Securities and Exchange Commission Historical Society
Interview with Milton Kroll
Conducted on September 13, 2001, by Richard Phillips
Offices of Foley & Lardner, Washington, DC

RP: I am Richard Phillips from the SEC Historical Society, and I'm here to interview for the society Milton Kroll. We're at the offices of Foley & Lardner, a law firm in Washington, D.C., with which Mister Kroll now is of counsel, at 3050 K Street, N.W., Washington. We're interviewing Mr. Kroll because he served at the commission for a period of fourteen years, from 1940 to 1953, in the Office of General Counsel, starting as an attorney for $2,600 per year, and ending in 1953 as associate general counsel of the SEC. He's seen a lot of the SEC during the early days, and we're here today to see if we can tap Mr. Kroll's memory for posterity. Mr. Kroll, why did you go to work at the SEC in 1940?

MK: Well, 1940 was the depths of the depression. The possibility of getting a job at the SEC for $2,600 a year was very appealing.

RP: And that was appealing, even though you were a graduate of Harvard Law School?

MK: Oh yes. It was difficult getting jobs anywhere. It's hard today to understand that salary, when you compare it to the $140,000 graduates of law school are offered today.

RP: During your tenure at the SEC, who was the chairman and some members of the commission?

MK: Well, when I went to work there, the chairman was Jerome Frank. A prominent member of the commission then, Republican member, was Judge [Robert E.] Haley. He served several terms, I believe. Ganson Purcell succeeded Jerome Frank. Ralph [H.] Demler was a chairman, Republican chairman. Harry [A.] McDonald, also a Republican chairman, although that, interestingly enough, was during the [Harry S.] Truman administration. In those days, before 1950, the chairman of the commission was selected by the members of the commission, not by the president, and that apparently accounts for the fact that there was a Republican chairman during the Truman administration.

RP: And that was changed in 1950 by act of Congress.

MK: 1950, yes. Others, Don [C.] Cook was a prominent chairman. Dick McEntire, was a commissioner, I worked with on the Canadian Extradition Treaty. He was an important factor there. By and large, the commissioners were extremely capable and, I thought, very talented.

RP: What about your colleagues? Who were your colleagues? Can you give us some names? What was it like to work with them?

MK: Well, I certainly have a lot of memories of my colleagues. One, Louis Loss became my best friend. Unfortunately, I also was an eulogist at Harvard at his memorial service.

RP: He was in general counsel's office.

MK: He was in general counsel's office. He, incidentally, started at $2,000 a year because he went there directly from Yale Law School.

RP: Are you suggesting that Yale graduates did not command a higher price than your law school?

MK: [Laughter] No, no, it was just the ground rule depending on when you left law school. I came several years after I got out of law school, because I was waiting for that job with bated breath. Milton Freeman was an important person in that office. He was the person I reported to. Over the years, there were many, many talented people: Manny [Manuel F.] Cohen, who later became chairman. Irv [Irving M.] Pollack, who also became chairman, and whom I hired, by the way, in the general counsel's office. Stanley Sporkin. There were many, and we were all close friends.

RP: Who was the general counsel and your superior?

MK: When I went there, the general counsel was Chester T. Lane. He came from a Wall Street law firm, I believe. He was the general counsel. The assistant general counsel in charge of enforcement, which then was also one of the functions of the general counsel's office, was Robert E. Kline. Thereafter, there were some changes made. Initially the general

counsel's office, about 100 attorneys, did all the legal work for the commission. There were a few lawyers in the regional offices, but there were no lawyers assigned to the various divisions as lawyers. Some of the people there who performed administrative functions were lawyers, but they were not there as lawyers.

In about late 1943, just before I went into army service, they changed that. The general counsel's office became the solicitor's office, and each one of the divisions had a counsel—"counsel for the division." Lou Loss went to become counsel to the Division of Trading and Markets. I was about to go in the army, so I stayed with the solicitor's office. The solicitor then was Roger Foster, who had been in the '35 Act division. He came over as the solicitor. Thereafter, during the war, it shifted back again and the general counsel's office became the chief litigator, chief legal office for the commission, and Roger Foster was the general counsel. John F. Davis was the assistant general counsel with whom we all worked.

RP: John F. Davis went on to be a chief assistant in the solicitor general's office for many, many years.

MK: Yes, solicitor general's office. Actually, he had come from the solicitor general's office initially, I believe. He went over there thereafter. Just as I was about to leave, William Timbers became chairman. No, no. Ralph Demler became chairman, and he appointed

Bill Timbers as general counsel. Bill Timbers went on to become a judge of the Second Circuit Court of Appeals.

RP: For purposes of context, I'd like to probe your memory as to what was happening in government, in the securities industry, at the commission generally. Let's divide it up, if you will, between the pre-army service. I understand you were in the army for three years.

MK: Two and a half.

RP: That was 1942?

MK: '43 to '45.

RP: Let's divide it into pre-army service and post-army service, or pre-World War II and post-World War II. What do you recall about what was happening in the economy, the country, the securities industry, pre-World War II?

MK: Well, to use a baseball term, I think the financial firms were "warming up." The depression had set everyone back. They were warming up. They were curious. They were trying. By and large, they were quite cooperative, I thought. This is the pre-World War II period. So far as the commission was concerned, these were years in which we were trying out things, trying to develop the confidence that later prevailed. As an

example of what was going on at the commission, I must say a word about someone who wasn't in the general counsel's office, but who performed a very important function. Baldwin Bane had come over to the commission from the Federal Trade Commission, which, as you know, administered the Securities Act a year before the SEC was created by Congress. He had some very important people with him, a man named Andrew Jackson, a very good name to have. [Laughter] And Ted [Edward T.] McCormick, who later wrote a book and became a commissioner.

In any event, the reason I want to make these remarks about Baldwin Bane is because he developed the registration process as we know it today. When the act was passed, all it said was that you file a registration statement, and twenty days later it becomes effective unless the commission issues a stop order. Well, that is pretty hard business. Bane created the idea of deficiency letters. You filed your registration statement. His people in the registration division would examine it and they'd send you a deficiency letter. You complied with that and then the statement became effective. Now, actually, at that point people who cooperated complained that they had to wait another twenty days.

RP: Each time they complied with a deficiency letter, they filed a new amendment, and that started a new twenty-day period.

MK: So Congress took care of that, the commission got them to pass a law providing for acceleration, and I have a piece from *The New York Times* that talks about that, which

you're welcome to have. It's in the back of the piece which also notes that the '40 Act was passed.

RP: Let's call this Exhibit A.

MK: What went on in the early days were matters of training and understanding. Everybody was trying to see things that way.

RP: You're saying trying to develop concepts.

MK: Concepts, yes.

RP: Such as the deficiency letter and acceleration.

MK: Yes. People from the general counsel's office also would go out to the regional offices and conduct forums and have programs and explain things to lawyers, accountants, and so forth. We were growing up. When I got back from the army, things were quite different.

RP: How were they different?

MK: People were much more sophisticated. Some people's objectives were not noble; they were trying to take advantage of the fact that there were a lot of highly reputable

investment banking firms, whose reputations they could hide behind. So enforcement became an important thing. One thing I worked on was the Canadian Extradition Treaty. I worked on that with Commissioner McEntire. The promoters of mining ventures there were making fraudulent offers here. We couldn't get them down here to prosecute them, so we had to go up. It was very difficult to do this sort of State Department work, but we did it and got that done. That was one of the things I was proud of.

RP: Was there more of an emphasis on enforcement rather than education?

MK: Yes, yes. Enforcement. And there was litigation. There's one thing I'd like to mention. I guess one of the most active litigation experiences at the commission was in connection with the Kaiser-Frazer-Otis Company litigation. Kaiser-Frazer developed a new automobile. Cyrus Eaton in Cleveland had a brokerage firm, Otis & Company, and they entered into an underwriting contract. Well, they filed a registration statement. Things weren't going so well at that particular time for this issue. It was a new automobile. It wasn't a Buick or a Cadillac. A lot of competition. They had a lot of disputes.

One day a lawsuit was filed by a lawyer in Philadelphia named Masterson. Of course, that would provide an out under the underwriting contract. This got the commission somewhat disturbed. Of course, people wrote in and said, "What is this?" So the commission started a public investigation. No one really knew whether the commission had the power to order a public investigation. I was in that case because I was named the

hearing officer to be in charge of the proceedings. Louis Loss was the commission counsel, along with Charles Odenweller of the Cleveland Regional Office, and Russ Kelly, who was the chief litigator at the commission. And we had this long hearing.

In the meantime, the Kaiser-Frazer people and Otis & Company people were in court all that time. I don't know whether anybody ever won, but one thing that came out of it was that in one court opinionCI forget which one at this point, it was made clear that the SEC did have the power to conduct a public investigation.

RP: That Kaiser-Frazer-Otis litigation, that occurred before or after you came back from service?

MK: After.

RP: What were the significant issues confronting the commission after you came back from service? There were enforcement issues.

MK: Enforcement. There was the Canadian Extradition Treaty. The enforcement issues, I think loomed very large. So far as litigation is concerned, there were no great litigation matters except to the extent that the Kaiser-Frazer-Otis people kept the general counsel's office in court quite a bit. But they were still in the developmental stage. The general counsel's office wasn't yet the law firm that it later became.

RP: What do you mean by that?

MK: Well, I'm comparing an aggregation of people who are trying to find their way and establish ground rules, with a large Wall Street law firm. Later it became very much like a large Wall Street law firm. But in the days I was there, it hadn't got to that point.

RP: Let's take pre-World War II period. What do you think was the most significant achievement or failure of the commission was?

MK: At the commission? Well, I think it was the development of two things. First, the development of the registration process so that it made sense and it's still in effect today. That was very important.

RP: The deficiency letter, followed by acceleration.

MK: And also the educational side, the fact that we would go out into the regions and conduct seminars and so forth. Also it's interesting that right before the war, the SEC did quite a job in providing the War Department with bombing targets.

RP: Tell me about that.

MK: I have a letter here. Here's a letter from the Chief of Far Eastern Section, Operational Intelligence Division John Haas, Major, Air Corps, G4, Eastern Section, Operational Intelligence Division, Assistant Chief of Air Staff. This is in 1943. It happens to refer to me, but it indicates what we were doing. "Mr. Milton P. Kroll of the SEC has been of inestimable aid to this office in obtaining information for the planning of bombing missions. His contributions on this score have involved an extensive and intensive search among files, publications, and people in a position to provide data of this kind." This is the sort of thing we did. We're still in the developmental stage.

RP: What do you think made the army think that an SEC lawyer had the ability to help them identify . . .

MK: Obviously people file registration statements and information about their companies.

RP: So the army used the SEC to gain access to that.

MK: Also there were proxy statements and annual reports.

RP: A reservoir of information.

MK: Yes.

RP: And that was in the pre-Computer Age.

MK: Yes, indeed.

RP: Do you recall any matter, any issue, that you'd regard as a commission failure during the pre-World War II period?

MK: When you search your memory, you don't think about failures. I haven't thought much about failures. I can tell you about another plus, an achievement which drew congratulations from Franklin D. Roosevelt. There was a company known as Empire Ordnance Corporation. This was right before the war. It had been promoting itself and selling stock as a company that was providing war materiel. People were attracted to this sort of company at that time. The SEC started an investigation because it had received word that Empire Ordnance wasn't the company they were making people think it was.

Well, the commission conducted an inquiry, a rather long inquiry. I worked on it. And it finally filed a report to the president, telling him what this company was like. Well, when I was in the army, 1943, a letter was sent to Private Milton Kroll at Fort Custer, Michigan, from Ganson Purcell, chairman. It says that "the report to the president on Empire Ordnance Corporation has been delivered to the White House, and the president has written me a letter expressing his appreciation of the job done." This took up a great deal of time and a large number of people, but we were in the war. This was a war effort.

RP: And this was not securities fraud? This was defense fraud, was it?

MK: No, it was a securities fraud because they were trying to sell securities. But it was also defense fraud. It had two sides to it.

RP: And the president of the United States and the White House was interested.

MK: Yes indeed, and they wrote letters to the commission about it. I've got copies for you.

RP: We'll call that Exhibit Two. Let's move now, fast forward to the post-World War II part of your tenure, starting in 1946, late '45. What were the issues confronting the commission during this period, '45, '46? What was happening?

MK: Things were very busy, of course, with securities offerings. I mentioned one thing, the enforcement thing. It was the promotion of Canadian mining ventures by fraudulent promoters. It was necessary to work out an extradition treaty so we could get them down here. That's one of the things I worked on. It's hard to recollect the flow of litigation, but there was a lot more litigation. It's hard to remember the specific cases.

RP: I gather from what you're saying, that the focus was on offerings of securities and fraud enforcement.

MK: Right.

RP: What about the '35 Act, the Public Utility Holding Act in, in 1935?

MK: That was almost a world of its own.

RP: Was it an important world?

MK: Very important. Very important, because it was an antitrust type of arrangement regarding these companies. I think they resolved the questions presented because they had some very, very competent people there, Manny Cohen, others who were over there, such as Roger Foster. They ultimately worked out the problems there. The '40 Act had just re-enacted. There wasn't too much going on there, but they were starting to see the development of the mutual fund industry. That created a number of problems. There was some work under Chapter X of the Bankruptcy Act at that time with several cases, but they were not extensive.

RP: You've mentioned a number of significant matters which you've worked on. Are there any others that you can recall?

MK: Let me look down here. [Reviews notes] When I was at the commission, those were the main ones that I remember at this point.

RP: Tell us about your memories of the SEC, the people. What was it like to work there? Do you have any vivid memories that you'd like to share with us?

MK: Yes, I have some very important memories. An *esprit de corps* and a bond of friendship among the people who worked there, which I think is not been paralleled in too many places. I know in my own case, I made close friends there. I mentioned Lou Loss as one of my best friends. We lectured all over the world together. I'm sure he was the chief attraction, but I went, too, to Brazil, twice to Japan, to Hong Kong, and we even went to China to lecture there on corporations. We were good friends and we worked together on things.

The *esprit de corps* was contributed to greatly by the commissioners. The one thing I must tell you about, because probably the least intellectually directed chairman that I remember, I think played a very big part in building the *esprit de corps* at the commission. Harry McDonald. I may have mentioned him to you. He was appointed during the Truman administration. He built up *esprit de corps*. He would visit offices, come in and see how you were doing, pat you on the back. If you did anything commendable, he'd be there to say, "Great!" He would attend all social functions. He was an extreme example, but all commissioners were interested in staff. It's a very vivid memory I have, a very vivid memory. Have I mentioned to you the diplomas that were awarded to staff members who left?

RP: No.

MK: There was a custom that grew up that I think reflects the staff-commission relationship. This is for the people who were in the higher staff level. When they left the commission, they received a diploma, I have one at home in a prominent place, a diploma reflecting graduation from the "Institute of High and Low Finance of the SEC." Mine was signed by Chairman Don [Donald C.] Cook and Commissioners Paul Rowen, Clarence Adams, Dick McEntire, and J. Howard Rossbach. Well, I'm sure others also value theirs very greatly.

Incidentally, in Lou Loss's book, *Anecdotes of a Securities Lawyer*, he talks about many of the things that I've been talking about today. He says that one of the things he was most pleased to take away from the SEC was his diploma marking his graduation from the "Institute of High and Low Finance."

RP: You left the SEC in 1953. Why?

MK: Well, to support my family. I had a child. And I thought I'd been there long enough and I'd better get out and see if I could develop some kind of estate for my family and support them.

RP: What did you do?

MK: A law firm in town, Brown Lund & Fitzgerald, had been talking to me. They wanted me to come out because they had some SEC matters and needed someone to take care of then. I went with that firm and I was with them for about six years or so. Thereafter, I joined in starting a law firm with two people whom I had met at the SEC, Walter Freedman, who, when I came to the SEC, was a legal assistant for Judge Haley, and I think he also worked with David Schenker on some '40 Act matters. Arnold Levy was in the '35 Act section, and one of his associates was Gerald Simonds. We formed a law firm, Freedman Levy Kroll & Simonds, which did a great deal of SEC work over the years.

[End Tape 1, Side A]

[Begin Tape 1, Side B]

MK: We did a great deal of SEC work and, in fact, hired a lot of people from the SEC, Peter Panarites, Arthur Bill, Gary Cohen, Tom Lauerman. They came over to the firm. Joan Boros was with us for a while. Did a great deal of work in various new fields. I think we were the first to work on registration for the syndication of real estate properties. I've been thinking, since what happened the other day [9/11/01, two airliners crashing into World Trade Center towers], whether we syndicated any properties near the World Trade Center. I know we did the Empire State Building, and I have a picture of that up there on my wall.

RP: You may have been one of the first SEC alumni to develop a securities practice in Washington.

MK: Conceivably. I also became active in the field of variable insurance products at that time. I became active in some other things I should mention to you. I was a consultant to the American Law Institute on several important projects that had an SEC side. The ALI Federal Securities Code Project, published in 1980, was an attempt to codify the securities laws. People very active in it were Manuel Cohen, Lou Loss, Dave Ruder, Victor Brudney. There also were others involved, lawyers who had practiced in the SEC field from private firms.

As a result of that, we were in a program at the New York Stock Exchange, for their members, regarding the securities code, and I got to know the people from the Exchange. I became an inaugural member of their Legal Advisory Committee. I served as its chairman twice, and I'm still an ex-officio member, not quite emeritus. [Laughter] I'm on their Nominating Committee. I also was a consultant to the ALI Corporate Governance Project which came out in 1992.

I should mention this. Incidentally, regarding army service, since I'm listing all these things in response to your question. I'm proud of the fact that I was in charge of intelligence and security at the Potsdam Conference at the end of World War II. Incidentally, there's another thing. I was given an award just last year, you were probably

at the meeting, I don't know, by the ALI ABA Conference on Life Insurance Projects, reflecting the work I did in the early days in that area. They awarded me a lovely crystal object, which has these words at the end: "In appreciation for extraordinary contributions taking variable insurance from paradox to paradigm." I thought that was rather nice. Dick, I suppose that's about all I have to say.

RP: I have a follow-up question.

MK: Sure.

RP: How would you compare the commission during your tenure there and today or in recent years when you've had contact with it? What's changed? What's changed for good? What's changed for bad?

MK: Well, there's been a growth pattern you have to consider. We were largely, in the earlier days, certainly in the development stage. Later on when I got out of the army and came back to Washington, it started to have more of a feel of a large law firm. I think that's the way I would characterize the way I have viewed the commission since then, extremely competent people. I still have the highest regard for the people there. I don't always agree with the things they come out with. Some of the points are arguable. But highly competent, and I have the highest regard for them.

RP: Has the *esprit de corps* changed?

MK: I can't say that, because I'm not there. I'm not there.

RP: Any other thoughts or memories you'd like to share with us?

MK: Well, I've mentioned the fact that there was a long line of highly competent general counsel.

RP: Right.

MK: There was a long line of highly competent commissioners. I didn't know Joseph Kennedy, so I can't say much about him. But Jerome Frank—to me, as a young fellow out of law school, I was dazzled by him. I think it's also important to remember how many commission staff members became commissioners ,Ted McCormick, Manny Cohen, others, Irv Pollack. I think that was important. I look at the present commission with a great deal of respect, but I don't know the ins and outs as much as I did in the earlier days, so I can't really draw a true comparison.

RP: Any other thoughts or memories?

MK: I think that about exhausts my memories.

RP: We thank you very much, Mr. Kroll. Thank you.

MK: You're welcome.

RP: Today is September 13. The interview started a little after 11:00 a.m. and it now ends at 12:00 noon. September 13, 2001.

[End of interview]

INDEX

Adams, Clarence H. 16
ALI Corporate Governance Project 18
American Law Institute 16
Bane, Baldwin 6
Bill, Arthur 17
Boros, Joan 17
Brudney, Victor 18
Canadian Extradition Treaty 2, 8, 9
Cohen, Gary 17
Cohen, Manuel F. 3, 14, 18, 20
Cook, Donald C. 2, 16
Davis, John F. 4
Demler, Ralph H. 2, 4
Empire Ordnance Corporation 12
Empire State Building 18
Foster, Roger 4, 14
Frank, Jerome 2, 20
Freeman, Milton 3
Freedman, Walter 17
Haley, Judge Robert E. 2, 17
Jackson, Andrew 6
Kaiser-Frazer-Otis Company 8, 9
Kelly, Russ 9
Kline, Robert E. 3
Kroll, Milton
- accepts job with Brown Lund & Fitzgerald 17
- and accomplishments in the army 18
- and assistance to the War Department 10
- and Canadian Extradition Treaty 2, 8, 9
- and departure from SEC 16
- and establishment of Freedman Levy Kroll & Simonds law firm 17
- and inquiry into the Empire Ordnance Corporation 12
- and salary paid in 1940 1
- as consultant to the ALI Corporate Governance Project 18
- as consultant to the American Law Institute 18
- as inaugural member of NYSE Legal Advisory Committee 18

Lane, Chester T. 3
Lauerman, Tom 17
Levy, Arnold 17

Loss, Louis 2, 4, 9, 15, 16, 18
McCormick, Ted 6, 20
McDonald, Harry 2, 15
McEntire, Richard 2, 8, 16
New York Stock Exchange 18
Odenweller, Charles 9
Panarites, Peter 17
Pollack, Irving M. 3, 20
Potsdam Conference 18
Public Utility Holding Act 14
Purcell, Ganson 2, 12
Rossbach, J. Howard 16
Rowen, Paul R. 16
Ruder, Dave 18
SEC
- and Canadian Extradition Treaty 2, 8, 9
- and development of registration process 6,10
- and War Department 10
- post-World War II issues 12, 18
- pre-World War II 5, 10, 12
- pre-World War II issues 5
- salary paid in 1940 1

Schenker, David 17
Simonds, Gerald 17
Sporkin, Stanley 3
Timbers, William 5
World Trade Center 17