closing observation. He said, "Mr. Makens, the opening argument is extremely important. You need to get the judge's attention immediately, and you need to make him focus on what you're going to do in your case. And my observation is that it was very hard for me to concentrate when your knees were shaking so badly." [Laughter].

KD: So do something about the knees.

HM: Yes.

KD: So let's talk about some of the highlights as far as the cases are concerned. What kinds of things were you seeing a lot of in those years?

HM: We were seeing some organized crime cases because we had the Detroit family. And in addition, we got into a fairly large organized crime case out of Montreal. And so I would be sent to run down those cases. The case in Montreal was interesting. We had to clear through the State Department for us to go into the country and coordinate with the Criminal Investigation Division of the Mounted Police. So I went into Montreal targeting a group of people that I intended to try to trace down, including the promoters of a "cancer drug," which was nothing but a placebo, but they'd been dumping their stock all over the United States.

And they were caught with a trunk-load of stock crossing into the American border, and the driver of the car pulled in and then took off, and the Customs people didn't get him, but they had the car, so they had all these stock certificates, plus some of this placebo-type medicine. So we got a call, all right, "Go up into Port Huron, find out what's going on." And that gave us enough of a lead to be able to go back and identify some of the participants, and some of the investors, because there were papers in the car. So that then starts the blood-hounding of a case.

I went to Montreal, checked in with the RCMP, and then started my digging around with people. And one of the first things I did was go to the office of the Quebec Securities Commissioner. And I arrived quite early for a meeting, and I said, "Well, that's fine, I'll sit and wait." And the secretary said, "Well, some of his clients," because he'd been an attorney, "are coming in in just a moment to see him. So after they finish, you can go in." And I said, "Well, don't even announce me. Don't even say I'm here. That's fine. I don't want to put any pressure on him. And then in walked the two promoters. [Laughter].

I told the secretary I would leave and come back and don't even say I was here because I don't want to embarrass him. Eventually, the commissioner got indicted as part of the organized crime operation out of Montreal. The other humorous thing is I like to walk, I like to explore places. So I climbed up to Mount Royale, to the top of Mount Royale one night. Another night, I went out to the Olympic site, both of which involved quite substantial walks. And when I went back to check out with the CID people, Criminal Investigation Division of the RCMP, when I went back to meet with them, they brought a

sergeant in after I explained, "Here's what I found when I was here," because we cooperated continually with the RCMP. They were wonderful. Canadian people were wonderful to work with except, obviously, the Commissioner in Quebec.

The major there said, "I would like to introduce you to Sergeant so-and-so. Sergeant so-and-so has been assigned to follow you for the last three days that you've been in our city." And the sergeant said, you know, "Good to meet you," and all that. And he said, "Why the hell didn't you take a bus some of those places?" [Laughter]. But they were worried about me being shot, so they put a tail on me.

KD: Where did you take this information after you left the Commissioner's office?

HM: It goes two places. Number one, it went back in a written report to Goldsberry, so that should be in the file someplace. And secondly, it went to the CID. And they already had suspicions about this guy and what he was doing.

KD: What makes a securities case an organized crime case? Is it just gangsters –

HM: They are identified as part of the gangster world, nothing more or less. We worked with the Justice Department and the Michigan Attorney General's Office, who both had Organized Crime Divisions. So we had a list of everybody. One of the jobs I had was every quarter to go over to the brokerage firm where most of the mafia people traded to

look at their accounts. It was very convenient. They all went to the same brokerage [laughter].

KD: Did you have somebody who sat around and looked at the ticker tape or something like that, try to track things down?

HM: No. The tape was so ancient, so slow back in those days that it didn't mean a whole lot. No. Usually, if we were tracing something down, what we were looking for was a trading pattern. Normally, we were looking for market manipulation. Are they starting to accumulate stock in an unusual way? Are there unusual sell patterns?

KD: Any other notable cases from that time?

HM: A lot of oil and gas cases. Probably did more oil and gas cases than anybody in the country during that period of time. There was a lot of shallow drilling in Ohio, West Virginia, Kentucky, Illinois, some in Indiana, little bit in Pennsylvania. And these people were generally promising great returns. Generally with shallow drilling, when you hit oil, you will hit a pretty good surge. But what they don't tell you is that the production drops off dramatically if it doesn't disappear. And what they would do would be to sell to the investors a fractional interest in a turnkey operation, that is both the drilling of the well and the completion of the well. And they wouldn't disclose the fact that it might be costing them, you know, 20, 30 percent of that turnkey price, and they were just taking the rest off as profit.

There was a fellow by the name of Paul Liberty down in Toledo, Ohio, who would sell interests in oil wells adjacent to the Albion Scipio field, which is probably – it was at that time the most successful oil field in Michigan. A lot of millionaires were made out of that, but it is a very, very narrow strip. And Paul was drilling just off where there wasn't a chance in the world of hitting oil, and he knew it.

So he would sell, like *The Producers* movie, he'd sell 100, 200, 300 percent of a well, because he knew he wasn't going to succeed. And he was also selling the turnkey for completion, and didn't return it if you didn't get a completion.

KD: Did you get complaints about these guys?

HM: That was generally how we did it. I think my favorite case involved victims who were from a topless girls band. And I was sent out to interview this band, having no idea what I was about to get into [laughter]. But it is truly the most unusual interview I've conducted in my life because I did it at the bar, and that's how they were attired.

KD: I didn't even know these things existed.

HM: Well, they sure did. At least I got to tease Goldsberry. They had a card, a postcard, so I brought back a card and said, "Well, Bill, here's your witnesses. You put them on the stand."

KD: So they'd invested in one of these schemes.

HM: They'd invested in one of these scams, the oil promoter visiting the bar, and these people would take money from anyone.

KD: Were you able to put a dent in this kind of thing by prosecuting?

HM: Oh, I think so. There weren't that many, so they became known pretty quickly. And also, we worked with the state people in these different states, and they were taking them down at the same time, so I do think we had a fair amount of impact.

KD: That raises a good question, which is the extent to which you worked with state regulators in all of these areas.

HM: Goldsberry gave me carte blanche to cooperate with any of the state regulators. Without exception, they were pleased to share, but were surprised that the SEC was involved because, normally, there was something of a rift between the states and the SEC.

KD: Do you know why that was?

HM: Yes. I think there were several factors that went into it. Number one, most state senior regulatory officials, the commissioner, the director, whatever, are political appointees. I

went through civil service, but that was unusual. Secondly, states generally had limited training at that point in time. Third, there was a concern about confidentiality.

KD: On the part of the SEC?

HM: That the SEC didn't believe that states would keep things confidential. Actually, the states over the years have done a far better job than the Commission in terms of keeping things confidential. The exception to that is, obviously, Eliot Spitzer. But he wasn't good at keeping a number of things confidential over his lifetime.

KD: Right. Plus, he had no intention in these high-profile cases.

HM: No. His strategy was generally to use the leak to his former college roommate from Cramer & Kudlow as a means of putting additional pressure on people to settle, because they were being exposed to publicity.

KD: Right. So how long did you cover the field for the Chicago regional office?

HM: Five and a half years.

KD: Okay. How often did you get to Washington?

HM: Six, seven times a year, eight times, I suppose. When we had cases that we had to defend, we'd go; we'd go for training. My chain of command, generally, was Bill Goldsberry, and then the Chicago regional office, John Mayer in Chicago, Tom, I'm trying to remember Tom's name, before that. Then it would go up. Usually, Art Mathews would look at our material. And we had a continuing running dialogue with Art. Art was the SEC's equivalent of a computer. He knew more cases, more interpretations than anyone I've ever met in my life, including probably Joel Seligman, but it was close.

KD: So what was his position, his title?

HM: He was one of the senior enforcement staff. He reported to Stan Sporkin, who reported to Irv Pollack. So we would be involved with the three of them. It was from Stan that I learned what a fraud was. If somebody's taking money, it's a fraud, and not using it right, it's a fraud. And if it's a fraud, it's a security. And that was a pretty simplified, but incredibly accurate way of describing what a security really is, because almost every instance of abuse, stealing money, in those days, was, in fact, deemed to be a security. If you took investor's money in any size, shape or form, somehow or another, it would be fed into a securities case.

KD: If somebody's investing, it makes it a security.

HM: But I do remember, fondly, Stan's, "If it's a fraud, it's a security." [Laughter].

KD: Did you go and help present cases to the Commission?

HM: We would present cases to the Commission periodically.

KD: Tell me about that experience.

HM: We would go before the Commission, five Commissioners were there. Manny Cohen was the chair at that time. We would have an organized presentation. We might have some exhibits. We would be allocated so much time, 20 minutes, half an hour, whatever that time was going to be on the case. We would make our presentation. And at the end of the presentation, during the process also, the Commissioners would ask questions, and then they'd give us the authority to proceed with the case.

KD: Did they ever tell you not to proceed with the case?

HM: Yes. A couple of times, we had cases where we were told not to proceed. On the other hand, there were other solutions to those problems. You could refer a case to the state. You could refer a case to the Postal Inspectors, which was a wonderful place to refer cases because their criminal conviction rate was about 95 percent, and they were fast.

KD: Why is that?

HM: They took the very simple approach, and it was the approach that Goldsberry took with his cases, and that is find a fraud; don't worry about what really happened. It'll sort out later. So my instructions, when I went into the field were, find six good witnesses, find two strong fraud counts. I don't care if you get a registration count or not, but if you do, that's fine.

KD: A registration count?

HM: A failure to register a security because they conducted an illegal public offering. And off I would go. That was my target. Six good witnesses, two good fraud counts, bring the case back and we'll bring it. That's why we brought so many more cases than the other offices because we didn't try to find out everything that happened. It didn't make any difference. The important thing was stopping the fraud. And that was Bill's philosophy when he took over the Regional Office in Chicago.

KD: Wouldn't that raise the chances that you might make a mistake, and it might not have been a fraud?

HM: Never did [laughter]. I mean, conceivably, yes. But, generally, securities fraud tends to be pretty blatant. We're not working the sophisticated inside of large corporations. That's not, generally, what we did in the field. We were, generally, chasing people committing intentional frauds. Regularly, we'd run into people who were just doing things wrong. But usually, if you met with the attorneys and those people, you could get

them to straighten out what they've done, do them right, and get back on the track, usually meaning getting registered with the Commission to do what they were doing. And if they were able to make rescission offers, fine. No investors, no harm, no foul. We'd get a letter from them that admitted what they'd done wrong in the past, we'd put it in the file. We'd say, "You do this again, this letter will be used in your indictment."

KD: So how much of that did you have, as compared to actually bringing a case?

HM: I would suppose it was pretty close to even.

KD: So it seems like that would be a pretty important pat of the whole enforcement mechanism.

HM: Yes. And it is not used today.

KD: Why is that, do you think? Short answer.

HM: Short answer is that the incentives for people are different than they were in my era. The competition for moving up the ladder is different than it was in my era. The way Congress evaluates an agency is different than it was in my era.

KD: And there also tends to be that sort of Eliot Spitzer type, black and white, bust them or not.

HM: Yes. There's a lot of things that need not be resolved as harshly as they are resolved. And there's a lot of other things that should've been resolved a great deal more harshly to avoid the situation we're in today. And it's a question of picking your targets and prioritizing what the impact of what people are doing on society.

KD: Okay. Through your time with the Chicago office then, perhaps we've touched on this, but was there at any point sort of a strategy, like this is the kind of thing we want to go after?

HM: No. We had a lot of stuff coming to us. We were never short of work. There's another aspect of this, I suppose, that might be interesting for you. Some of the things that would regularly come to us, obviously, were complaints from brokerage firms. What we did was establish a rapport with the branch office people or regional people from the New York Stock Exchange firms. Generally, if a customer had been abused, we would go meet with the branch office.

Very often, if they agreed with our evaluation that an abuse had occurred, then under those circumstances, we would say, "You straighten it out, will you straighten out the rep?" and that would be the end of it. There would be a file, and we might get an acknowledgment from the rep that there'd been wrongdoing, but it wasn't reportable, it didn't rise to that level. There wasn't really much of a reporting mechanism back in those days.

KD: And your experience was the brokerages would generally take care of this.

HM: If they agreed, they would take care of it. And, generally, that meant making people whole. The attitude toward making people whole was much better back in those days because you didn't have the arbitrations, you didn't have the NASD and New York Stock Exchange arbitration system. There was litigation that was going to take place. The brokerage firms didn't like the litigation, but you'd have pretty candid discussions back and forth, they weren't the guarded discussions that you have today with a brokerage firm, and often, the firm's attorneys weren't involved. It was usually the branch manager. You might call them in and let them know, "I'm going to be meeting with, and I'm going to work this out," and that would be the end of it.

KD: Litigation was the only alternative, so people would have a lot of reason to work things out.

HM: Yes. Now the other observation was that probably half of the investor complaints that we received weren't bona fide complaints, and that was true when I got to the state as well. They were, generally, people trying to get their money back for a bad investment decision, where you couldn't fault what the rep or the firm did, they put them in blue chips and the market went down. [Laughter]. Sorry, that doesn't make it.

KD: How obvious would it be that that was the case?

HM: Generally, pretty obvious. You'd look at the statements, go through, you'd look for a pattern. Was there churning? No. No churning. Were they put in something that was unsuitable? No. There wasn't anything that appeared to be unsuitable. Were they put continually into house products where the highest commissions were being paid and there wasn't disclosure? No, they were generally buying stuff on the market. Was the stuff they were buying in the market diversified? Yes. You'd go through that kind of a list, and you'd say, "What's the problem? Where's the complaint?" You'd bring it up to Bill and say, "Okay, I've looked this over. I don't think there's anything here." He'd look it over and say, "I agree. File it." And we'd send a letter back to the person saying, "After review of your case, we do not believe that there is a matter that would warrant enforcement action by the Commission." Or we might refer them to their own attorney.

KD: So the regional offices, officially speaking, within the SEC were independent, right? They didn't respond to any particular division. Is that correct?

HM: No. The Regional Offices generally responded primarily to the Enforcement Division. And there was a coordinator at the SEC for the Regions during my entire period. There's still a coordinator for the Regions.

KD: Okay. This would've been Trading and Markets at that point, right? Because Enforcement hadn't been set up.

HM: No, Enforcement was there. We're talking '66, and Enforcement has been standing alone for a few years.

KD: Okay, so you're talking fairly regularly –

HM: Yes. 90 percent of what was going on in a Region was enforcement. There was a broker dealer/investment advisor component, and then there was a Reg. A component which reported to Corporate Finance. And the broker dealer/investment advisor were not reporting to but respectively working with Trading and Markets. How things come around! And secondly, with Investment Management, because the IA's were under Investment Management.

KD: Now did your job change over time while you were there for about five and a half, six years? Did you move up or anything like that?

HM: There wasn't any "up" to go.

KD: It remained four people?

HM: Yes, it remained four people. I'm sorry, no. Ed Haley left, and Weldon Schwartz came. And John Kuhn was added, we did add one more at the time.

KD: But, essentially, you're looking at the same routine of going out, finding these problem areas and making your case.

HM: Exactly. What changed for me was that I went from a fact gatherer, to a drafter, to a litigator with less and less supervision as Bill got more comfortable with my level of incompetence [laughter].

KD: And you would pull people in who would do your fact gathering for you.

HM: I still did the fact gathering. There wasn't anybody else to pull in. I would still go out in the field and gather. Mark would go out, as I did more independently, Mark would go out more also into the field.

KD: Did you see much change in the SEC at this point? You would've gone from Manny Cohen to Bill Casey.

HM: Yes.

KD: Was there any difference in Washington that you noticed?

HM: Well, Manny was there the whole time I was, and I didn't get to Bill Casey until I'd moved over to the state side. For me, the continuity was always there. And, again, it's the Enforcement Division, so it's Irv Pollack, Stan Sporkin, Art Mathews, and a variety of

other people. I'm leaving out dozens of names of people that I worked with that were at the Commission for years, and years, and years, and were really wonderful to work with. For me, it was a pretty static world. The biggest change, ultimately, was when Bill Goldsberry moved to take over from John Mayer at the Chicago office.

KD: Okay. Well, tell me a little bit about the decision to leave the Chicago Regional Office.

HM: I'd reached the point where I felt I was not learning anything anymore. So I wanted to do something. I applied for a job as securities counsel at John Deere, and I had the job for a day and was fired. I drove out to Moline with my wife, got interviewed, they said, "You're great, you're hired." I got home. Next day, I got a telephone call and said, "The person that you were going to replace, who was drafted, flunked his physical and is going to return to his job, so we do not have an opening." And I'm feeling just devastated.

I talked to Bill about maybe I could go out to Washington, to Seattle, to work for Jim Newton, who I knew quite well. The Regions were so close with each other back in those days. The administrators were continually talking with each other, and we would share information on cases, and they would investigate part of ours, and we'd investigate part of theirs. Wonderful, wonderful level of cooperation without any sense of competition. I thought that was just great. So I thought about going out there. And then I got a call one night at home and said, "Hugh, we'd like you to apply for the job as Securities Commissioner in Michigan." And I said, "I don't have any political connections at all, and I can't think of why anybody would want to hire me."

KD: Who was calling you?

HM: One of the governor's aides.

KD: Is this G. Mennen Williams?

HM: Yes. And talk about a wonderful person, but I'll get into that in my other life. He said, "Hugh, the governor would like you to apply." I said, "Well, I wouldn't have a prayer of getting that job. There's got to be fifty, a hundred people that want that job." And he said, "Hugh, the governor would like you to apply!" "Okay." So I told Bill, and he said, "Yes, go for it." And I went up and did my interviews before a very unusual civil service panel, composed of very, very senior executives in state government. Not your typical panel. And, apparently, there were about thirty-one people who applied for the job, and I got the job, which shows how low the standards were at that time [laughter]. In doing so, I became the youngest securities commissioner in the United States.

KD: How old were you?

HM: Thirty-two. This had been the product of working closely with the people in Michigan on sharing cases and getting to know senior people. And I think it was also a time the previous Commissioner, Jack Heini, was at mandatory retirement age, and he'd slowed down a lot. Enforcement cases were backed up. There were a lot of complaints coming

in about the agency. But most of all, I think the Governor was concerned about enforcement matters not being dealt with. So I think I just happened at that moment in time to fit a notch of somebody who they thought could come in and straighten out the enforcement stuff.

KD: And he was willing to break with the tradition of putting politically-connected people into the office.

HM: Absolutely, yes.

KD: So you developed a reputation among folks in Michigan in the securities regulation.

HM: Yes. And I presume he would've talked to people in the brokerage community. I presume he would've talked to people in the state bar. I presume he would've reached out to a number of sources in making that decision. Who knows?

KD: So did you go and meet with the Governor then?

HM: I didn't meet with the Governor at that time. I didn't meet with the Governor until after I was hired. I just went through the civil service process. And I think the Governor did not want to become involved more than in the designation of the people that were going to serve on that board. That's what I suspect.

KD: So when you talked to him after you were hired, did he talk about what he wanted?

HM: He didn't talk about how I got selected at all. What he talked about was what he expected from me.

KD: Which was?

HM: Two things. Number one, do your job as an ultimate professional, and number two, stay out of politics completely. I don't need you. I don't want you involved. I want you to do your job! That's the greatest thing you can do for me. And he meant it. At one point in time I had commenced an investigation of one of his principle givers, and the feedback I got from one of the staff was that this guy went to the Governor and said, "You got to get Makens off my back." And the Governor said, "No, you have to get Makens off your back. He is fair, he will treat you professionally, and you go down and be honest with him and work out your problem and solve the problem, and you will find that he will be good to work with." I never got a call, I never got an intervention, and that was consistent all the way through his time. He kept me isolated from the political things, other than the innumerable sessions that I had with different legislators. But legislators have something called constituents, which means that you're talking with them continually.

KD: And every time you're dealing with somebody out there, it's somebody's constituent, so it gets back to the legislator.

HM: Exactly. Exactly.

KD: Let's talk a little bit about what you found when you came in there. Now you're moving from one kind of regulatory regime to another, to some extent. Right?

HM: Yup.

KD: Is Michigan a merit state?

HM: Michigan was a merit state.

KD: So that must've been a bit of a change for you.

HM: It was, but I never bought into the idea that disclosure alone was adequate. And after forty-five years in this business, I still haven't bought into it. I've seen too much abuse. I'll jump ahead for just a moment. One of the people that I got particularly close to, became just a dear friend for me and a mentor, was Al Sommer. I would have lunch regularly with Al when I was in Washington, and we'd talk about SEC-state relations. We'd talk about problems that commonly faced us. But he also involved me in things that were at the American Bar level. And he also asked me to author an article in UCLA symposium on the Efficient Market Theory, because he knew I didn't believe absolutely in the Efficient Market Theory.

I hate to say it, but I've been justified beyond my wildest expectation, and the cost to me personally has been fairly high, as it has been to almost everybody else in the United States who holds any stock, but the markets have changed since then. And so I authored an article that caused me to get a fair amount of abuse for several years. And then two market drops later, people are saying, "You know, you were right about that."

KD: Was this in the mid-80s?

HM: Yes. Well, it's actually the 70s. Let's see, I'm trying to remember. No, it would be the 80s, and it would be the '87 crash. But my point was a very simple one, and that is, a market is only as efficient as the ability of the analysts to analyze particular securities in the market, and have enough analyst activity to mean that you've got a meaningful in-depth analysis. Therefore, in your small cap and often in your mid-cap, you don't have that. You never have had it, and you don't have it today. And it's a lot of the people who were doing it are now disappearing. Furthermore, the system got corrupted. As you recall, the number of analysts were pandering for the investment bankers. And you'd look at this list of recommendations, and there weren't any sells. There were no sells. And everybody knew it. One of the puzzles is why it took so long. It was the states that finally shook that loose. But how strange.

But anyway, I guess the point being was that the relationship with Al Sommer was a tremendous amount of help to me. Back to the state of what happens when I walked in.

There was chaos when I came in. There was this great big long table, perhaps this deep [illustrating with arms], longer, that had three deep four-foot, three-to-four foot piles. And I said, "What's that?" And they said, "That's the requests for no-action letters." They'd gone back for years. We had a lot of cases that hadn't been investigated. They were just sitting in files. Our Corp Fin Division--we didn't call it that--didn't have specific objectives. Each examiner was simply applying their own standard or they'd come to the head of the section and say, "I don't like this."

Well, we were turning down offerings for incredibly nickel-and-dime things. And on the other hand, we were missing some pretty serious stuff. So I knew I had some major, major problems. In the evening, I punched out the no-action letter. No organization. They didn't understand what they were supposed to do in their jobs, so there wasn't meaningful training. There was no coordination with the Attorney General's office, no expectation for performance, everything was ad hoc. No targets. Complaints were backed up like mad. So I went through a series of things.

KD: How big of an office are we talking about at this point?

HM: We're talking twenty-six people when I went in. When I left, we're talking maybe 320, but some things got added that caused that. I think when I left, I had about forty-five, forty-six people in securities.

KD: That's still a pretty good jump. So you, obviously, took a look at systematizing things.

HM: Yes. First thing we had to do was figure out what we had. The second thing we had to do was create an inventory so that we could go back and find it and know what the status was. So we started to put status reports in. Any time anything came in, it got logged in, depending on whether it was an enforcement matter, corporate matter, matter in the mutual fund division, whatever it was, it got a log. The log got a number. The number matched up against the file that was established through our filing system with different codes for different units. Once that had been set in place, we then started to prioritize what was serious, what was not so serious, what could be deferred. I spent my nights sitting at that table, drafting letters.

A number of letters were, "This is five years old. Do you still want to pursue this?" [Laughter]. "If so, I apologize for what's happened, but I'll get back with you if you want to continue." And so I just spent a tremendous amount of time at night and on weekends just trying to work my way through the backlogs. I had some good enforcement people. Not well trained, but very good people. I mean, a pair of bloodhounds. And so I could go through the cases with them, and we'd develop our own priority system. The next thing I did, and probably the biggest thing—I've found, generally, that the accomplishments that I've achieved in life have generally been achieved by having a good team that does a job very well. And so I set about hiring a good team. I hired only lawyers and CPAs. That sounds a little bit like the SEC at the time. There's a good reason for it. I did it in a manner that would've caused the Attorney General to hemorrhage, and eventually did, in a very, very difficult confrontation.

KD: Why is this?

HM: The Attorney General believed he should have control of all attorneys in the state. I had, I don't know, twelve, thirteen, fourteen attorneys. And when I replaced people, I replaced them with attorneys. The other thing I did was go to the law schools and graduate business schools and say, "Would you like credit for having people work here on a part-time basis?" And so I worked my way up to the point where I had twelve law students and three graduate business students, a number of whom have gone on to wonderful careers in the securities field. I'm very pleased with what happened to my kids and how well they succeeded.

So now I had bodies to throw at some of these problems. Yes, they needed training, but they didn't need inspiration. They didn't need someone to push them. They pushed themselves. And all they needed was guidance.

KD: These would've been the kinds of folks who were looking to really establish, maybe learn a lot, maybe move up and maybe move on at some point.

HM: Exactly. Exactly. The measure of success that I've had as a professional, particularly when I was with the state, was the ability to take people and have them move on to greater responsibilities, and succeed in their professions. And I've got lawyers all over the United States who did that, who worked with me during this period of time.

KD: So you came in in about '72. Right?

HM: I came in in '72. Left in '78.

KD: About how long was it before you got that big table cleared off and the backlog –

HM: I came in, I think in October. It was done by December.

KD: So that's a lot of working overtime.

HM: Yes. But we didn't have a house in town yet. We were trying to sell our house, get out of Birmingham and get up there, and we were trying not to be disruptive with the kids.

KD: Notable cases or notable accomplishments during these years as far as the regulatory regime of the State of Michigan?

HM: Right. We became known as one of the most aggressive states in the United States in enforcement. We would send our people to assist other states in investigations if we had Michigan investors who'd been involved. One example, there was a commodities/securities fraud being run out of Boston. We shut down the operation in Michigan, and Ray Cochi, then the Massachusetts Commissioner, said, "Hugh, I don't have anybody who knows how to do this." Rather a dramatic difference from today! I

sent three people out until that case was finished. We worked with the CFTC, we worked with the FBI, and they did a massive raid, and we went in and shut down the operation and took the people off to jail.

One of the smoother joint operations. At times, there was tension with the CFTC. They were extraordinarily jealous of their turf. It helped when I was appointed to a CFTC advisory board. They had a state advisory board, and so we were able to work in coordination with them, much better. Particularly when I got to know Dick Nathan, who was the general counsel at that time. Suddenly, the tensions started to dissipate.

KD: They were just worried that the securities people were going to step –

HM: Trying to get into their turf. And I didn't care about their turf. I cared about a guy who was committing fraud. They weren't moving as fast as I thought they ought to move, so I moved. And we went in with the state police and seized the operation here. Major cases. I don't keep kind of a war chest of what went on. We would average about 350 investigations at any point in time. Of those, we might have seventy-five in a year, maybe up to a hundred in a year, that would go to some kind of an order.

The states had what was called Cease and Desist power, which means you could issue an administrative order that said to stop right now. That often dried up people from our state, but didn't mean that it would cause them to dry up nationally. We'd turn it over to

the SEC. We'd call the other states, we'd cooperate with the other states in investigations to try and clean up the entire mess.

KD: Would you try to avoid these Cease and Desist orders for that reason?

HM: No. No. As a matter of fact, I'd rather get them out. The advantage of a Cease and Desist order was that it immediately alerted the people of the state, we've got serious problems. And the press was good about picking up those cases. There was a young reporter for the *Detroit Free Press* by the name of Alan Sloane. I don't know if you know who Alan is, but he has been the business editor for *Fortune, Newsweek*, and is recognized as one of the top writers on business matters in the United States. But we were both young at the time, and he would do investigations himself and ferret out stuff that he'd ask us about, which was really his way of turning it over to us. And in return, I'd say, "I can't say anything now, but the moment we are ready to bring the case," and particularly if we were going to a court case, Alan would get a call because I could trust him not to say that we were in the case until it had broken.

KD: Did you have those kinds of relationships with any other journalists?

HM: Not to that degree, not where there was that level of trust. Everything else was arm's length. It doesn't mean that people would – if they said, "Call me if something happens," that I wouldn't call them because we would. And we had a public relations office in the

department that would make these calls, very much like what happens with the commission today.

KD: Did a lot of this activity focus around Detroit and the major –

HM: Actually, it focused over the entire length and width of the state, which surprised me. I mean, yeah, there was a fair amount in Detroit because of the population balance. About a third of the people were in that Detroit, Pontiac, Oakland, that corner down there. But there was stuff that was going on all over the state. We had some people running a land fraud around the state, including the Upper Peninsula. And it was being run out of Arizona, and Wisconsin issued an indictment against the people who were running the fraud. We were still in the investigative stage, and I went up to visit my in-laws and was reading the *Daily Mining Gazette*, which is a very small local newspaper. And my mother-in-law is preparing the meal, and there's nothing left to read but the obituaries, and I see in the obituaries that the brother of the head of the sales operation has just passed away.

Now the head of the sales operation, when the indictments came out, headed for Brazil. I said, "I wonder if he might come back." So I called the Wisconsin Securities Commissioner and said, "Can you get me a copy of the warrant for his arrest?" "Yes, we can get you the warrant, we'll get you the indictment." I called the state police and said, "I want somebody at the Michigan-Wisconsin border. The state police from Wisconsin

are going to drop off this, and I want you to meet me up in Houghton, Michigan." I then called the airline. Sure enough, on the passenger invoice, guess who's coming?

So I went to the funeral, along with three or four state police officers, and after the funeral was over, as he was getting into his car, we quietly arrested him, took him out and extradited him to Wisconsin. One of the more unusual things, kind of macabre, as a matter of fact. But the humorous part of that was some of my friends were at the funeral. "We didn't know that you knew this fellow had passed away." I said, "Oh, you'd be surprised the people I know." Then afterwards, they said, "You know, this guy sold his brother into this scheme too, and his brother was desperate for cash, and we think that may have contributed to his death," so I didn't feel very bad after that part.

KD: So that gets to the other question of how closely you worked with the other states.

HM: Very.

KD: And gets us sort of into NASAA and those issues.

HM: You've got to back up from NASAA and go to two other organizations. The first is the Central States Securities Administrators Association. This was all of the states in the SEC's region.

KD: In the Chicago Region?

HM: Chicago Region. We would hold quarterly meetings where we shared case information. Generally, they were held at either Craig Dearborn's office at the NASD in Chicago, or in Bill Goldsberry's office. Both the NASD and the SEC would be present. We would share information on every critical investigation of any magnitude.

KD: You'd just sit around, and everybody would give a presentation?

HM: Everybody would give a presentation. You'd have a set of cases that you were going to bring to the group, and usually what happens, you would bring something up, and someone would say, "I've got that on my list too." And now it's changing, and at that point in time you could see Goldsberry's eyes start to sparkle. [Laughter]. "Okay, I've got a multi-state fraud. This is getting more interesting." No competition. Just cooperation. And the administrators are still today good friends from that period. I mean very good friends.

KD: Who were some of the folks you were working with at that point?

HM: Jeff Bartell, Steve Southerland, down in Indiana, John Short in Missouri. He came into us even though, once the St. Louis office closed, he decided to come in and join us. Let's see, let me go through the states. Ohio, Bill. What was Bill's last name? There were two or three people, but Bill was the principle person down in Ohio. Illinois, Dave Wunder. Kentucky, John Mahalick. Wisconsin. Minnesota, Ed Driscoll. Later, John Larson.

KD: Well, that's pretty good. But the point is, you're sharing information with them, primarily through the Central State Securities Administrators Association.

HM: The next level is the Midwest Securities Administration Association. This organization isn't Midwest, and it isn't a general purpose. It is the merit regulation organization. So our functions were to develop merit policies, a role eventually taken over by NASAA. But at that time, done exclusively by the Midwest. We would have two meetings a year, plus various subcommittee meetings working on projects, or project group meetings, if you want to call them that. And we established policies relating to the sale of real estate, oil and gas. And so you'd have California, you had Texas, as well as Midwest states, anybody with the merit regulation. And at that point in time, I think there was about twenty-six, maybe twenty-eight states with merit regulatory authority. And our job was largely policy making, but we also had an enforcement element to it, and a broker dealer element to it.

KD: How did those work? You didn't have much of a budget or anything, did you?

HM: No. Each state would just send their people. There was no budget. Neither of those organizations had a budget. It was host state or host organization. You know, that was the nice thing about Bill Goldsberry and Craig Dearborn was their willingness to share. Incidentally, I stayed close with Bill all of my life. I mean, I'd go over and see him in Chicago. He'd come up and stay at our cabin; he was a wonderful mentor for me.

KD: Okay. So you've set some of the background. When did NASAA start to emerge as being the preeminent organization?

HM: After I left office in '78. I'm going to say around '80, '81, something like that. They determined to merge the two groups. Bruce Burditt probably would remember.

KD: Right. Well, they came up with the exam that provided funding that gave them a budget.

HM: Let me give you a little bit of that story. I'll take you back to the very beginning. In '72, the SEC had a group called the Stepanek Commission, whose job was to look at all of the forms that existed and say what's out there? What's the inventory? Over Christmas that year, for reasons that no one could logically define, I read the Stepanek Report. I then called Tony Stepanek, who was with, I think it was Robert Baird in Milwaukee, a brokerage firm. It still is a significant-size firm. Said, "This is really an interesting report. What are you going to do about it?" He said, "Oh, nothing. We're now dissolved. We've done our job." I said, "Well, that's tragic." So I said, "Can I come over and meet you?" Talked to my boss, said sure, be my guest.

I called Ron Birch, who was with the Wisconsin Securities Commissioner's office as head of the Broker Dealer Division, and we went over and sat down for a day with Tony and went through what their findings were and what they meant. I then went to NASAA and said, "We need to do something about this." So they appointed me head of the task

force to do that. I then spoke with the SEC, and we got Rob Millstone assigned to us. I spoke to the New York Stock Exchange. We got Jim Davis assigned to us. I spoke to the NASD, and we got Jerry Foley assigned to us, who is still quite active. So we now had a team, and I put together several state people, mostly broker dealer people.

From that, we developed a uniform Form BD so there would be a single form rather than seventy-two different forms. We also had people from the other exchanges, from the SIA coming in and being involved with what we were doing too. It was kind of an open group. We're trying to solve a problem, so everybody who's got an interest is welcome at the table. Marie Montenegro was really active from Merrill at the time. They're just contributing ideas, and giving us research and helping us through the process. We developed the Form BD, we developed the Form U4. Now we had to do something to get these adopted nationally.

Millstone goes back to his bosses at the Commission, and they established what's called the Report Coordinating Group, which is the SEC group that ratifies what we've done, and also develops the Focus Report, which is the report for analyzing net capital for brokerage firms that still exist. All of these forms, in updated versions, exist today. But they were the effort that brought together all these forms. And I was appointed to the Report Coordinating Group as NASAA's representative to participate in that.

From that came the idea, well, if we can register people centrally, and I think it's Harvey Bell who was then the Arkansas Commissioner, comes up with the idea of let's have a

Central Registration Depository using these forms. So you can now have central filing, and the information will be distributed to the state, and you pay your fees in centrally, and that will cover the amount, the fees that are paid to the states, but it will also provide NASAA some money. I wish I'd thought of that, but I was too altruistic.

KD: Well, NASAA had been around for a long, long time.

HM: NASAA had been around since almost the start of securities regulation.

KD: Right. And you were president in '76-77, in there, and you've got these other two organizations as well. What distinguished NASAA at that time?

HM: NASAA was the national organization where all fifty states, all the Canadian provinces, Mexico and Puerto Rico were involved, and theoretically the Virgin Islands, but I can't ever recall seeing them at a meeting, though I would have been willing to go down and investigate if called upon.

KD: Yes. Maybe if you met down there one year.

HM: Yes, exactly. That would've been nice. The status of NASAA was that it was a very weak organization. And industry funded very elaborate parties. I walked into this, some of the other young lawyers walked into this and said, "Oh, my God. What is going on?" You had a number of people that weren't lawyers, been around for years in the securities

business as regulators. And we said, "You know, this is a national scandal waiting to happen. This can't go on." So in our third year, a group of us, including virtually everybody who's in the Central States group and the Midwest group, win an election that tosses out the old guard.

KD: Is this in the mid-70s or so?

HM: This would be, I would say maybe '74. And I've got some other friends that I've made with the other state administrators cooperating in enforcement. So we win pretty decisively. We are led by a fascinating lady, Thyra Thompson, who was the Commissioner in Wyoming. She was also, and I'm not going to get all of her titles, she was also the Lieutenant Governor. She was the head of insurance, head of banking, and most anything else in the state, as best I can tell. She'd been a former U.S. Senator, taking her husband's seat when he passed away. Wonderful lady. She's still alive out in Cheyenne, Wyoming.

I tried to see her a couple of years ago, and we couldn't make the connection, and I was sorry that I'd missed her, but just a delightful lady. But she helped with the strategy, and we quietly put it together, and when the vote came, the leadership was horrified to find out that it was no longer the leadership. That changed, dramatically, the direction of NASAA, and also changed the environment in which NASAA would operate so the officers in the Midwest were, largely, the officers of NASAA at California and Texas.

KD: Okay. So the Midwest staged a coup or something like that.

HM: Yes, probably. Roy Mouer was in Texas, and Brian Vancamp in California.

KD: Okay. So what were the priorities then?

HM: Well, the first thing was to clean up the funding, and get rid of the fancy parties. If we had a party, we paid for it ourselves. We established dues for the organization, we established fees. We upped the dues, we established fees for people attending the meetings. And then we brought in the policies from the Midwest.

KD: So you're back to creating these guidelines, so to speak.

HM: Which all exist today. There's an extensive list. There's probably twenty guidelines if you go to the NASAA site. But that's the genesis of those guidelines was coming out of the Midwest, and the feeling that we had to be more uniform.

KD: So this would've been the situation when you were in as President then.

HM: By the time I'm President, we've now solidified a lot of what's going on. My big push is still for dramatically increased uniformity because I am fearing badly that the states are going to lose their authority through preemption if they don't achieve a greater level of harmony in the nature and manner of execution of regulation.

KD: Preemption by the SEC?

HM: Preemption by Congress with the responsibility going to the SEC. And that issue was, the SIA had been pushing for that for a long time, the Securities Industry Association. The Investment Company Institute took a shot at it in Congress. They got it through a committee with something like a nine-to-one vote. We didn't realize it was coming. Nobody went to testify. We went to our governors, we went to our senators. The next week, the reverse, there was a ten-to-nothing vote against preemption. The general counsel of the ICI lost all credibility with the states.

A lot of animosity came out of that undercover effort. Eventually in 1996, NSMIA does substantially what they wanted to do, though I think it probably went a bit too far, because the funds themselves went too far the other way. We saw that in the market timing scandal, we saw that in the freedom to invest in anything without disclosing the nature of the investments, and that's rippled its way into the present disaster that we've got in our economy. The discipline of being honest about what you're doing wasn't present, and largely isn't present today in SEC filings. Too much boilerplate, not enough substance.

And I look at the private offerings for clients today that come from the hedge funds, the venture funds. One out of ten is competently written, and the rest are boilerplates slapped together that authorize people to do anything without telling you what the strategy is,

how it is working, when it's going to change, how it could change, how it could affect you, what risk changes are going to happen to you. And I don't know who's dumber, the companies putting them together because they can sell that way, or alternatively, the investors who are willing to buy something that doesn't tell them anything about how to protect themselves. I think they're going to get a lot smarter about now.

KD: Yes. A situation like this tends to focus people a little more.

HM: Yes, but it's been coming for a long time.

KD: Any other things that we should touch on as far as working as the head of state regulations?

HM: Yes. There was one other event that was rather unusual. We had referred a number of cases to the Attorney General, and nothing happened. They fell into a black hole. This went on for about three years. And I finally said enough of that. Went to my boss, and said, "I propose to start trying cases again." And I and one of my young attorneys, who subsequently became the Arizona Securities Commissioner –

KD: Who is that?

HM: Dee Harris, and Alex Deyonker, who eventually came to our firm here and was our Managing Partner, the three of us started to go to local prosecutors and say, "We will try

cases for you. You make us special prosecutors; we will take your case and try it. Have somebody with us if you like. If not, just get us admitted as your special prosecutors, and we will proceed with the case." And we did that, and that went on for about a year and a half until, here in Grand Rapids, we had six cases brought up before a Grand Jury, and they got plastered all over the front page of the newspaper. The Attorney General called screaming at me and said, "You can't do this. I'm the attorney for the state." I said, "Well, if you were the attorney of the state, you'd probably have done something about all our cases that are backed up on your staff's desk that I've been complaining to you about. And I'm perfectly happy to describe those to the press if you want to push this too hard." He said, "Let's have breakfast."

KD: So was he upset that these cases were getting press that he wanted to get?

HM: Yes. I think so. But the result was that he assigned us our own Assistant Attorney General in our office under the supervision of his senior assistant, and not in the criminal division. And we were now able to bring our own cases, which we did with abandon. Mark Goldman was the Assistant Attorney General who was assigned to us and stayed for a number of years. And that was very successful, and I said, "I won't try any more cases." And that was the last case I tried until I got into private practice.

KD: You talked before about beefing up the office, and that would've been a pretty substantial addition to the office.

HM: Yes.

KD: Tell me a little bit about your decision to move on from there.

HM: I had several things that were under our responsibility in addition to securities. We had condominiums when I arrived. And that was an area that was just developing nationally. So condominium regulation, had several people for that. We had Debt Management, which was the companies who advise you on how to get out of debt. I was really concerned about abuses in the franchise world that we were seeing, and I didn't want to take them on as a security, so we wrote a franchise law, and that was adopted. We had six life care nursing homes collapse in the State of Michigan in a year, with people who put in their life savings in return for life care, and those people were put out on the street. That really upset me, so we drafted a law.

Again, I thought I could catch some of them under the securities law, but I drafted a law that required certain standards to be met before you could set up operations, and you had to maintain those standards, and you couldn't take all of the money and a number of other things that were put into place, and you have certain levels of financial strength, a little bit like a brokerage firm, if you want to know where the idea came from.

And we passed the Living Care Disclosure Act. Since that time, and that would've been around '76, since that time, there's not been a failure of a home in Michigan. It worked

like a charm, and we kept out some very bad people, which was gratifying, because those people have all failed.

KD: Have you seen that replicated in other states?

HM: No, which has fascinated me because it's been so successful, and it's not that we don't have plenty of homes. It's just the homes are well operated and well funded. They transferred the Corporation Division to me. That's the function that normally goes to the Secretary of State. And so we had that to run. Suddenly, I've got a hundred more people arriving at my door. They gave me mobile homes where there were a lot of scandals going on, and boy, I did not want mobile homes. But I said, "I'll take it on the condition I can rewrite the law and put in some enforcement teeth."

And all these laws had good enforcement teeth in them. So they all worked quite successfully. I was called to Congress to testify before Jesse Helms one time on condominiums, and whether there should be a federal condominium law. Carla Hills was, at that point in time, the HUD secretary and was testifying for the law. But California and a Minnesota person and myself came in to testify on state laws can work, and are working just fine. We're not having the problems that Florida is having. If Florida had competent state regulation, you wouldn't have to worry about this. And they decided not to adopt the law.

But Jesse wanted the law, and he went through maybe twenty minutes of my testimony before it finally occurred to him that he's not agreeing with me [laughter]. And I found it rather unusual because Jesse was supposedly a state's rightist, so it was very confusing. But in any event, I had these other things any way to deal with.

KD: So your job had grown in complexity.

HM: It had grown in complexity, and it meant that I was becoming more and more and more an administrator, and less and less a lawyer. And I thought about it for a while. I'd finished up my NASAA term. I'd probably have left even before NASAA if it had not been for the opportunity to do the NASAA. And it wasn't that I didn't like the job. It was that I wanted to be a lawyer. I mean, I like analyzing, developing and building. I actually enjoy defending. One of the things about enforcement is that it is an incredibly negative activity, and weighs on you because you're continually dealing with the negative. You're dealing with the people that have lost money we can't get back. You're dealing with people who are bad people, stealing money, and that wears on you, and I think that was part of the equation too. One of the things that we used as a measurable for us—it's taken the Commission a long time to get around to it—is the amount of money we had returned to investors.

KD: Which is a positive.

HM: Which was a major positive. And that became one of our highest priorities was find a way to get money. So we changed the securities law in Michigan to allow us to go to and seize assets, get conservators appointed, receivers, whatever else, through the court. In essence, I replicated what the Commission had. I went to school, and I took my books with me. And we did that in a number of cases where we seized assets and broke up schemes.

KD: So the decision to leave was, essentially, to go back to being a lawyer.

HM: I wanted to be a lawyer, yes. I'd been named a couple years before the State Executive of the Year, so I was doing just fine, the relationship with the Governor couldn't have been better. I had a wonderful boss, a fellow by the name of Dick Helmbrict. I mean that way, my life couldn't have been better.

KD: Did you go right to Warner Norcross?

HM: I went right to Warner Norcross. I had been working against every other law firm in the state, and the one that I saw that represented the greatest level of teamwork, cooperation, and overall consistency of strength was Warner, so that's why I went here. I had a number of other opportunities to go elsewhere.

KD: Did you want to stay in Michigan?

HM: Yes. I like Michigan. My in-laws were here, so my wife didn't want to leave Michigan.

KD: Okay. Well, one other highlight. I noticed that you were involved on some fairly high level task forces.

HM: I've been fortunate enough to do a number of really neat things. That was the product, I guess, of other people saying bring him along. Another mentor for me, a dear friend, is Dick Phillips. And Dick has been responsible for some of that. Mike Halloran is another one. Mike and I were charged with revitalizing the state regulation of securities committee, which had virtually disappeared. And we took it from something like five or six members up into the hundreds.

KD: Is this the ABA?

HM: This is the ABA State Regulation and Securities Committee. And Mike chaired, and then when he finished his term, I took over after that.

KD: There was a task force on federal/state securities regulation.

HM: Yes.

KD: Is that the one you were just mentioning?

HM: That's a different one. There's a whole mess of them.

KD: The name David Ruder was in there.

HM: Yes.

KD: Commissioner Wallman, I think.

HM: Yes.

KD: And Joel Seligman, who you mentioned earlier.

HM: Yes. And Joel has become a dear friend. A really, really neat person.

KD: Yes. Who wrote the book on securities.

HM: Who wrote the book. But also wrote the Uniform Securities Act of 2002. And four years before, called me and said, "Hugh, I want you to come down and be involved in this, and I said, "I don't have any role. I'd been involved in the previous effort through the ABA. And he said, "Well, you're now the Commentator." So I was sent down to advise the committee on the practical aspects of securities regulation, as they drafted the new Uniform Securities Act. And also, I would like to think that I helped build consensus by liaisoning, along with Joel, with all the different participants. And the '85 Act had almost

nobody supporting it, and was kind of a joke. The 2002 Act had virtually unanimous support from every organization and every regulatory body.

KD: What was involved in building that consensus?

HM: Part of it was trying to manage expectations and balance the need for investor protection, on the one hand, without imposing undue costs and undue interference with day-to-day business operations on the other. It's very easy to make a rule that says, "You shall not." But there's a lot of consequences to the "You shall not" that people often don't think through. So what you do is end up with much more refined regulations that say you will do this, you can do this, and you can't do that. And arriving at consensus of those pockets, arriving at where is there a need for regulation. Getting through the issues of how much authority the state should have.

I mean, one of the fears that businesses have is that if you give the state tremendous amount of authority, they're going to abuse it. I won't say it can't happen. We had Elliot Spitzer. I mean, Eliot did some very good things, but he also did some bad things, or did them bad ways. And that's the first really bad state regulatory abuse that I've seen since the time I left office. There were a few bad administrators in that original group, some of whom were accused of wrongdoing or taking bribes. That's all gone, disappeared.

KD: Well, anything else we should touch on? We've covered a lot of ground.

HM: Yes. Oh, one of the other things that I did that was quite successful in ferreting out frauds, I penned a series of articles describing how different frauds work, and we distributed it to all the newspapers in the state through our publications office.

KD: This was when you were at Michigan?

HM: Michigan, yes. Boy, did that bring in a lot of good information for us. And those articles kept getting re-run periodically, and that would cause people to call us. That's a technique being used by states fairly commonly now. In fact, they've now gone to TV campaigns, videos.

KD: And a lot of stuff on the web, certainly.

HM: Yes. On the web had just been an incredible source. By the NASD has done it, and to a lesser degree, the SEC has done it. I would observe that, as NASAA president and working up through the chairs, both Ray Garrett and Bill Casey were wonderful to work with. Bill Casey was hard to understand sometimes. [Laughter].

KD: I've heard that.

HM: But he'd have us out at the house for cocktails and dinner and discussions about how are we going to solve problems and where are we going to go. And he was very good about

getting the staff to work with us. Irv Pollack, and later Stan even more so, were good about working with the states. Stan was practically venerated by the states.

KD: Seen as one of the few people in Washington willing to enforce, I guess.

HM: Well, that, but also willing to receive input and information, and work with and share information with the states. Not just saying, "I'm on an island, and the SEC functions alone," which had, for many years, been the approach of the Commission. There was a Commissioner when I first came on, he was there very briefly. He'd been there well before me, Hugh Owens. I don't know if that name has come up in your workings.

KD: Yes, but not too much.

HM: But he was the former Oklahoma Securities Administrator. And he was seen as the liaison with the states. But that liaison was a much more arm's-length liaison than it became later on. Al Sommer was wonderful about involving the states and participating in state events, coming to meetings, that kind of thing. But we had really good Commissioners during that period of time. You've had a string afterwards where it's been quite uneven where I don't think Commissioner Breeden particularly liked the states at all, and others where the relationship ran kind of hot and cold. But during the time that I was going through the chairs and in the chair, the relationship was consistently good.

KD: Sort of an evaluative question, a big question would be looking back now with the landmark that NSMIA is, how much of what you were doing back in the 70s is applicable today, given the way that the state role has changed?

HM: Well, you've carved out all of the mutual funds, you've carved out all of the filings for companies that file reports with the SEC, or that will be listed, are or will be listed out on exchange, an accredited exchange.

KD: Which is a pretty large number.

HM: Which is a large number, yes. What we're doing largely now is special products, what the states are doing. That is, you're doing the partnerships, and the limited liability companies that are involved in real estate, that are involved in the REITs, the oil and gas, the equipment leasing, the securitization programs that are public, all those things still pass through the states, but securitizations have largely been moved to the private sector, so you don't see many of those coming down.

KD: So there's a little more specialization, I guess.

HM: Yes. Corporate finance tends to be that, and local business. On the investment advisor side, you divided the investment advisors roughly evenly. That was a mistake, I think, by the Commission. They'd have been much better off taking a smaller piece of the pie. They used $25 million to $30 million as a cutoff. They'd have been much better off if

they'd have used maybe $50, possibly $100 even, though I notice that that number, there's a lot of people going to be leaving the SEC and joining the states at the end of this year because the amount of money under management suddenly has dropped down significantly. The area where the most fighting occurred has been in the area of Reg. D.

KD: What do you mean fighting? Between whom?

HM: Largely the promoters and their attorneys and the states. Gerry Laporte, who is coordinating the Reg. D stuff at the SEC today, does a wonderful job of liaisoning with the states and working with the states, so there's almost no tension there at all. My hat's off to what a wonderful job he's doing. And I presume that's also the responsibility of the senior people at Corporate Finance saying that's what we want to do. The problem has been expressed in the issue, is it enough to claim that you are doing a 506 offering, or must you prove that you are meeting the standards of 506.

And a couple of early cases came down, stupid, but came down from federal court saying, "Oh, well, if you claim it, that's enough." My analogy is you walk with somebody out into a field, and you say, "I'd like to sell you that horse." "But that horse has udders and horns." "No, it's a fine horse." You know, it just doesn't go. And I can't believe judges would be foolish enough to believe that it would. But the string of cases that have come down in the last year and a half, starting, I think, with Blue Flame out of Ohio, and the Sixth Circuit came down with a case, the Alabama Supreme Court in the

Boist case have all said that that's nonsense. You've got to establish that you meet an exemption before you can claim it.

And the burden of claiming an exemption under both federal and state law is specifically spelled out as being on the person who wants the exemption. So there's been a string of cases in that area, and it's only been in the last six months that this really has pretty much clarified and finalized. So that's been the hot area. If you would like something of an explanation on that, I can give you an outline that I've worked up for ALI-ABA presentation that would possibly assist you.

KD: Well, clearly, you've stayed really engaged with all of these issues over the years.

HM: Oh, yes. I don't know why, but I've done my best to make the organizations that I've been involved with stronger organizations. And I think that's a good thing to do. I get pleasure out of succeeding when it happens. I've been fortunate enough to chair the Meetings Committee for the ABA Business Law Section, and the National Institutes and Seminars Committee, so I've gotten a chance to improve and enhance, though I will say with the Meetings Committee, there were some wonderful chairs before me, so it was just enhancing. The opportunity to get involved in changing things is fun. I served on the NASD's National Legal Advisory Board, which may have been the most single enjoyable activity I've done professionally, because the level of debates and discussions that took place there were just fascinating.

KD: What kinds of issues were you grappling with?

HM: Where should the NASD go? What can it legally do? The markets are changing. What are the considerations that we ought to have in changing markets? We're enforcing in these areas. What are the ramifications of getting into these areas? Those kinds of discussions. They were wonderful.

KD: And these are big issues.

HM: These were big issues with wonderful people. I served on an advisory committee to the states on trying to make more uniform their application of Reg. D. And that report, with a number of major names on it, fell on deaf ears. You know, Joel was on it. And that, I think, is the saddest thing that I've seen over the years was the failure to succeed in that area because we gave them enough guidance that it could've worked if anybody wanted to try. But I think it may have been more cosmetic and political than it was real.

KD: Yes. There's always going to be some of that.

HM: Yes. I served on various committees for NASAA. I continue to serve or advise on various committees for NASAA. Helped them develop uniform forms, I've helped them develop in the investment advisor area, and model rules in the investment advisor area.

KD: Well, that's a lot to cover, and I really appreciate it.

HM: Yes. That's probably more than you possibly wanted.

KD: Thanks very much.

[End of Interview]