Securities and Exchange Commission Historical Society
Interview with Ralph Ferrara
Conducted on May 8, 2008, by Kenneth Durr

KD: Interview with Ralph Ferrara, May 8th, 2008, in Washington, D.C., by Kenneth Durr.

RF: First, before I do this—as I said before we went on the record here, so to speak—these are stories, if you will—vignettes—from my life as a securities lawyer, particularly at the SEC, although before and after that as well, that someday I intend to put into a memoir and have published, because I loved my time at the SEC; I loved the craft that I've devoted my life to, and would like to share that enthusiasm with others. So I want to be clear that in doing this, and recording it with you, that may result into some transcription of these events, that I am retaining the copyright and ability to use these renditions in my book. With that, I can give you a very clear recollection of how I became a securities lawyer.

I was a student at Georgetown University, and graduated there as a major in economics—well certainly an area of concentration in economics; and I wanted to go to the Ph.D. program at the London School of Economics, which back in 1967 was the premier graduate school of business practice in the world. It was well before the Harvard Business School had the dominance that it has now. And LSE, as it was known then and today, was the leading school of Keynesian economics, or post-Keynesian economics, which was the heart of the economics program at Georgetown. So it was a great deal, and a wonderful Jesuit named Father Zarini had recommended me for, and I had been accepted. The Vietnam War was going on. My Dad, a second generation Italian

immigrant, felt that if I wanted to stay out of the war, the last thing he was going to do was to send me on a three-year vacation to Europe—London was Europe to him; and that if I wanted to draft dodge, he would only pay for it if I did trade school. Now, for someone like my Dad, trade school either meant the seminary, dental school, or law school; and I chose the least of three evils.

I ended up at the University of Cincinnati because, out of protest, I went to the Georgetown University Graduate Department, which had a room of long magazine racks with graduate school catalogues, alphabetically listed from A to Z. I went down and looked at each of the catalogue covers, and I got to C. And at C there was a place the University of Cincinnati, and on the cover was the Alphonso Taft Hall, which was a Greek Revival structure that looked like it belonged on the Acropolis. I had been a Regents Classics Scholar before going to Georgetown—Latin and Greek—and I thought: Mm, what a wonderful place to study law. I had never been west of the East River, certainly knew nothing about Cincinnati; sent one application to law school, it was to the University of Cincinnati. They were so eager for me to attend that they flew me out there at their expense to interview me, and then accepted me. And I went there thinking that I was going to have an easy course of it. Well, either I grossly over-estimated my ability to do well in law school with ease, or Cincinnati was a lot more rigorous than I had given it credit for, because I worked my little—then not so little—butt off.

By the end of my first year, I said: You know, I guess I'm going to do this for a career, and I really ought to find some part of this that I like. I happen to be a person who is deterministic by disposition. And by that, I mean I think that the world has a clockwork mechanism to it, and that probabilistic experiences and chance should not play

the role in life that it plays apparently at the subatomic level of our existence. And so, I said: Let me think about what I should do, in deciding what I want to be, as a lawyer. And I said: What do I value? And coming from a middle class, actually lower middle class background, I said: You know, I think one day, being economically successful will be something that I will enjoy. Now, I say that, for example, as opposed to those of my colleagues who felt that what they would enjoy is feeding the hungry, clothing the naked, housing the homeless, or washing the wind. All of those being laudable pursuits—to me, laudable; but thinking that economic well-being was even more. So, I then said, with that objective in mind: What should I do? Well, I thought: If my father was a tailor, to be sure, I would always be dressed in good suits. If my father was a shoemaker, I would be dressed in good shoes. So, if one is interested in economic well-being, perhaps you should choose a craft, or a course of study in law school, where the underlying commodity is money. And I said: Okay. That leads me to—knowing nothing about money, other than what I'd learned as an economics study person—insurance: that has something to do with money; banking has a lot to do with money; securities. And so, with those thoughts in mind, I went to our library, to the reference desk—all this is true—went to the library reference desk at the University of Cincinnati, at the end of my first year, and I started looking down the library reference desk for something that had to do with money that I could learn about. I came across a book by Alan Bromberg, at the University of—not Texas, but at a Texas university—Southern Methodist; and Alan Bromberg had just come out with a book called *Securities Law Fraud.* I can picture it today, as having a plastic cover and a sky blue text. And I said: Interesting. I checked it out for the weekend. It so happens that this was 1967, the Texas Gulf Sulphur case had

been decided some years before, and was now becoming part of the literature of this field. And Bromberg was one of the first texts on the subject. I read the book that weekend from cover to cover; became fascinated by it. And I said: It's economic; it's interesting—indeed, it's fascinating. And Alan Bromberg's book brought my interest into this field, and then I devoured, through the balance of my two years in law school, everything I could find on the subject of securities law.

I interviewed with eleven firms in New York City, solely to practice securities law; and at the same time, had been offered a position at the George Washington University National Law Center, as a teaching fellow—very prestigious thing for a young fellow like me, particularly coming from a second tier, maybe even third tier—not even maybe—a third tier law school. And I said: This will be exciting; I will do it. And they were willing to craft a master's program for me—the first ever—in securities law, an LL.M. in securities law. So I chose not to go to New York, and to come and get this master's degree, while teaching at G.W., which I ultimately got—proudly, I might add—as a summa cum laude, with—I was told at the time—the highest grade point that anybody had ever received at G.W. in any course. But any event, that's a—I don't mean to be grossly immodest, but that's what I was told. The summa cum laude is on the resume. So, in any event, I go there, and I'm teaching during the day, taking courses at night.

And one night, Arthur Matthews was teaching the course in securities for the graduate program at G.W. I took the course. And one night, he brought in this character named Stanley Sporkin, who was the associate director of what was then called the Division of Trading and Markets, half of which had to do with enforcement. The

division was headed by Irv Pollack; Sporkin was the associate on the enforcement side. And while Sporkin is conducting the class—he's throwing questions out, as Sporkin does—I'm sitting in the back of the class of maybe a hundred people, and responding to every other question—because I was just intrigued by it. And of course, it was what I had now chosen. And frankly, this deterministic way of going about life—I'll give you a footnote to this story, and then I'll come back to the text—is interesting because if you start the way that I did, and you involve yourself in a topic for which you know nothing, and you become more expert at it, you'll be surprised how quickly your colleagues—here: other students at law school—start recognizing you for your flair in that topic. That recognition brings a sense of self-satisfaction and worth, which drives you even further to become more expert at it. You start publishing in the area; and then people outside of your colleagues start recognizing you, and the adulation, again, spurs you on to more. Well, that's the path that I was on. And so I was very enthusiastic at this point, now having done this for three years—enthusiastic at what this topic was, felt myself to be growing in expertise on it. And Sporkin recognized that. And in the midst of this class, Sporkin said to me, "I don't know who that fellow is in the back of the room, but I don't know why you're here. You should be working with us."

So, Matthews was delighted with that, and arranged for me to have lunch with Stanley Sporkin, at a brown bag in his office. Stanley and I hit it off marvelously. The Commission was about to create the Division of Enforcement out of the Division Trading and Markets, which was largely an effort to get Irv Pollack out of the Trading and Markets business, not to create a Division of Enforcement. It was meant to isolate Pollack, not to create a Division of Enforcement—isolate Pollack from the regulatory

side of the business. But, in any event—and he said he wanted to have me down there. Well, unfortunately, the chairman of the Commission at the time was a fellow named Hamer Budge. Hamer Budge was from the west of the Mississippi, and had adopted a rule—I don't know if anybody's told you about this yet—but he adopted a rule—at least, so I was told—that there were too many lawyers from the east at the SEC—Have you heard this before?

KD: I haven't. That's a good one, though.

RF: And that no lawyers should be hired east of the Mississippi; there was a freeze. And of course, I was from New York, and Washington. And so, I was frozen out of a job. So Sporkin, creative as he is, says, "You know, I want you here." And he had heard that someplace in government there was a student observer program that some agency had had. He says, "Let's create a student observer program."—at the time called graduate student observer program. He says, "We'll bring you in on that, we can't pay you. But you'll work with us, and then when Budge leaves, or the policy changes, we'll hire you." And so, what has now become a very well-known program at the SEC, the student observer program, and then the professional attorney observer program, all began with that inspiration by Sporkin to bring me into the SEC when I wasn't teaching at G.W. And so, I was the Commission's first student observer. Interestingly, the Commission's second student observer was Ed Herlihy, who no one wanted to hire. And when Len Rossen, who was the assistant director, was introduced to Herlihy, who was graduating from, I think, G.W. at the time, said, "Who wants to hire this guy? He does nothing but

sit in his office as a student observer." Sporkin said, "Let's give him a chance." Herlihy, today, as you may know, is one of the most prominent members of not only the Securities Bar, but the Banking Bar, as a partner at Wachtell, Lipton. He was the second student observer. In any event—

KD: Good record.

RF: So, then I do the student observer program for, I think, two years. My contract is up with the G.W. law school. I have invitations to join the faculty of law schools—different law schools; I don't recall if G.W. is one or not, I don't remember—and I had an offer from Sporkin. And I said: Well, if I was going to be a law professor, teaching constitutional law or contract law, I would have never gone to the SEC. I would have never worked, other than teach. But, teaching in the business units: securities, corporation law, tax, business planning—I felt I should have some experience. And I thought that being at the birth of the Division of Enforcement, as a staff attorney—indeed, branch chief soon—I think I was the second branch chief; Ted Levine, I think, was the first—or something like that—being a branch chief in the Division of Enforcement would be a little bit like being a surgical intern in the Emergency Room of a big city hospital. And so, I chose to do that, and went to the SEC to spend two years, before going back to teaching; and ended up spending ten. So, that's what brought me into being a securities lawyer. How I developed that craft, and the graduate degree which I now hold, how I was introduced to the SEC, and how I began at the Division of Enforcement. Now, from there—if you would like—

KD: Sure.

RF: I will relate to you what I regard as some of the highlights of my career at the SEC.

KD: Let's do that, starting with some of what you did in Enforcement, and how you moved on out of there—

RF: Enforcement was a great opportunity for me. I can tell you one of my very first cases was a case called Accurate Calculator. It was a Canadian company that was making the first hand-held versions of calculators—you know, adding, subtracting, multiplying and dividing—quite an innovation back then; this is well before computers of any kind. And they were selling securities—they were going public in Canada, pushing securities in the United States, and there was a big Section 5—ultimately fraud problem. And the fellow who was running the company, a guy named Howard Efron was the fellow in charge. And what we found—to my amazement, as we got into this—is that the entire place was Mafia laced. And it was a genuine Mafia operation that had infected this company. Efron was afraid for his life, and we went through long, long discussions about how the Mafia had invaded this company. And then, I was sent up to be a special assistant, or something like that, to the U.S. Attorney's office in New York, and in that office, worked through this case. And perhaps one of the highlights—it was not a major case, but a very important one to me—one day we were bringing in investors for Accurate Calculator, to find out who had been hurt; and one day, I bring in an investor—comes across to me, a

burly guy with a very elegant lawyer next to him—and I begin talking to him. And I asked him—I explained that we were here gathering investor statements to help them out in this fraud. And I asked the fellow's name, and the fellow took the Fifth—which surprised me.

KD: On his name.

RF: On his name. And I asked a couple of more questions. He took the Fifth. I was with an old fellow named John Connor, who was an investigator with the SEC—indeed, the first investigator in the Division of Enforcement—non-lawyer, great guy, now dead—used to fly model airplanes, was quite proud of it; one of the first to fly these big model airplanes—great guy. And he runs out of the room, comes back to me—how he recognized this guy, I have no idea—calls me out, and he says, "Do you know who you have there?" "No." Well I had a fellow named "Fat Tony" Salerno. "Fat Tony" Salerno was considered to be the *capo di tutti capi,* or at least one of the principal captains of the Genovese Mafia family in New York, known for loan sharking and prostitution. And this guy was an investor that we thought we were trying to help in the Accurate Calculator case. And that, I thought, I'll never—I've never forgotten that vignette. It was an amazing experience for me. We giggled about it for years. Finally brought the case; it ended up being a wonderfully small case, but punctuated with that delightful issue.

Next issue that I can recall was a case that I took over called Executive Securities, a case that was run by Ted Levine for many years. It was a case run out of the Miami office of the SEC, then a regional office. The case had been largely completed, and there

was only one part of it left, a very small part of the case. And the Commission—Levine had persuaded the Commission to bring cases against the General Counsel and the principal investigator of the Florida Securities Commission, for being in cahoots with Executive Securities, and whatever kind of misconduct Executive Securities was involved with—the General Counsel of the Florida Securities Commission and their principal investigator. And if I'm lucky, the names will come to me in a moment, of the two fellows—very famous case. So we go down for the administrative proceeding in front of the Chief Administrative Law Judge of the SEC, whose son now is the—it'll come to me in a minute—principal—oh, what's his name? Judge—great guy. But it'll come. We go down there; the proceeding begins. And these two fellows are represented by who? Louis Loss, himself. Now, here I am, a baby, securities law professor, one year or so on the SEC staff, doing my first trial, against Louis Loss. So, we get started, and Louis Loss is obviously trying to delay this proceeding, and successfully gets through the first few days until he can get a break. And then disappears for about two weeks, for a break. This is when the Securities Act Amendments of 1975 were being adopted, the amendments that basically create the National Market System—very complicated at the time, very big deal. It was the result of the creation of the Division of Trading and Markets, related to that whole issue about getting Irv Pollack out of the fixed minimum commission rate business, and moving towards a national market system—all those amendments. So, during the break in this trial, the amendments clear both houses of Congress, go through conference, and are signed by the president. The hearing recommences after the adjournment. And Loss gets up and says he'd like to have the proceedings dismissed for lack of jurisdiction. I said: What the hell is this all about?

Well, this clever old guy had gone up to Congress, and in the last minute—in conference committee, where nobody caught it—persuaded the conferees that the Exchange Act should be amended—15b, 5 or 6 or 7, whichever Section it was—in the following way: This was a broker/dealer administrative proceeding. The broker/dealer charging section used to say that the Commission, upon finding a violation, can either suspend, censure, or disbar—or disqualify, or bar—any person who is found to have violated blah, blah, blah, from being a broker/dealer. This proceeding against these two people had been brought on that section, because they were any person who—that was the jurisdictional nexus to bring an administrative proceeding. Loss had gone to Congress, and persuaded the conference committee to change that statute to say: Any person who is either affiliated with, or seeking to become affiliated with a broker/dealer, the Commission can bring an administrative proceeding against to do this—and took out the 'any person' language. Nobody caught it. He comes down, has the case dismissed for lack of jurisdiction, caught us all unawares; and I walked out of that hearing saying: This is why they call him Louis Loss. This is why there was never a subject matter called securities regulation until he invented it. Later, Loss and I got to be good friends, when I became General Counsel, because I was the in-house sponsor of the ALI Federal Securities Code; and one of my proudest achievements as general counsel was to get the Commission to completely—we rewrote the whole code with Loss, and then to have it approved by the Commission, recommended to the Congress, where it died; but it was Loss and I who got the code approved by the Commission, so that was a wonderful, wonderful experience for me. But that was my first encounter with Loss. So that's another wonderful story—wonderful to me; perhaps not—and perhaps to you, but only kind of the devotees of the

idiosyncratic beauty of the SEC could appreciate the love in that, being nailed that way by Louis Loss, by having a statute changed overnight in conference committee. Right? The world has never seen that. As far as the world—nobody will ever know that the language of that broker/dealer enforcement provision forever now reads: Either affiliated with, or seeking to become affiliated—or associated with a broker/dealer.

Okay. So now, next thing that comes up—I mean these are—people always think their days at the SEC were the golden years, right? But these are stories that really made them the golden years for me. So, one day, news reports come out and say that a fellow named Eli Black, who was the Chairman and CEO of a company called United Brands, had dove out of his 90th story window in his office building in New York City, and splattered on the ground like an egg. So, Sporkin calls me in the next day, or that day. And he says, "Ralph," he say, "Guys don't drive like this, don't drop out of windows for no reason. I want you to call up and find out what's going on." I said, "Stanley, what do I do?" He says, "Figure it out." So the next day I call up. Of course, this fellow was of Jewish ancestry, and apparently had to be buried like the next day. The whole place was out at the funeral. Nobody can answer the phone. Next day, they call me back. I said, "Look, I'm Ralph Ferrara. I'm in the Enforcement Division of the SEC. I'd like to talk to the General Counsel, CFO, Chief Operating Officer, President. And I want you to come down here tomorrow." Now, in those days, you know, we were a bit more roguish perhaps—in the romantic, not the aggressive sense of the word—roguish than the staff is today, but more careful, for good reason, because they get sued, and cases get lost because of that conduct. Anyway, we used to call up and say: You know, I'm from the SEC. Come down with all your checks tomorrow. Or else. Right? Which is what the

call was. Next day, this group comes down. And I spent—with Ed Herlihy taking notes, as I recall it, for me—I spent a day asking every question I could dream of, to figure out why this guy jumped out the window. Now, let me go away from the text into a footnote. As of this time, Sporkin had discovered that companies like American Airlines had been making political contributions to the Democratic and Republican party here, without recording them on their books. And so he had brought two or three cases at that point called the Political Contribution cases, from companies that were making political contributions. And that was pretty high profile—different stuff. It just showed Stanley's creativity. And the argument was that these expenses were not being properly recorded on the books. So, we go through this full day, and the very last question I asked—and I don't know what made me ask this question, there had never been a foreign bribery case—the last question I asked that day is, I said, "You know, you guys do business in the Dominican Republic. Do you know if anybody was bribing anybody in the Dominican Republic, in a way that could have—was about to be exposed, and drove this guy out of the window?" "No." Last question of the day. Why I asked it, I'll never know. Other than the fact that there was an unrelated—well, kind of partially issue that had come up in American Airlines type cases of domestic companies making political contributions—not bribes, but—Okay. Next day: and I get a call from Stanley. Stanley says, "What did you do yesterday?" Go through the whole story. He says, "The chairman wants to see us." Okay? Go up to the chairman's office. In the chairman's office: Ray Garrett—no, Bill Casey. Bill Casey or Ray Garrett, I've forgotten which. Sam Butler. Sam Butler is the presiding partner of Cravath, Swaine & Moore. And they're there to tell us that the General Counsel and others had not recalled correctly the

answer to my last question. And that, in fact, there had been an extensive public bribery program engaged in by United Brands, and Eli Black—the officials of the Dominican Republic.

This was the very first case ever of foreign bribery, which ultimately led to the Foreign Corrupt Practices Act—and this was a year or two later, when I'm in the chairman's office, and my first article published for PLI was an article called "Saints and Sinners", followed by something called "Saints and Sinners II", followed by something called "Saints and Sinners Revisited"—which to this day is the most complete collection of the literally hundreds of bills that were filed, or submitted, in both houses of Congress that ultimately became the FCPA. And you are talking to the person, at this moment, who drafted the first version of the FCPA with, on the bribe side completely; and on the record-keeping side with a fellow named Lloyd Feller, who was at the time serving as lawyer to the Chief Accountant, Sandy Burton at the SEC. And God rest his soul, Alan Levinson was totally against it, saying this could never happen. And to the day he left thought it could never happen. But to this day, I take—I won't say pride, but I find myself to be the curiosity when I walk into the meetings involving the FCPA, and I say I was one of those who was active in the participation of drafting it. On the committee drafting that was representatives from the Department of Justice, the Department of Commerce, the Department of State—State, by a fellow named Monroe Lee. And the group on that were driven by those who were involved in the Lockheed case, which was one of the next big foreign bribery cases. And in the Lockheed case, this group became the working group that ultimately got the government's version of the FCPA together, from the draft that I first penned, with Lloyd Feller.

KD: Now did you do this while you were in Enforcement?

RF: No. This is by the time I got to the Chairman's office. I'll tell you how I got there in a minute. But this is the FCPA—this is how it all ties back to Eli Black. I mean the animating spirit that resulted in the FCPA, as we know it today, came from a newspaper article involving Eli Black diving out of a window, and that experience that I just related to you—that ultimately becomes the FCPA. Okay. And the fellow who was on the task force from Japan—I'll just complete that story—on the FCPA Task Group that then evaluated and changed the drafts that we first did—is a fellow named Akio Hirata who went on to become the chief prosecutor for the Department of Justice in Japan—the functional equivalent, I think, of our Attorney General, or the attorney general who does prosecutions in the Department of Japan. And we still trade Christmas cards, to this day. And I have, on the walls of my bedroom, an inexpensive, but very cherished, triplicate of Japanese woodcuts that were presented to me by the Japanese government for our role in bringing the FCPA and the Lockheed thing to close in a way that was not harmful to the reputation of Japan. But that's that. Okay.

So, in between the Eli Black issue and me, then, going up to the Chairman's office comes the following events, which really gets me to the Chairman's office, and ultimately to be General Counsel. The student observer program is now underway, and there's a new law school called Antioch Law School in the District of Columbia. And it's formed by two professors, Gene and Edgar Kahn, who are at the G.W. Law Center when I'm there, and break away from G.W. to start their own law school. And law

school, Antioch, as it begins, is a unique invention that says: Lawyers are best trained by clinical experience, as opposed to pure classroom work. So the Antioch model was that all of their young people had to be public interest oriented—that is: wanting to, you know, cure the world; and had to be completely devoted to spending at least two-thirds of their time in clinical education as opposed to just classroom work. One of the members of the first class of that group is a young woman named Barbara Brandon, who is in the first graduating class, who comes to be effectively an intern for a semester at the SEC, as part of the clinical education program; and she's assigned to me. This woman is now my wife, I might add. That doesn't happen until fifteen or twenty years later.

But, she's—and we've talked about this before, and I think that she has a slightly different recollection than I do, but—I had just finished a case called the Florida East Coast Railway case. And that case involved a question of the Florida East Coast Railway redeeming a group of—as I recall it—first mortgage bonds, and exchanging them for cash at face value, without telling—and they were convertible bonds—without telling the world that its assets, which were largely land in Florida, adjacent to the railroad lines, had risen in value enormously. This was well before fair value accounting, FAS 157. It is at the time when all assets recorded historical value, period. And if you ever projected anything to fair value, you were considered a fraudster. That's the days then. But, because this transaction was going on, I thought that the bondholders should know before they trade their bonds in for face, that if they were allowed to convert, knowing the true value of the land, it would be a big deal. And my position was that the notes of financials should have that kind of fair value information, so notes of financials were very important to me. This was my theory. I was quite proud of it.

KD: How did you get wind of this thing happening?

RF: I don't remember. How I got wind of the case? I don't remember. But I do remember that when I saw this it was a curiosity to me, but it was an interesting thing: the way I tried this case was that I started with a Florida East Coast Railway former employee—what we'd now call whistleblower—went down the entire length of the Florida East Coast track, and we picked out every vacant parcel of land, photographed it; went to the real estate assessors and found out what the assessment for those was, and they were—I mean the P&O docks, which is part of that in Miami, Florida, is now the site of the biggest hotel in Miami. I mean—you know. So, and we tried to show that the value of this stuff was—that's not the whole story, but—so we're doing that. And so I'm really into what should be buried in footnotes about the values of assets.

So, this young woman comes in—back to this issue—this young woman comes in, as a student intern, and she's got to do a paper. So I say, "Where's a good paper? You know, get a bunch of filings and go through footnotes and see what you find interesting about assets. All right? And that will be your paper." It was something like that. So she starts pawing through the filings. One day she comes in to me, and she says, "Ralph, this is a very odd company." She says, "It's called Global Marine." She says, "They have one asset." And I look at the footnotes, and the one asset is a ship. And she says, "It's a funny, funny thing," she says, "because this asset is a ship, and it has one contract. And the contract is to pick up nickel nodules off the floor of the ocean." This ship, now, is a big ship; and it's made to have the bottom fold out, to expose a big hole in

the bottom of the hull; and it's got this big grappling hook, the size of a small house, that's supposed to go down to the bottom of the ocean and scrape nickel nodules off the floor. But, the contract isn't attached, and it's a material contract. There's very little about this thing works. And it's a very odd company. And so, she wants to complete her paper. And so, she says, "Gee, this is very—" I said, "Well look, let's just find out." You know, because, again, it's the days where you pick up the phone, say come down with all your checks. So I pick up the phone; I say, "Look, Ralph Ferrara with the Enforcement Division of the SEC. We're looking at your most recent 10K: one asset, one contract, not much description. What the hell's this company all about? You sell stock, you trade on the New York Stock Exchange, or the NASDAQ—or wherever the hell it was. Why don't you come down tomorrow?"

Next day: get a call from the Chairman—from Sporkin. "Ralph." "Yes." "What the hell did you do yesterday?" "What do you mean?" He says, "You talking about Global Marine?" "Oh yes." I explained to Stanley, so he asked me to come down and explain just what the business is about. "Chairman wants to see us." Okay? Go up to the Chairman's office. We're sitting there with Bill Casey, who's the Chairman at this point. And there's a guy standing next to Bill Casey who looks just like the lead actor in the old television series *Get Smart.* Remember that? The kind of buffoonish CIA operative who wears nothing but a black suit, skinny tie, sunglasses, with a telephone in his shoe.

KD: Right. Don Adams.

RF: Don Adams. There's a guy who was his spitting image standing next to the Chairman. They say, "You've got to not ask anymore questions about Global Marine. Why are you doing it?" Blah, blah, blah. I explained the situation. He says, "We're going to tell you about this, but first we have to give you security clearance." So he brings Sporkin up. Sporkin and I go through about two weeks of top secret security clearance; which is above top secret, it happens to be special projects security clearance. And we get shipped out to the CIA. Come to find out, the CIA was using—had created Global Marine as a front for a CIA operation, and we had found that they had done many of these. And so our task was to help the CIA deal with how it was going to have the sponsoring organizations not be public companies, because there's this disclosure requirement here, no disclosure there. Well, as it turns out, Global Marine had been created to build this ship, but not to seek nodules off the floor of the Pacific; rather, a year before, the Russians had lost a fully-armed nuclear submarine in the Pacific Ocean, had been looking for it for a year, and we had found it. And this ship was built to go out to the place where this thing was, to scoop the submarine up, and to bring it to the surface, fully-armed, so we'd have all their technology. This is my case. Right? It goes on for a couple of months. The bottom line of that is: They picked the submarine up and it broke, so then they got half of it. I can say all this now because years later a fellow named Seymour Harsh did a full public exposé of this. And, I got to be kind of an expert in CIA law, but so does Sporkin. Casey ultimately ends up going to the CIA, brings Sporkin over there as the general counsel, in exchange for an agreement by President Reagan that if Sporkin goes over there, and as general counsel of the SEC that Reagan will make him a judge

before he retires, and that's how Sporkin gets to be a judge. All tied to Barbara Brandon raising the footnote problem on Global Marine. Okay? True story.

KD: Yes. You're making your deterministic argument here, with the pieces all fitting all together.

RF: Yes, exactly. So now: next story.

KD: We need to get you into the Chairman's office here.

RF: Sorry. Now, because of this, Harvey Pitt, who was the Chairman's chief of staff, sees me as this wonderfully aggressive, hard-working, 18-hour a day guy. The Chairman's Special Counsel, Kathy McGrath, is pregnant and going to have a baby; is going to take some time off. And he invites me up to take her place on a temporary basis. She comes back as Assistant General Counsel, as I recall it. Harvey brings me up there full-time as Special Counsel. I'm the only person on the planet who was ever the sole assistant to Harvey; it was the two of us. He, as Chief of Staff; I'm Special Counsel. He ultimately becomes Deputy General Counsel; I become Chief of Staff. He becomes General Counsel; I become Associate General Counsel. He becomes Fried Frank; I become General Counsel. That's the rough chronology of that.

But before I get there, I'll tell you one more little vignette that you'll get a kick out of. And that is: before the Global Marine issue, and after the Florida East Coast Railway issue, and Eli Black, comes one of my most favorite cases, which was the ITT

case. You may have heard of a woman named Dita Beard. Dita Beard was the public relations, or congressional relations director for ITT. ITT was caught up in a major anti-trust piece with Richard McLaren, Assistant Attorney General for the Anti-Trust Division, who is bringing the first major horizontal anti-trust case in the Supreme Court—ITT, Cornell, Hartford, as I recall it. And the claim was that this Dita Beard had been dispatched by ITT to fix that case, in exchange for ITT giving the Republican National Committee the convention facilities owned by ITT in San Diego. And when this broke, ITT—Dita Beard disappears. People think she's been kidnapped or killed. This is all pre-Watergate. And I'm the one assigned to the case.

So, I got into this whole ITT, Dita Beard case, which was another great story, which—I can tell you're getting anxious—I won't go through with you. Another wonderful thing, which ultimately ends up with the precursor to Watergate. As doing some of these things I feel a little bit like that character from the movie *Forrest Gump,* who always seems to be characteristically in an important place at some odd time. The history behind that is: There is no Watergate. And I can remember thinking: What an absurd notion, that somebody thinks they could bribe the president of the United States—Richard Nixon—to throw an anti-trust case at the Department of Justice, in exchange for a convention facility. Right? And so, I investigated this for years. This is pre-Watergate. I investigated it for years. And now, I come across, in my investigation, this whole pile of White House memos, involving major figures at the White House who were having communications about this lawsuit and this convention center. So, the materials are subpoenaed by the House Oversight and Investigations Committee, headed by a guy named Harley Staggers. Sporkin gets a call the day before this is going to happen, and

the call is from the Executive Assistant to the Chairman, pre-Pitt—the chairman is Casey—from the White House, saying they want all of the files in the ITT, Dita Beard case removed from the SEC, and sent to the White House. Have you heard this story?

KD: No, I haven't.

RF: Sent to the White House. And trucks would be there at the close of business, after business, to pick up all the files from my office. So, Sporkin says, "You've got to do it. White House is calling." So, I don't know what to do. I said: Gee, I'm going to lose my files. I'd better make notes. So I spent all night long doing an outline of the critical notes of every document—of boxes; I mean a roomful of documents. And the outline was hundreds of pages long—dictated, right? Trucks come up, take all the documents out—literally move them to the White House, where executive privilege would be asserted. Congress shows up with a subpoena: no documents. Harley Staggers goes nuts. An investigator comes over to find out what happened. I said, "Well, this is what happened. I shipped my documents out. Sporkin says we were commanded to do it. Chairman's office told us to do it." I said, "Stanley, you know, I've got these notes." He says, "What notes?" I said, "Well, you know, of my investigation. I wanted to make sure I had the notes." What the hell did I know? I produced a sheaf of notes; the sheaf of notes go right to the Hill. Hearings are held. Now, they have all the—and of course, my notes take—the most important and material parts of every document; so it's like having—somebody had digested the—and there's a field day up there. Harley Staggers goes nuts. And this

is the beginning of the corruption that ultimately ends up besetting the White House with Watergate. Okay. So that's that story.

Now, back to the Chairman's office. I have given you the chronology of events leading to that. While I was there with Harvey, we basically—Harvey, with me serving as his acolyte—basically did most of the Supreme Court briefs and appellate briefs of the General Counsel's office out of the Chairman's office; the most important of which was the *Chris-Craft vs. Bangor Punta* brief by the Commission and the Supreme Court, on the question of whether there are implied remedies under whatever provision of the law was involved in that case. We put in an amicus brief that was about—I don't know—a hundred or a hundred and fifty pages long. It was that brief that, shortly thereafter, resulted in an amendment to the Supreme Court rules that said amicus briefs now have to be no longer than X—whatever that is, because it was this massive brief. And that was the little—again, little inflection point where I feel we helped change history in some small ways.

Ended up in the Chairman's office doing the FCPA work that I described to you before, leading to the passage of the FCPA. In 1974, as I recall it, the CFTC was being formed. I was the person that was with Harvey—the point person of the spear to stop the CFTC a.) from being enacted, or at least to have it not cover instruments that could be considered securities. We lost that battle.

KD: How did you do that? Who did you go up against?

RF: It was the Ag Committee. The Ag Committee dominated the Securities Committee. We lost. And when we lost, after it was created, I was the person who was asked, with Ted Levine, to go over there and to help them create the CFTC. And we were there when there was a staff of two. They wanted me to be their—I don't know—enforcement director, or general counsel, or something; which I chose not to do. And Levine and I spent probably three or four months there—literally, with three or four people, creating the agency; which was another wonderful experience, similar to the experience that I had when ERISA was passed, and I was in the Chairman's office. And when ERISA was first passed, the way it had been written is that all services provided to plans by broker/dealers were going to be either prohibitive to transactions or turn them into fiduciaries. And so, I was dispatched with Katy Maguire, who you may know, to go over to the Department of Labor and work through all of the initial round of rules for the ERISA that allowed Wall Street to continue to represent plants. So that was another great, fun curiosity that I was involved in.

KD: So you were acting on special projects while you were in—

RF: Well, which is what the Chairman's office did. I mean the Chairman's—what, historically, had happened there—today, I don't think it works this way. In those days what the Chairman tried to do was to take the projects that were important to him—in that case—to take his team and throw them in as that SWAT squad on that topic, which is what Harvey did, what I did.

KD: Was this Ray Garrett who was doing this?

RF: It was first Casey, then principally Garrett in this administration, and then Hills. With Hills, again, Harvey and I—sorry, while Hills was at the White House under—this is before Garrett left and before Hills arrived, Hills was, I think, counsel to the president, and had been given the job of coming with a response to the Arab League boycott. And Harvey and I were the SEC assigned to the SEC role in developing the resistance by the financial and broker/dealer community to the Arab League boycott. Those were the kinds of things that we did. Then, Harvey gets recruited out of the General Counsel's office. The office is about thirty lawyers, as I recall—no, not even that; it's maybe twenty. And there was a very unusual deal when Harvey was made General Counsel. Dave Ferber, who had been the Commission's solicitor, had wanted the job. Ferber would have been always happy to serve as solicitor under a politically appointed general counsel, but could not serve as solicitor under somebody who had been appointed up from the staff. Harvey was the first general counsel, I think, in the Commission's history that had been appointed from the staff, and not brought in as a political appointee. And Ferber couldn't deal with that. And so the compromise, as I recall it, by Garrett, was: I'm making Harvey general counsel of this twenty-person or so office, but when it comes to appellate briefs—which is all the office did—Ferber has free hand. So, Harvey and Ferber always had to kind of work together, so that Harvey could get his thumbprint—and remember, Harvey was running the general counsel's office and the Chairman's office when he was up there; and now he's general counsel, and he's had restriction on him that he didn't have when he was in the Chairman's office, where he's doing the

whole job—which was always a bit of a frustration, I think, to Harvey; although Harvey was always a perfect gentleman with Dave Ferber, and really worked hard to make the whole thing work.

So, now it comes to be my turn. At this point, Harold Williams is chairman. And there's an issue—the way Williams saw it. And I don't think that Harold was entirely correct on this, although he wasn't entirely incorrect either. What Harold perceived is that there were five very powerful, very dominant division directors at the SEC: Sporkin, Levinson, I think Pitt may have been head of the Division of Trading and Markets at the time—or Brad Cook, I'm not sure—and there were two similar fellows, the names of which I'm blanking out, who were the head of Investment Management and Corporate Regulation—I'm blanking their names now. And Sporkin in Enforcement. The issue was that every issue was presented to the Commission as a unified result from these five division directors. And Harold felt that everything was being presented as a fate accompli, and he was never getting the kind of dialogue and pro and con, objective advice that he felt he needed as Chairman of the Commission needed to come to their Commission's views. And what the Commission doing was turning into a rubber stamp for the staff. So he says, "I'm making you general counsel, Ralph." He says, "But I want to reorganize the office of general counsel." He said, "Appellate brief writing is still part of it, of course. But I want to make the office of general counsel really an advisor to the Commission." So, I devised, with Harold's approval, a new office of general counsel which was divided into three parts: brief writing, defending the Commission when it's sued, and then professional counseling. Bob Posen—who is now head of CIFR, the Committee on Improvement of Financial Reporting—is the associate general counsel I

bring in from Harvard to head up the counseling group. The office grows over the course of seven or eight months, from twenty to about eighty. It becomes, for the first time, a major office; and still has the architecture today that was created by—with Harold's approval—by me, when I was general counsel, and became a counseling operation. And then, my job was to preview every recommendation from every division that went to the Commission. Before it went to the Commission, the sponsoring division would bring it to the general counsel's office. We sat around a conference table like this, and we would review it. And my job, with Posen, was to find what the contrary view was on every important issue, and to make sure the Commission had it. And we would do that in separate memos. And then I had a seat at the Commission table, far left, and sat there for every meeting, for almost every week that I served as general counsel of the SEC—until the very end when I let Posen do it, or Posen did it. And my job was to be—certainly not the sixth Commissioner, not that—but my job was to be there, and not to be the foil for what was being posted, but to be there to say: Here are the policy issues that this proposal suggests, the pros and the cons; and either we support the division, or disagree with them on that. Which did not make me a very popular guy, I might add, at the time; because it was seen as a kind of—but it wasn't—some saw it as kind of an anti-staff position, as opposed to a pro-Commission position.

KD: The word bottleneck might have been used at that time—running everything through the general counsel's office.

RF: But I'll tell you: someone may characterize that way. It wasn't a bottleneck, because we worked hard to make sure that nothing was delayed. Right? I mean there was—the schedule was: Give it us the week before it goes up. And we made sure that when it went up, it went up with our views. So we worked as hard as anybody did getting it done. I doubt that anything was slowed down.

KD: How much of that growth—

RF: But clearly, there was a resentment that some divisions felt where they were the experts, and what were these group of general counsel generalists doing commenting on technical parts of what they were doing? And there was a feeling of that. So, to the extent you mean that by bottleneck—yes.

KD: Perhaps.

RF: But it wasn't a timing bottleneck. I mean it wasn't like the problem they've got today, with not being able to have settlements approved without prior Commission review; which is a huge bottleneck, because it just can't get through the gate.

KD: Well you talked about the growth from twenty people to eighty—

RF: Seventy or eighty.

KD: In the general counsel's office. How much of that was just professional counseling group? How much of that growth went into that group/

RF: Probably two-thirds. That's just a guess. And you know, there were a couple of young people that I hired when I came in, and we made kind of field commissions. People were promoted to assistant general counsel who were babies. One of those babies that was fresh out of a law firm, Arnold & Porter, was hired as a staff person, who I gave a field commission to and made assistant general counsel overnight. And the counseling group is now going on the Commission, Elisse Walter. She was there at the time. Another one: Linda Feinberg is now deputy general counsel of the NASD, or enforcement director of the NASD, I've forgotten which. Interesting stories, huh?

KD: Yes.

RF: You've done a lot of these, but do you find that all of the people that have been there have had these wonderful experiences?

KD: Well, it's usually a matter of perspective. But everybody, without a doubt, says that their time at SEC—

RF: Were the golden years.

KD: —have been the most enjoyable. They've gone on to other things. Other than what was clearly very important, which is really redefining the general counsel's office, and creating this whole other activity, which went on after that, what would have been, in a nutshell, your other biggest accomplishments and challenges as general counsel?

RF: Two. I'll give you a story on that. Before I joined the SEC—it was kind of a tradition, unwritten, that an SEC general counsel would be given one opportunity in their career to argue before the Supreme Court. I had the advantage of five arguments before the Supreme Court. My first appellate argument was in the Supreme Court of the United States. And it came the first week that I got the job; it was offered to me, and I took it. So: great story. As you know, when you go to the Supreme Court, and you're a government counsel, you can't go in your own clothes. You have to wear a morning suit and tails. So I go out and rent it. And there's a robing room for government counsel there. I go in the robing room, for my argument—obviously nervous: first appellate argument, the Supreme Court of the United States; and there's an African-American fellow in there robing, and we're sharing gallows humor with each other, as we're looking at each other in our skivvies. Turns out the fellow's name is Wade McCree, first black solicitor general in history. He's having his first argument that day. We get to know each other. I'm going first. He says, "Ralph," he says, "I'm going to wish you luck. If you don't mind I'd like to come in and listen to your argument. Sit behind you." I said, "Wade, great idea. And I'll listen to yours." That picture on that wall is my first appellate argument. It was done by a woman named Betsy Wells; who was, at the time, NBC's court cartoonist, or artist, because no cameras were allowed in the court. She was

warming up on me, but there to put in Wade McCree, for his first argument. The woman who became my wife is sitting there behind these curtains, watching her do this, and says, "Gee, could you finish that draft someday, so I can present it to the person who is going to be my husband?" And three years later, they present that to me. Okay.

So I have five arguments in front of the Supreme Court. Oh, sorry. I go there: arguments all over. We come back to the robing room together. McCree is very complimentary of my argument, and says, "Ralph, any argument you want to do for the SEC you can have." Frank Easterbrook, one of the most famous graduates of the solicitor general's office, is my assistant solicitor; helps me do all the briefs, doesn't get one argument in the Supreme Court. I do them all. But that was Wade McCree: fantastic guy. And the court had a great time with me, because Lou Powell—Justice Powell—was the court's expert on securities law, and used to hammer me with all these arguments, had great fun with me. I used to argue in these cases like it was a district court. I mean, you know, very combative, very—as you can tell from my personality, very effusive. He got a big kick out of it. They all beat up on me. When it was announced that I was going to leave the SEC, the Chairman gets a call from Justice Powell, and says, "We've given Ralph a very difficult time up here, but we very much enjoyed him as an advocate. We would like the privilege of giving him his going-away party. Do you mind?" And Justice Powell sponsored my going-away party at the Supreme Court, presenting me that picture on that wall, with the signatures of the judges I had argued against. When I went to Debevoise & Plimpton [he] wrote a letter to the head of Debevoise & Plimpton, which I still have on that counter behind me, saying, "Ralph is one of the best advocates I've had before the Supreme Court. Congratulations

that you've brought him onto your firm." And that was one very proud day. Here I was, going into the second lateral in the history of Debevoise & Plimpton, going to my first partners meeting ever, with a group of people who all went to Harvard and Yale—me, from Cincinnati; and the one of the senior partners of the firm gets up, and reads this letter—which I didn't know existed—from Justice Powell saying: Congratulation to Debevoise for recruiting somebody who's such a fine advocate. And writes me two years later, saying, "The SEC has not had anybody argue so good since you left." Which is also there on the counter. So when you say: What are you proud of? It was that.

The second issue that I was very proud of was the ALI Federal Securities Code, which probably killed Lou Loss when it wasn't enacted by Congress. But the reason I'm quite proud of it is that you can look at every amendment: PSLRA, SOX—every amendment of the federal securities laws that have occurred since, and you will find that the genetic material that has built the law as it is today is in that code. And I take—along with Ken Bialkin who is still alive and was a principal part of that effort—take great pride in having been the one who brought that code around from what it was, after three or four or five years of gestation in the private bar, into something that the SEC unanimously could support as legislation. And I take great pride in that. So, it is the creation of the office as it exists today; the wonderful experience I had at representing the Commission in virtually every circuit court in the country—arguing *en banc* in the Third Circuit, which was a great experience—the Wheeling-Pittsburgh case; and then the role the office played in developing the Federal Securities Code, I think are the three things that I take the greatest pride in as general counsel to the agency.

KD: Terrific. We have taken an hour of your time. Thank you so much.

[End of Interview]