Securities and Exchange Commission Historical Society

Interview with Milton Cohen
Conducted on November 29, 2001 by David Silver

DS: The first question on the list, Milton, is why did you go to work for the SEC?

MC: Well, because it seemed like jobs in private practice weren't available and the government was an interesting place to work because it was in the middle of the new deal, and all kinds of exciting things were going on in Washington. And, SEC seemed to be one of the best places to get that experience.

DS: What year were you at the Harvard Law School?

MC: I finished law school in 1935.

DS: '35. So you went right to the SEC from law school?

MC: Right.

DS: Just to follow that up a little more, when you had the constellation of alphabet agencies at that time to choose from, was the SEC of particular interest to you among the others or was there a general reputation of the SEC as being a particularly interesting and important alphabet agency?

MC: Well, I think the SEC did have a special reputation, but it was kind of accidental that I ended up there. When I finished law school and didn't have a job in private practice, I sent in an application to several different departments and agencies of the New Deal and the first one that I got a response to, a favorable response, was the SEC. So I went to the SEC. So it was kind of by accident that I became a securities lawyer.

DS: Milton, when you went to the SEC I noticed that you started out in what ultimately became the Division of Corporation Finance?

MC: Right.

DS: And in '35, was Joe Kennedy still Chairman? I suppose he was.

MC: I think he left about when I got there. I think that same summer there was a change. I can't remember who became the chairman—it might have been Landis.

DS: Who did you work for? Who was the director of the '33 Act Division?

MC: A man named Harold Neff. He was a Wall Street lawyer who came down to Washington and was a wonderful mentor for teaching how to draft formal documents. And, he made the point that if you were writing poetry, you expressed the same idea in as many

different ways as possible. But if you were writing a rule or a regulation, then you used the same word to mean the same thing all the time. You didn't vary the words.

DS: Was there much regulation writing still going on when you were there? Were you initially drowned in regulation drafting?

MC: Oh, yes. I had a hand in the original registration of securities form, what became S-1. And I had a hand in the original proxy rules.

DS: Was Barney Woodside there when you got there?

MC: Yes, he was.

DS: Did you know him in your first go round?

MC: Sure.

DS: After a couple of years you went to Public Utility Holding Company Act Section, was that the Division of Corporate Regulation? Did they call it that in the beginning?

MC: No, they called it Public Utilities Division.

DS: Why did you go there?

MC: Well, the Public Utility Holding Company Act was enacted in 1935 and it looked like the exciting place to be. It was a very interesting statute with a lot of active business going on, and I just thought it would be a challenging place to be, and it was.

DS: Just switching back for a moment in time in Corporation Finance—you say you worked on S-1 and some of the proxy rules, was that sort of the most, from your point of view, the most significant work you did in Corporation Finance?

MC: I think so, yeah.

DS: Who ran the PUCA Division when you got there? The Holding Company Act?

MC: I think a man named Joseph Weiner and another man named Bob O'Brien—were the directors. And then I became director in 1943.

DS: Was that the same Joseph Weiner who was later reincarnated at some point as a consultant, was it during the special study or . . .

MC: I imagine so.

DS: How many people were in the division at the time you became director or by the time you started working there?

MC: I can't really remember, but I would guess it was around 30, 40.

DS: What was the main work load of the division back then? I know, only in very general terms what the Public Utility Holding Company Act was all about, but I am not sure what the actual workload was when the act was first implemented.

MC: Well, the major purpose of the Holding Company Act was to eliminate all holding companies that weren't geographically integrated and corporately simplified. Those terms were defined as the standard to test a permissible holding company. The job was to eliminate unnecessary write-ups and . . .

[Tape turned off]

DS: We were talking about the work of the division in the early days when you were director of the division.

MC: Well, the job was to examine each holding company system separately and decide whether it met the standards of being geographically integrated and corporately simplified. And we worked by teams. We had each holding company system assigned to

a different group. And I was in overall charge of all of it. My main direct assignment was with the Electric Bond and Share System, which was the largest of all of the holding company systems. It had three sub holding companies: American Power & Light, Electric Power & Light, and National Power & Light. And the question was whether each of those was a necessary holding company and could stay in existence.

We examined each of those separately and in various different approaches, we found that none of those three could stay in existence so they all had to be dissolved. By the time you dissolved them, there was nothing to hold the Electric Bond and Share together, because these sub holding companies were what provided the leverage to allow Electric Bond and Share to control the whole system with a very limited investment. So when you knocked out the intermediate holding companies, that was the glue that held the whole thing together, and the Electric Bond and Share had to end up being just a service company. It could no longer be a holding company. And that was a major accomplishment of the Holding Company Act.

One of the interesting provisions of the Act was that these definitions of being geographically integrated depended on "the state of the art," and of course, the state of the art has changed a great deal so that systems that could not be interconnected economically under the state of the art at the time have since become interconnectible; and therefore, the application of the Holding Company Act today is quite different from what it was then. Now you have direct current transmission that was not then feasible.

So the Act served its purpose at the time, but to some extent its purpose has changed because of the change of the state of the art.

DS: Going back to the very beginning, as the division started off after the Act was passed, how did you identify the holding companies that were subject to the Act or did they come in and identify themselves?

MC: These were all public companies so the basic existence of them and the facts about them were public knowledge.

DS: I know Electric Bond and Share sued along with some of the others as soon as you got going, it looks like, the Commission was beset with all kinds of litigation challenging the Constitutionality of the Act, the administrative process, and just about anything else that the lawyers could dream up. Did the work of the division carry forward during that litigation, or was the litigation disruptive? In some sense it had to be disruptive, but what actually happened during pending litigation which went on for many years? Electric Bond and Share I think went on almost through the war, half of it anyway.

MC: We never had to interrupt because of pending litigation. We were never enjoined from proceeding.

DS: Did you work on any of the litigation or did it go elsewhere?

MC: I worked on all of it in the sense that I was, in effect, the client of the lawyers who were arguing the cases. So I would participate in the preparation of our side of the case, but I never argued in the court or anything like that.

DS: I noticed that in simply looking at some of those cases, the appearances, that Tommy Corcoran was actually—his appearance was noted in several cases. He actually worked on those cases or was his appearance a nominal one?

MC: The original case which upheld the Constitutionality of the Registration Provision—not the death sentence but the Registration Provision—was argued in the Supreme Court I think by Tom Corcoran and Ben Cohen. That was upheld, and therefore, the original efforts by the industry to throw out this Act failed and we could go on and implement it.

DS: I noticed, not in the earliest cases, but just a little way on Dave Ferber's name appeared. Was he in the general counsel office?

MC: Because he was in the general counsel's office and Milton Freeman was also there. They worked closely with us but we were—they were our inside counsel in a sense.

DS: I think you answered this already, but if you want to expand it. I take it you consider that in its time and the circumstances that prevailed, that the Holding Company Act was very successful in doing what it was intended to do?

MC: Very much so.

DS: I understand what you said about the geographic integration, but of course, I guess, the other half is the simplification part of it. And I would suppose that that is still alive somewhere; or at least the need for a simplified structure when you're dealing with a regulated utility. Do you have any views on that?

MC: That still applies. That's still valid, yes.

DS: I notice that there are about—I took a look the other day, I can't remember the exact number, there were about 25 registrants still under the Act.

MC: Now?

DS: Yes. I was surprised to hear that there were that many; although some of them looked like they may be some doubled counting in the sense that there looked, on a couple of cases, to be members of the same corporate family registered, registered twice. There has been talk all during the late '80s and '90s about repealing the Act. Did you follow any of that in the proposed legislation that was, I suppose, transfer some of the Act to FERC?

MC: I don't remember that latter point, but there was a period when the—there were Congressional hearings about maintaining the Act or repealing it, and I did testify before

a Congressional committee on that subject. And we were successful in having the effort defeated so that the Act stayed alive and was not repealed.

DS: Do you have any current view as to whether it should continue in place at the SEC or… Obviously I am not thinking about details now, I am thinking about in general terms and particularly with respect to the structural question.

MC: Well, I think it should stay at the SEC. It could go over to FERC because it's closely related to what they do, but I think leaving it where it is okay.

DS: Now if we can go back to the early days—I notice that some of the people who worked, we looked at them in the Special Study, were in fact on the staff back then. I notice that David Saperstein, for example, was director of the trading division at the time. Did you know him?

MC: Yes. He wasn't involved in the special study.

DS: No, no. We looked at a lot of his work during the special study. You remember the so-called "Saperstein interpretation" of the duties of specialists. And there was someone else who passed away recently who did some economic work, Raymond Vernon. Did you know him?

MC: Yeah, sure.

DS: Was he in the trading division too?

MC: I think so.

DS: He did some early work on specialists if I recall . . .

MC: Uh-huh.

DS: You were with the Commission and I suppose you made the move to Philadelphia? What did the Commission do during the war in the sense that had any of this work become war related?

MC: Not very closely, although the Chairman of the SEC, who that was [Ganson Purcell] at the time, certified that I was a necessary—I had an essential job as a civilian and should not be drafted. So he considered it and the draft people apparently considered that I was deferable as a necessary civilian.

DS: But the work of the Commission itself did not become involved in the war effort?

MC: No, not at all.

DS: I think there was something I saw at one time indicated that some of the files filed with the Commission by international companies, particularly the ones with German connections obviously, did provide some information as to the location of strategic plants, et cetera. But that's probably just more like turning records over to the military than the Commission itself.

MC: I don't remember any of that.

DS: When did you leave the Commission in your first incarnation.

MC: In 1947.

DS: If you had to think of the chairmen and the commissioners you knew during that period, how would you rate them in terms of effectiveness—any people stand out in your mind as being outstanding?

MC: Well, they were all very supportive and very competent in different ways. They had different experiences. Judge Healy had been there for many years and had a long background with the Commission. Bob McConnaughey was a very bright lawyer. But they all were very bright and they were all very supportive. We would report to them regularly and talk about where we were headed, and they kept giving us the support we needed in personnel and resources of various kinds.

DS: I guess you were there during the period—when Justice Douglas was Chairman?

MC: Yes.

DS: I don't think he stayed very long.

MC: That's right.

DS: And then Jerome Frank succeeded him?

MC: Yes.

DS: Did you work with either of them?

MC: Yes, not very closely but… They were there before the Holding Company Act. Really. They were there when I was in the Forms and Regulations.

DS: Who were any of the staff members that you worked with fairly closely that stand out in your mind that were particularly effective in their work?

MC: Thinking back that many years, I get a little confused between who was on the staff of the special study and who was on the staff of Holding Company Act. So I am having difficulty answering your question.

DS: Switching over to the—you may have the same difficulty—but switching over to the private bar, did any of the private bar who worked with or worked in opposition to or, any particular name stand out in your recollection or any lawyers being particularly effective, whether they were helpful or obstructive to your work in the Public Utility Holding Company Act or Corporation Finance area way back then?

MC: Well Reid and Priest were pretty active I think, and I can't remember now who represented Electric Bond and Share. But it was one of the major Wall Street firms. I just can't remember who it was.

DS: I think Wendell Willkie was a Public Utility lawyer. I don't know if he ever practiced on the national scene or not, but I think I remember that he may have been—did you ever run across him?

MC: Well, he was head of one of the major holding companies. I didn't have much to do with him personally, but he was a great opponent of the Holding Company Act—before he ran for President.

DS: In your job, did you interact at all with the Hill back then or the Administration, Executive Branch?

MC: I mentioned before that I testified in Congress about the continuation of the Holding Company Act. That was my main interaction. On an ongoing basis, I didn't report to the Congress at all.

DS: I am thinking in terms of a later experience in the Special Study and, in my case, a period thereafter being an observer of the Commission's work in recent years. The Hill interested itself in the work of the SEC in various ways, in its oversight capacity. Sometimes on behalf of constituents of theirs. Did you get any of that during the administration of the Holding Company Act?

MC: I don't think so.

DS: Was it generally felt then that the independent regulatory agencies were independent? Was that sort of the spirit of the time in which you acted or was there any sense that you were implementing the philosophical agenda of the new deal?

MC: We were always aware that Congress could intervene at any time and hold hearings, repeal or amend the law, but they never made us feel threatened by that, except that one time when we did have the hearing I mentioned.

DS: During the period when you were the director of the Holding Company division, how would you view this in terms of the total worth of the Commission? What percent of the total effort of the Commission was devoted to the Holding Company area or the '33 Act or the '34 Act? I am trying to get some sense as to how the Commission divided its resources.

MC: I think that the Holding Company Act was by far the most important focus of the Commission's attention. I think they spent more time listening to the ongoing work of the Holding Company Act than any of the other divisions.

DS: Well, I guess, during that period, obviously, the '33 Act was having its infancy really, I recall from the Special Study days looking backwards that you had things like the multiple trading case under the Exchange Act so I guess there were things going on all over back then. You left the Commission in what year?

MC: '47.

DS: Did you feel it was simply time to leave?

MC: Yes.

DS: And what did you go to right after the Commission?

MC: Went out to Chicago and started practicing law in Chicago.

DS: In that firm that you have been identified with for many years?

MC: Yes. Same firm.

DS: What was it called back then?

MC: I think the first name was Pam, Hurd, Reichman, but the name changed over the years. It's now Schiff, Hardin & Waite.

DS: I guess during the roundtable you told us all as to how you got back to the Commission through Bill Cary.

MC: Yes.

DS: And obviously, over the years, you would have observed the work of the Commission in that interim period between '47 and '62 I think it was, '61. When you got back to the Commission, did anything strike you as to how the Commission was different as you came back to it in the '60s as to the Commission you remembered in the '40s?

MC: Back in the '30s and '40s everybody was very enthusiastic about the work of the Government and of the Commission. Everybody thought that it was saving the world to carry out this mission. In the interim, during the period that I wasn't at the Commission, I noticed that there was much more of a tendency to blame the Government instead of looking to the Government as an important factor in the economy. So there was this sort of philosophical difference that I sensed as to how important the Commission considered itself and how it was considered by Wall Street and by the Congress.

DS: And obviously the Commission was different in a number of respects, but was it still basically the same internal organization—for example, it had a separate division for General Counsel's Office. Was the interaction with the Commission and the staff approximately the same given the difference in personalities obviously, or was there anything different about the way the Commission and the staff interacted to changes?

MC: I can't identify any real difference then.

DS: When you got to the Special Study and made your assessment as to how you were going to divide the resources for the study, did you have any feeling about what part of the Special Study's very, very, very broad warrant should receive the greatest emphasis based upon what you had observed about how the securities industry had developed and how the Commission had responded or not responded?

MC: Well, I thought that in the interval there was a feeling that the New York Stock Exchange was the top dog and everything was likely to be okay. And I remember that Keith Funston, who was then the chairman of the New York Stock Exchange, said, in effect, that the Study should study everything but the New York Stock Exchange. We soon concluded that the main focus should be the Stock Exchange and so the whole internal and external workings of the Exchange became a main subject matter for the Special Study, as you know.

[End Tape 1, Side A]

[Begin Tape 1, Side B]

DS: I do remember, Milton, that your organization of the Study was the list of projects going from one to perhaps forty or whatever it was, but number one was the New York Stock Exchange. So I guess that reflects your assessment of what had to be done.

MC: Yeah

DS: In what respect . . . what do you regard as the greatest success of the Special Study?

MC: I guess the . . . well I think we studied lots of things more thoroughly than they had ever been studied before. But one of the most important things we did was to identify some

problems that were emerging that hadn't been looked at much before . . . hadn't even been recognized like institutionalization, automation, and globalization. Those were three developments which were just beginning to show up that hadn't received any attention at the Commission and we identified them and made the first serious studies of institutionalization, for example.

DS: Do you think that the Study was successful in a short run—really not a long run—in reorienting the allocation of resources within the Commission?

MC: Yes I think so. I think it was very successful. Previously there had been more attention to the '33 Act and the Study focused on markets for buyers and sellers; and the whole business of a continuous market and the importance of the clearing function were recognized by the study in a way that they hadn't been by the Commission previously.

DS: Do you have any feeling and again this is really just a personal impression, or perhaps a judgment, as to why the Commission went off in that direction during the '50s—after all back at your first time around. There was some activism under the Exchange Act in the regulatory function of the exchange and the multiple training and other activities. Did you ever develop any sense of why the Commission started in effect to, not intentionally, deemphasize their work under the '34 act concentrating more heavily on the '33 act?

MC: Well in general I think that the political climate was different . . . it was met with the New Deal under the Democrats, there was a feeling that government was the answer to lots of problems and in the Republican period there was a feeling that government was part of the problem. I think that was the Reagan philosophy later on. And so I think it was the fact that Kennedy came in and there was that spirit that government would have the job to do that the previous administration hadn't emphasized that made the difference.

DS: In the Special Study, of course, again at the Roundtable, there was some discussion of the interaction between the Special Study staff and the Commission and I think you gave your views of Bill Cary. Who did you find the most effective in the Commission during your tenure with the Special Studies?

MC: Can you remind me of who the commissioners were then?

DS: Well you had Bill Cary, Barney Woodside, Manny Cohen, Jack Whitney, and I think Hugh Owens may have come in then.

MC: Who was the man from Maine?

DS: Was Senator Frear on the Commission?

MC: No, Frear was not. What was your question again?

DS: My question was which one of the Commissioners did you find to be . . . in the course of the Special Study as being most effective in commenting upon or working with you as director of the study?

MC: Manny Cohen was probably one of the most important.

DS: What would you regard in your long career in both of your incarnations at the SEC as . . . what work do you remember with the greatest feeling of pleasure?

MC: Both the Holding Company Act work and the Special Study seemed to me to accomplish quite a bit and I felt we made a big difference and that was a source of much satisfaction and still is. I'm very proud of both of them.

DS: Is that to say that if you had to do it all over again you would do both?

MC: Sure.

DS: Do you think that the SEC is still a good place for a young person, man or woman, out of law school to go?

MC: Yes I think so.

DS: Switching all the way back now, just sort of personally, where did you live when you first got to Washington back in 1935?

MC: Well when I first got there I wasn't married and I lived with various roommates in small apartments. In 1939 Rowne and I were married and we then had a house out in Alexandria for a year. And then we moved back into the District and lived off Wisconsin Avenue somewhere in the northwest area of the District.

DS: When you went there in 1935 what was your salary?

MC: I would guess it was two thousand a year.

DS: I think I will end the session there. And with my own personal view, Milton, the government got a great bargain.

MC: Thank you very much

DS: Thank you for participating.

[End of Interview]

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