Securities and Exchange Commission Historical Society
Interview with Orestes J. Mihaly
Conducted on November 12, 2008, by Kenneth Durr

KD: This is an interview with Orestes Mihaly on November 12th, 2008 in Armonk, New York, by Kenneth Durr. All right, let's start with a little bit of background. We don't have to do the full, "I started out as a child," but I want to get a little bit about your education and how you got pointed in the direction of this career.

OM: I went to NYU, Washington Square College, and after graduating from Washington Square College, I went to NYU Law School. After getting into law school - at that time it was very difficult finding any kind of position! The graduates were really suffering from lack of placements in any kind of a legal firm.

KD: Was this the mid-50s we're looking at?

OM: Yes, it was probably – '55, actually, something like that. I was fortunate enough to get a placement through the school and they referred me to the Attorney General's Office, and I was appointed a Special Deputy Attorney General or something like that for a year.

KD: So you're on the staff.

OM: I'm on the staff of the Attorney General's Office. And at that point, Jacob Javits was still Attorney General. And during that period of time, I also was taking the Bar exams because I wasn't really admitted to the Bar at that point. Then I took the New York and Connecticut Bars and passed them, thank God, and then eventually worked my way up to becoming Assistant Attorney General, and so forth and so on, and I stayed there from 1975 to 1997.

KD: What size was the staff when you came on? How many people are we talking about?

OM: Well, in the Securities Bureau, there were about six or seven lawyers, and four or five accountants, and the Bureau Chief and myself. It was something like that.

KD: Who was the Bureau Chief?

OM: John Kelly was probably the first one that was the Bureau Chief. He didn't last long. He ran for judge and became a judge. And then there was Sid Tartikoff. Sid Tartikoff was a very nice old gentleman, and he became ill, and he left in about two years or so. And then Carl Madonick. Carl Madonick was a younger, vibrant sort of guy, and he became the Bureau Chief and lasted until after the Lindsay election. John Lindsay ran for mayor, and Carl was very active in his campaign, and actually, so was I. Carl became a Commissioner of Housing or something like that, and he left. So then Dave Clurman became the Attorney General in Charge in the office, and Dave stayed until I took over

and became the Assistant Attorney General in Charge of the Bureau of Securities, and that's the timeline.

KD: Sometime in the mid-70s, I guess?

OM: I became Bureau Chief, let me see, 1975. I was appointed by Louis Lefkowitz.

KD: It sounds like you did a one year sort of internship deal or something like that. Did you go right into the Securities Bureau then?

OM: Yes I did. That's where I started out, in the Securities Bureau.

KD: What was it that prepared you for that? Why did they put you in there?

OM: I have no idea. They probably thought that there was a need for some young man to shuffle the papers around a little bit. But actually—my first assignment in doing that was—no, this was later, a different time period. I was going to refer to listening to wire taps, but that came later. I started out just doing things, and sitting in on hearings and actually watching the accountants, they didn't have ways that they do their checking of the accounts now. They used to have the books. You brought the books in from the boiler room, and you put it on the desk, and you went through every entry in the books, and the ledgers and so forth and so on. It was a tedious job! And the accountants were well versed in how to find out what was wrong with what they saw in the books, so to speak. There were some great accountants at that time. Barney Abramson was one of them, and Abe Pass, a guy named Al Gombar. They were fantastic people who deciphered what was wrong in the books of a broker, particularly a small broker. It was usually a small brokerage firm, so-called boiler rooms.

KD: So you got introduced to boiler rooms pretty quickly.

OM: Right away.

KD: How did those typically come to your attention? Did you go out and find them, or was this all complaint driven?

OM: Well, it depended on what the time period was. Probably early on, it was complaint driven. And later on, we became more aggressive in these things and knew where to look for them, so that's the way it turned out to be.

KD: Tell me about some of the early experiences. I'm sure that when you were young and you're first doing this, some of them must've stuck in your mind.

OM: One of the earlier ones when I was still a young member of the bar, I first came into the office and John Kelly had a case involving the Alaska Telephone and Telegraph Company. And there was a fellow by the name of Walter Tellier, who owned a couple of brokerage houses out of Hartford, Connecticut. Our office decided to prosecute or to

look into his operations, and they actually sent out Kelly and Casagrande, the accountant, to the West Coast where the information was with respect to the AT&T telegraph company, supposedly, in Canada.

KD: So you're looking at the securities they're issuing.

OM: I was a young guy then, John Kelly told me that I had to interview witnesses for the trial - the people who had bought the stock and were wiped out because it was a fraud. So I proceeded to call people in and interview them. And one of the people that I was able to interview was an old Scandinavian fellow who was a tugboat captain on the Hudson River. He had a daughter or a sister who was crippled, and he was supporting her, and he had been hoodwinked by the boiler room salesmen into buying this particular stock. So, naturally, I thought, using my wealth of knowledge at that time as to what would be a good witness in this particular case, I decided to recommend that he become a witness. The judge had limited Kelly to only having two witnesses of that type to testify at the trial. This was not a criminal trial. This was a trial for an injunctive relief.

I told Kelly when he came back, and he said, "Good work," and that he was going to put him on the stand, and he did. The guy was fantastic and proceeded to tell his story and how he was hoodwinked, and about his cousin or his nephew or niece of whatever it was - how she had been damaged by his investment. The attorney for the defendant, as Kelly walked back to his seat, said, "Where did you get that guy?" As a result of that testimony, to a great degree I think, we did get a verdict for an injunction. And, actually, the judge only allowed for, I think, a five-year injunction. In those days, there were permanent injunctions and less than permanent injunctions. And this particular case, the judge ruled a five-year injunction. When Tellier came in with his lawyer to sign the papers consenting to the injunction, Tellier said, "I got this coin. Now let's flip the coin. Heads it's five years; tails it's a permanent injunction." Naturally, Kelly refused,; he became only subject to a five-year injunction.

KD: Yes, I can't see any reason why he would've taken that.

OM: [Laughter] yes.

KD: So you got as close as you could to widows and orphans. I guess that's the point when you're going out and looking for people.

OM: Right.

KD: That gets to making a case. Was this a difficult thing to do at that point? Was it hard to get sentiment on your side when you're prosecuting some of these people?

OM: In my early days, I was more concerned about my being able to get across to the jury that what I was saying was worthy of their concern. And, actually, we were not trained too well. We were neophytes, or at least I was a neophyte. And some like Kelly, he was a more mature attorney, left the office to become a judge. I was just a 27-year old guy or

something like this, so I certainly didn't have any training in trial practice, let alone a criminal prosecution. So you sort of felt your way around and asked the Assistant D.A.s how to do this, and what to say, and how to sum up, and it was trial and error, so to speak, and it was kind of difficult.

KD: I would think that you would've left some of that up to the D.A. and the assistant D.A.s.

OM: Well, depending on who the Attorney General was. If the Attorney General decided that he wanted his office to take the case under the Martin Act—the Martin Act statute in New York provides that the Attorney General's Office has direct criminal prosecution powers. And so if the Attorney General, who is usually running for office sometime in the future, and wants his name to become known in the press - one of the ways to become known is to have cases brought, and headlines returned that says such-and-such Attorney General's Office put somebody in jail. That was the main thrust of having the office prosecute people.

KD: You were working for Lefkowitz, at this point?

OM: Probably, at this point, Lefkowitz, yes.

KD: Would he step in and take these things when you got into court sometimes?

OM: No, not at all. No. It was all the Bureau Chief, whoever the Bureau Chief might've been - it would be me or one of the staff of the Bureau that would be prosecuting. Lefkowitz or Abrams would certainly be knowledgeable of what we were doing and encouraging us, but they didn't go into the court.

KD: Well, what's involved in busting a boiler room? Did you actually go in like Elliott Ness and *The Untouchables*?

OM: In some cases we did. We went in there with either process servers or police. At different times, we had actually state police assigned to our bureau, and they would participate in any raids that we made. One of the most significant cases involved Mineral Resources Corporation. This was after many years of uranium mines and things such as that where the boiler rooms were selling, interest in uranium mines. But they sort of ran out of the uranium business, and they figured that they were going to come up with something new. They came up with a precious metal that was lithium or something, that was supposedly in cans. And you bought an interest in these cans of—

KD: Tantalum?

OM: Tantalum. That's what it was! We knew that this boiler room was particularly doing this - solicitation of investments in tantalum and we knew where the boiler room operation was. It was off lower Broadway on a side street. We had several policemen and women, and went into the place and arrested them, took them out in the paddy wagon, literally in the paddy wagon, and took them down to the jail house.

KD: So what would you find when you went into this place? Did you walk in the front door? Is it just a place of business like any other?

OM: I didn't participate in going into this particular one, but I did others. And, yes, you just walked in and asked for the manager - identify yourself, tell them that "we're here to serve subpoenas, or we're here to put you under arrest." Usually one of the two. Usually, with the arrest situation, we would have the police with us that would enable us to actually make an arrest and do whatever was appropriate with respect to that.

Going back to the tantalum situation, there were about 35 people that were taken out in the wagon at this particular point. They were arraigned in night court in the building where the Tombs Prison is in lower Broadway - next to where Lefkowitz's office used to be. It was a wild scene. My two deputies were representing the people, and I was in the court also as well as the attorneys for these 35 people. As the Assistant Attorney General would make a statement, all of the other people in the courtroom, the defendants, would give out a moan—and then on the other hand, if their lawyers would say something, everyone would be clapping. It was like a scene out of Dickens. It was just incredible. They eventually were held for bail, and they got out on bail, and the trial came. It was probably the longest-ever trial in the history of prosecutions of boiler rooms, of securities frauds. The trial took about seven or eight months.

We had determined that we wanted to make sure that the individual salespeople would know that they were also going to be subject to criminal prosecution. Prior to that, it was very rare that the salespeople were criminally prosecuted. Maybe the owners were, but not the salespeople. We said we were going to eliminate boiler room operations by getting the salesmen to know that they were going to be subject to prosecution. That was the tactic that we had. Therefore, we had to have this trial, which included not only the owners of the boiler room, but the 35 other people that were involved in it. And each of them had their own lawyers. The defense—the boiler operators had their lawyers, and basically, almost each and every one of the other salesmen had their own. You can imagine what this looked like in a courtroom. It was like the Nuremberg trial.

KD: And you're trying to make the case against every single individual?

OM: Yes, absolutely. There were several incidents that took place that sort of jammed up the trial. One involved an attractive-looking woman who was one of the salespeople who was indicted and present in the courtroom. She and one of the jurors, I guess, were making eyes at each other. It became known to us, and so we had to dismiss the juror. It was really a fantastic situation. It took about, as I say, close to eight months to come to the end of the trial. It took a long period of time to make summations, not only from the prosecutor's side, but from each and every of the attorneys, having their own summations. And then they had the deliberations. And, naturally, the jury went out and the deliberations lasted for two weeks because you could tell basically, how the jury was going through the deliberations. You knew that they were coming down to the end of the line, so to speak. We knew that the owners of the boiler room seem to have reached. We

knew they were getting down to the final person, whoever it was. We didn't know who it was. So at that point, it was like late in the afternoon, and we knew that there was going to be a verdict pretty soon.

And so everybody in the courtroom decided - there was one particular place where everybody went for a drink, the defense counsel, the prosecutors, everybody. And probably when we came back to court, the only one who probably was sober was the judge and the court stenographer, to one degree or another. And of course, we got a verdict of guilty on all counts.

KD: Wow. We never talked about what, exactly, the fraud was. They were selling, they were calling people up and selling them shares of tantalum, right?

OM: Actually, cans of tantalum. Yes.

KD: Cans of tantalum. So they're selling commodities, I guess.

OM: That's what they tried to allege that that it wasn't a security. We beat that down, and we were successful in doing that.

KD: So did the tantalum not exist? Is that the deal?

OM: It existed, but it was scrap. It wasn't worth anything. It wasn't worth anything at all. I also must point out that we were very much helped by the U.S. Attorney's Office, who also had an investigation going, and they had actually infiltrated the situation. They had actually spoken to the chief salesperson. They got him to admit in an undercover operation with a wiretap and everything, to very damaging evidence. I won't go through the exact English of it, but it was pretty graphic. And they actually had that tape, and we asked them to step aside and let us prosecute, rather than they, and they did, and it was very gracious on their part, and we were able to come back with successful verdicts.

KD: How much of your business in the 50s and the early to mid-60s—in your earlier days in this position, how much of your work involved these kinds of boiler rooms, frauds where you're bringing a case, or you're trying to bring a case, and what other kinds of things were you involved in?

OM: Well, besides boiler rooms, we also had the Mafia in the boiler rooms, they actually controlled several boiler rooms, and we were very into that. There was a fellow named Carmine Lombardozzi who was a well-known Mafia figure. Lombardozzi ran several boiler rooms, and he had lieutenants under him. A fellow named Stanley Younger, and others who—James Gray was another boiler room operator that we actually busted too. We went into the office and busted them. Then the SEC also prosecuted, almost simultaneously. Ed Yagerman was the SEC guy. Tim Callahan was his assistant, and they were involved in these Lombardozzi boiler rooms, and they brought their cases in Hartford, and I think Albany, somewhere upstate, New Hampshire, Vermont. And we

went along also to make an appearance in those cases, and we sort of had a cooperative approach with respect to that.

KD: What was it like working with the SEC at that point?

OM: It was okay. There was always a certain amount of jealousy, let's say, who gets to go first, type of thing. But they were pretty cooperative, and we were pretty cooperative with them. Later on in the career, when Steve Hammerman was the SEC guy in New York - he later became the general counsel for Merrill Lynch - Steve Hammerman approached me and asked me whether we could do something together. So we did. We actually picked out a particular case, and we both brought the same proceedings at the same time, had joint press releases, and so forth and so on. That was not the usual case. But there was always a certain amount of rivalry, let's put it that way, rivalry between the prosecutors. And the SEC, naturally, didn't have criminal jurisdiction. When they went up to Hartford or Vermont, they had to go to the U.S. Attorneys up there. We just went ourselves to wherever they went. We were the prosecutor. They were asking for someone to prosecute on their behalf.

KD: Right. If there's something going on in New York and you're watching it and the SEC comes in. What kind of thing would bring the SEC in? Would it be a high profile, a broad scope? What was it?

OM: I'd say probably a little bit of each. Depends on the situation. Sometimes if we knew that they were in a situation, we would back off, and I would hope that they did the same.

KD: Do you remember any instances like that where something big was going on and you were watching what the SEC was doing?

OM: I can't recall at that time.

KD: Now in the 60s, Wall Street starts to crank up a little more, and there's a lot of activity, especially going into late in the decade. It's a real big time as far as securities industry is concerned. Did you see things change along with that economic activity? Did the level of fraud change, or the kinds of things that you start seeing?

OM: I don't think I really recall anything that depended upon the markets taking off. I think that we were always involved with fraudulent and criminal activity. You know, whether it be a small case, individual person, or—I'll give you an example. There was one case where we had a complaint by a person—she was asked to invest in a particular investment. I think it had something to do with Ellis Island. And this particular gentleman, I guess he romanced her too, and got her to invest several hundred thousand dollars in this particular venture. And we made our investigation and determined that this was a complete fraud, that there was nothing to do with Ellis Island, and that this guy was just giving her a load of beans.

So we determined that we would have to get him on the record, so to speak, so we arranged that she would meet him at a particular restaurant, and we put a wire on her. I think I remember the incident, actually. I was sitting outside in the car with a state trooper watching the restaurant, and we had two state troopers outside of the restaurant, and we had one of our female people also in the restaurant. When the signal was given, the guys went in there and they grabbed him. They brought him back to the office. This was in my office at the World Trade Center. The police that were assigned to me were right next to my office, and I was in my office, and they were in their office, and they were taking this stuff out of his pockets and whatever policemen do when they arrest somebody. And during the course of that, I guess the guy tried to be friendly, and he says, "Look it, I got –" and he pushes his eyeball in, and out pops his eye. The girl, apparently, had a diamond placed in his eyeball, fake eyeball, not a real eyeball. And he pulled it out and showed it to the detectives. So that's the kind of stuff you had to deal with. [Laughter].

KD: There's no way to be prepared for something like that.

OM: I guess not.

KD: Well, moving on into the 70s, I know that some of the things you got involved with, well, we were talking about tantalum, and one of the things that happened when inflation started to hit, people were buying metals, people were buying all kinds of things to hedge against inflation.

OM: Well, there was a lot of gold being sold. That's, maybe, what you're talking about. Or maybe—

KD: Silver, things like that.

OM: Gold and silver. For instance, we had these fellows who were down in Florida. The name was Gold Bullion Exchange. I think it was International Gold Bullion Exchange, I-G-B-E, IGBE. It was in Fort Lauderdale, Florida, and they had this huge skyscraper with a big sign, IGBE, and they advertised in the newspapers, the *New York Times*, all over the country about IGBE, and buying the gold and silver. And we saw this going on, and we hadn't gotten many complaints about any inappropriate activity, but we figured there was something wrong with this.

KD: You saw the ads?

OM: Oh, yes. We saw the ads. In the newspaper, the radios, everything. It was a big operation. So we had them come into our office to discuss this matter with them, and they came in with an entourage, actually. I don't think there was a lawyer involved, but they came in by themselves. The head of the operation, whose name I forget at this particular point, and he had two or three other people with him, and he had this one particular good looking young guy, and he was seated in my conference room, and the guy tells me, "You see that guy over there?" I said, "Yes." He says, "He's going to be the

President." I said, "Oh, that's nice. You've got someone to take your place when it's time for you to go?" He says, "No, I'm talking about the United States. He's going to be the President of the United States." In all seriousness. I could tell at that point that these guys were high on drugs. Absolutely high on drugs. And they were just amazing, what they were doing.

And so we were trying to get the people down in Florida, the prosecutors down in Florida. I went down there and tried to convince them that they should carry the ball. This was a Florida operation, and to no avail. We finally had to indict them in Westchester County, and by that time, the Alderdice boys were less one. He was put in jail, and then he got out of jail and he committed suicide. A couple of brothers were involved. One, when he came into the office, I was reading him the literature that he had put out, and I said, I said, "Is this—you see this? Is it true what it says over here?" He says, "Yes, it's true. Yes, it's true." It turns out he didn't know what I was saying because he was blind. He couldn't even read his own literature.

KD: So again, you've got people who are selling shares, or saying we've got a warehouse full, and you want to buy X pounds or something like that. And we'll keep it for you.

OM: Right.

KD: Did you ever wonder about the folks who bought into things like this, where they're giving somebody lots of money to keep something for them for months or years?

OM: Unfortunately, that's a very common occurrence. I mean, I'm sure that is happening today, especially when you've got the economics of the situation today. It's probably rife for boiler rooms and others to make pitches about some unusually-good investment that can be proof against anything going wrong in the economics of the situation. You've got a special kind of investment for that to handle this downturn in the market. I'm sure they're out there doing it right now.

KD: You had a counterpart, or there would've been a state securities regulator in Florida that you would've spoken to about this Alderdice situation.

OM: Yes, we did.

KD: Would it have been unusual for this person, the securities people down there to just turn a blind eye to this, or was that something that happened pretty regularly?

OM: I wouldn't call it a blind eye. I think that the securities regulator in Florida is part of another office. It's Department of Commerce, and they didn't have the kind of authority and the hands-on ability to do something about this. It would've been probably impossible for them to do it. The prosecutors down there, the federal prosecutors, or the state prosecutors, they certainly could've put a handle on that rather quickly, but they didn't do that for whatever reason, I don't know. We went down there, and I was the chief person to go down there and try to convince them that this had to be done, and they

just didn't do it. And so, finally, we had to do it. We had to indict them up here, but it was happening down there.

KD: Let's talk a little bit about that, the idea of New York having this different situation, the idea that your securities people in New York could actually go in, and you had some teeth. I guess the Martin Act is behind all of this. Is that right?

OM: Correct.

KD: I've read about merit states, and talked to folks about merit states and other forms of regulation, but there seems to be a consensus that New York is out here all by itself with the Martin Act and is somehow different. Can you tell me a little bit about that, about how New York State, compares and contrasts with some of the other state regulatory regimes?

OM: The Martin Act is actually sui generis. It is all by itself, so to speak. It has direct criminal prosecutorial powers. The Attorney General does not have to ask anybody, any federal prosecutor, any state prosecutor, to go into a criminal situation, go into a criminal court, to go before a Grand Jury and seek an indictment, a prosecutor's indictment in a local court. That's a tremendous amount of power that the Attorney General in New York has with respect to securities fraud prosecution. No other state has that, as far as I know. And there may be a state where the state regulator can go and ask the prosecutor to do something, but that's different when we are the prosecutors and we determine that we're going to do it. So it's that direct power that we have that made us pretty powerful and pretty good in making significant cases because we had this direct authority.

KD: Did you have the ability that a merit state would've had to look at a prospectus and say, "This is no good. You can't sell stock in this thing?"

OM: Well, intrastate offerings. I think we finally got that kind of jurisdiction. But, generally, that was not big problem. The big problem was the boiler rooms, the outright frauds. Not some where you had to determine whether a prospectus should've said X rather than Y, and did you cross the "T" here and cross the "I" there or whatever. We weren't interested in that sort of thing. Real estate, however, was a different. There was a time when real estate ventures became very troublesome. And that's when we prosecuted real estate frauds. And eventually there were some real estate requirements that were put into the Martin Act to address that situation.

We were able to go, for instance, we were in the office building, what is now the Louis Lefkowitz office building on the corner of Worth Street, right next to the Tombs Prison and the criminal courts building. We used to go right across the street into the grand jury room and ask for grand jury time and just, you know, make our presentation. And so it was very, it was very easy. We just asked the District Attorney to give us time before the grand jury, and then we carried the ball from then on.

KD: So in New York, you weren't sitting around looking at filings and vetting every securities deal that somebody wanted to do.

OM: Not in general. The real estate syndicate section used to do that. Eventually that came into being, but I was out of the Real Estate Syndication Bureau. That was a separate bureau, and they had their own things to do with respect to some of the filings and stuff like that. Condominiums became a big thing, the sale of condominiums, and how that would be handled. To this day, it's a big industry. The real estate syndication, there's a lot of legalities that you have to go through with respect to the Attorney General's Office. But that was sort of a split off from the Security Frauds Bureau.

KD: Okay. Similar kind of exercise to what other people might've done.

OM: Yes. But they were more involved, less in a criminal posture and more in what the prospectus would say or not say, and how they carried out what it said or didn't say. If they didn't do what they were supposed to do, then they were brought before whoever was in charge of taking care of that situation.

KD: Right. But in your securities branch, you were looking for criminals, generally.

OM: We were looking for fraud, and if it was a criminal fraud, we wanted to make sure that the message was clear that you couldn't operate without some kind of fear in New York City with respect to your fraudulent activities.

KD: So that was the theory behind regulation in New York, to show everybody that we're serious, we mean it.

OM: Yes.

KD: What's the difference between criminal fraud and non-criminal fraud? You made that distinction.

OM: If a person says, "Well, you should get 50 cents on a gallon of gasoline, and this will be 55," maybe it's fraudulent, but it's not criminal fraud. I don't know if I've answered your question or not.

KD: I can see where there would be shades of gray.

OM: As a prosecutor, if you didn't feel that this person was subject to going to jail, that what he did wasn't that bad, so to speak, then it wasn't a criminal fraud. Maybe that's the way to put it. But if he said something that was wrong, but it wasn't purposeful, it wasn't that he definitely wanted to confuse somebody and to take this money away from them, that's a different story.

KD: Yes, a little too much salesmanship, you don't want to put somebody in jail for that.

OM: Right, that's exactly right.

KD: Yes. Well this makes sense then in light of what you said earlier about when you were doing, I guess it was the big case. You had decided to prosecute every single salesman.

OM: Correct.

KD: Because you wanted to send a message.

OM: Right.

KD: Did that work? Did that message get heard, and did boiler room activity slow down?

OM: Absolutely! Absolutely! After that period of time, there were no boiler rooms in New York State, in the city or usually in Long Island. They flew the coop, so to speak. They really did. We attributed it to that criminal prosecution of not only the principals of the firm, but also the individual salespeople. The salespeople were not going to take that chance that this guy was telling them that this is right or wrong, that he's going to go to jail if the guy was wrong.

KD: What are the chances that they went to Connecticut or New Jersey?

OM: There were boiler rooms in New Jersey, yes. But at this particular point in time, I don't remember whether they ceased operation in Jersey also because of our prosecution. I don't think so. But they certainly stopped in New York State, as far as I remember.

KD: Yes. That was your major concern, I guess.

OM: Correct.

KD: That gets to the whole issue of states working together instead of separately. I wonder when you got involved with any state securities group. I know NASAA came along—well NASAA had been around for a long time and started to get active in the 70s. When did you start to get involved?

OM: Well, I'd have to look at my calendar to find out exactly when I got involved, but I could recall that when I was appointed Bureau Chief, and I think—

KD: And that was in '75.

OM: Somewhere around there, yes. Someone must've called me up from NASAA, and they asked me if I would be the treasurer for NASAA. I knew what NASAA was because my predecessors had gone to their conventions, usually in Mexico or some nice place like that. So I knew of the existence of NASAA, and they asked me if I would become the treasurer. So I says, "Yes. What does it involve?" And they said, "Well, not that much." He says, "You got to collect the dues or the fees from each individual state regulator and

put them in the bank account and that's about it." So I said, "That sounds pretty easy," so that's what I did. There were 50 states, there was $100 a year for the dues, so I collected 100 times 50, which was $5,000. That was the NASAA treasury. I was the treasurer for one year. And then I dropped out of it. I just wasn't a treasurer any more. But, of course, NASAA became big when they devised the Uniform Salesman's Exam and that sort of thing. Then the fees in connection therewith, and then, of course, the treasury got to be quite substantial, to this day [laughter]. Now they don't have one state administrator collecting $100, but they have many thousands of dollars, and they have a big office in Washington, D.C., and God bless them, they're doing okay.

KD: And it's based on the fees that are—

OM: Generated by the Uniform Salesman's Exam.

KD: Things like the Uniform Salesman's Exam, was that a welcome development in New York State? Had you been administering your own exam up to that time?

OM: No. We didn't have any exams at all. That came in with the new regime. Everybody has to take the Uniform Salesman's Exam now, including New York.

KD: There was no New York exam?

OM: No. No, not at all. There was no salesman requirement until later.

KD: So anybody could sell securities in New York?

OM: Correct. There was no licensing requirement for salespeople when I first started. Eventually, it came.

KD: Right. I mean, seeing as how this is a pretty generally-accepted thing elsewhere, was there ever any thought of doing that in New York State? Of licensing securities dealers?

OM: Well, certainly not licensing the salesmen. I think the dealers, there was a routine sort of a paper filing of who was selling securities at the state, but it wasn't too well enforced.

KD: Okay. Well, once you became treasurer and you're a fellow state securities regulator with these folks, did you become active in NASAA and begin to serve on committees?

OM: Later, later on I did. Yes. Later on, I did become active, yes. I was the treasurer, I was a secretary—I was on the board for several years. I was the chairman of some committees. I think I became relatively quite active. I think that we did a good job as far as that's concerned. I was in at the beginning of the burgeoning of the regulation of securities on a national statewide basis, and we had some good people there in the office.

KD: Well, this was, essentially, a way to bring ideas together and share ideas. Is that right?

OM: Yes, it was. And it was a lot of young people there who were very interested in protecting the investing public, and they did a good job. We did a good job.

KD: Yes. Because New York State's so different, probably the majority of those folks at NASAA were looking at things like the merits of an issuance and things like that. Because New York's so different, what kinds of things were you able to bring to NASAA, and conversely, what kinds of expertise could you bring away from NASAA?

OM: Well, I would hope to think that our criminal prosecutorial powers and the way we implemented them was a benefit to my NASAA colleagues who did not have that kind of direct ability, and I think that we had different venues where we discuss things like that. I think that, gradually—maybe I'm incorrect but I think gradually, they themselves have sort of leaned towards criminal prosecution. Maybe they couldn't do it themselves, but they have, I think, a better feeling of going to the appropriate prosecutorial agency to enforce their laws as much as they possibly can in the criminal sense.

KD: Yes. I know for folks that I've talked to, that has been the case where there have been certain issues where they've decided that they were going to take it on, and they get with prosecuting attorneys.

OM: Correct. I think that's been a great step forward as far as that's concerned with respect to state regulation in general. And I think that what we sort of mirrored or gave to them in our interaction with them, even though we weren't a merit state or a state that relied, basically, on the filing of papers, etcetera, and full disclosure and that kind of stuff. We were more into criminal prosecutorial, and also in a civil prosecutorial injunctive relief sort of things. But I think that they sort of learned a little bit, at least, from us. And, of course, subsequent to my exit from the state scene, of course, I went to work for Merrill Lynch, and tried to present the problems of the industry with respect to state regulation. I mean, I now had a different viewpoint of what state regulation should or should not be, I think, without trying to avoid the ability to prosecute appropriately those who need to be prosecuted.

So I think that I did take that stance when I was with Merrill Lynch, to try to bring that forth to the NASAA community that there are things that are not necessarily true with respect to how you could—there's a difference between regulating a boiler room, and regulating a legitimate firm because you'll find that the legitimate firms, they are in favor of good prosecution of criminals in the securities business. And they want to make sure that the public knows that they are a legitimate operation. Merrill Lynch wants its customers to know that it's a legitimate operation. Not to say that, occasionally, you'll find somebody who goes off the beat. But the focus of the legitimate firms on Wall Street is to be good citizens and do the right thing, and not commit fraud. I was there to try to indoctrinate that, or to bring that forth to the state regulators when I took my position with Merrill Lynch.

KD: So they brought you on to sort of talk to the state regulators and establish communications.

OM: Establish communications, and to bring things to their attention that I thought needed to be brought. NASAA instituted this procedure of having an ombudsman where the industry, presumably, would come to the ombudsman and complain about some particular thing that was not being done correctly, or was overboard or whatever. So I would, naturally, attend these ombudsman meetings and put all of my complaints on. It was a very interesting experience.

KD: Now this is like in the last 10 years or so?

OM: Yes, yes, yes.

KD: How would NASAA respond to this?

OM: With respect, I hope. [Laughter].

KD: Yes. Did you ever see any, you know, "Yes, sir, we'll see what we can do," and see something actually—

OM: Oh, yes. I can't remember exactly what it was now, but yes, there was give and take there, and it was appropriate.

KD: I want to come back to that a little bit, but I want to catch up on some of the things from your career as a state regulator too. In the 70s, you had the Williams Act, and late in the decade a lot of corporate takeovers. I know a lot of the state regulators were pretty involved in the whole issue of hostile tender offers, and looking at takeovers. I saw somewhere that you had actually helped to draft a takeover disclosure act in New York State. Do you remember anything about that time and that issue?

OM: Yes. Takeover disclosure was a pretty hot issue. I don't know if I drafted a bill for New York particularly, but I think it was a model draft of state takeover statutes.

KD: That's something else I want to get to too is that whole model draft idea. Tell me about that and what the point of that was.

OM: I have some difficulty recalling the specifics of it, but I know I was the chairman of the committee. We had a bunch of fellows, I think maybe some ladies too, who went to meetings and drafted what we thought would be an appropriate takeover disclosure act, which was, at that time, subject to a lot of criticism if not really attacks to completely obliterate the necessity. I think that we were trying to get in between and resolve some of the differences so that there wouldn't be a complete disappearance of a takeover disclosure situation. And I think that, finally, it just went its way, right?

KD: Right. The Supreme Court struck down one of the—

OM: Struck it down. *Edgar vs. MITE*.

KD: Right, right. Illinois.

OM: I was involved in drafting some of the proposals that NASAA had with respect to the *Edgar vs. MITE* case.

KD: I don't know if you remember, but how much of that discussion had to do with the SEC and what the SEC was doing at that point?

OM: I think it was a lot. I think that we sort of felt, and maybe I'm wrong, but I thought we thought that we were on a different side than the SEC with respect to that. I think they were on the other side.

KD: So the idea was that you would draft this model legislation that other states, supposedly, could adopt.

OM: NASAA had its individual committees, and one of the committees was the Takeover Disclosure Act Committee, and I was the chairman of it, and the purpose was to propose model legislation, and that's what we did.

KD: Did you do that in other areas too? I know you were on a number of committees over the years.

OM: Yes, I did, but I don't know if I can tell you that offhand. I think that financial planning did come up sort of out of the blue, so to speak. All of a sudden, I was getting calls from different societies and groups of financial planners and so forth for me to speak at different events and so forth and so on. I remember having vigorous arguments with some of them, and some of them not too vigorous. So there was quite a bit of activity going on in that connection, and I did become at one point the head of the financial planning committee for NASAA and probably proposed some sort of a model statue or regulation. I don't recall exactly.

KD: Was there any sense why this had suddenly become a big issue?

OM: Well, because I think part of the financial planning thing was also fraud. As a matter of fact, I'm starting to recall that we had a big financial planning prosecution up in Albany, which involved financial planners. Our staff spent a lot of time up in the Albany area prosecuting that case.

KD: One of the areas of emphasis for other people was to license these guys, to make them take exams, etcetera. And I don't know, maybe that was part of the NASAA recommendations. But again, in New York State, I guess you wouldn't take that approach. Is that right?

OM: Probably not, yes. But it probably would've been okay for most of the states to make sure that the people were appropriately licensed, and they knew what they were doing by

educational means. A lot of these so-called financial planners were nothing but thieves. And I think it was the first Meridian case, that was the case, I think, that involved financial planners in upstate New York. That's my best recollection.

KD: Well, here's a bigger name. E.F. Hutton. That's another one of those incidents from the 80s. Do you remember much about that particular case?

OM: Oh, yes. I do remember something, yes. The problem was something to do with how E.F. Hutton deposited its monies into the West Coast account, carryover to the East Coast, and they made a couple of points on the way they did it, type of thing, and I remember going with Dan Bell, who used to be the Securities Administrator in North Carolina. Incidentally, Dan is a very knowledgeable young man who you should talk to. Anyway, he and I went to meet with the U.S. Attorneys Office, and one particular fellow there who had investigated and was, I think, was in the process of prosecuting E.F. Hutton.

KD: This is in New York?

OM: No. This was in Pennsylvania. Dan and I went out to find out what the story was all about, and I think he did eventually prosecute him. And, actually, that led to their demise. Of course, once a major firm or any firm is indicted and eventually found guilty of investor fraud, he's out of business, either legally or otherwise. And that's what happened to E.F. Hutton. They just went down the tube as a result of this unfortunate practice that they had. It was a pretty substantial, well-known firm.

KD: Yes.

OM: I guess there must've been some hard reasoning on their part of how to handle this indictment. That's what it was. They were indicted in the Pennsylvania court. And, of course, if they ever were found guilty, they would automatically lose their license. And, I guess, the indictment was enough to send them into the doldrums.

KD: So were you thinking about getting NASAA involved in this now?

OM: NASAA was involved in that, yes.

KD: In what way?

OM: There was a committee formed about E.F. Hutton. Yes, as a matter of fact, I participated in that, and we went down—there was a well-known southern figure who was in charge—who was hired, maybe, by E.F. Hutton to help them out in their problem. Anyway, there was a big meeting where this was discussed, and the NASAA people were there. I can't remember the name—it was a very well-known name, but I can't remember it—from Arkansas or somewhere down there. Anyway, Hutton went under.

KD: Well, this gets to—we were talking earlier about the gray area that you would encounter.

E.F. Hutton was doing these overdrafts. They were doing bank overdrafts. It's not like they were necessarily defrauding investors or anything like that.

OM: Right.

KD: So I guess there's some question there, if they're not defrauding investors, why are the state securities regulators looking at them? I wonder if that question came up.

OM: I don't think it was only the state regulators that were looking at them. I think the SEC was probably looking at them also, I would think. I'm pretty sure they were. In either event, it was bad news for E.F. Hutton no matter what they did.

You got to understand that a legitimate firm where something happens when one particular aspect of its existence and somebody does something wrong, and a regulator takes action against them, it's pretty disastrous. You can see a boiler room going out of business, but it's kind of hard to take—a lot more people are involved when you have a legitimate firm, and that legitimate firm goes under, there's a lot more people that you have to consider whether that's the appropriate way of handling the situation. So the regulator has to be careful as to how it handles legitimate firms, because legitimate firms have its tentacles all over. If somebody does something in Kalamazoo that's inappropriate, that could lead to their whole demise. That's not the way to go. There's got to be some answer to that.

KD: Did you have discussions like that in your office where you're looking at some example of wrongdoing and you're saying, "But wait a minute, this is a bad apple way over here, and they put a lid on it right away," or whatever?

OM: Yes. I hope that I felt that way and I acted that way, yes. I wouldn't take action against a brokerage house and then put them out of business completely if it was limited to some one person or some particular office or something like that. I mean you had to take everything into consideration. And some regulators recently, have not had that capability of really realizing the implications of going against a legitimate firm for something that some part of the legitimate firm may have not done correctly. It's not appropriate, in my opinion, to put the whole firm out of business, whether it's by legal action or by just the implication of making it sound like this is a terrible firm because of what was done. Do I make sense at all?

KD: Yes, yes. Well, given the authority that the Martin Act gives you, or gave you, it seems like you do have a heck of a lot of responsibility.

OM: That's exactly right.

KD: You've got a big hammer, and you've got to be careful how you use it.

OM: Yes, and you got to know how to hit it, right. You don't want the nail to break when you're hitting it with the hammer.

KD: Right. Did you ever wish that you had some smaller instruments than just your big hammer?

OM: [Laughter]. Well, there are. You know, there's consent injunctions and that kind of stuff. It depends on how it's brought to the public's attention too. If you say that X, Y, Z Company did this, and did that, and did this, but the only thing that the regulator did was do this, a little tiny bit, but everybody knows what was said in the newspapers. And they're going, taking that stuff out of the company.

KD: Right.

OM: I don't know what the answer to that is, but it's got to be on the table, so to speak. When a regulator wants to do something, he's got to realize what the extent of his powers are and not just go for the headlines all the time, even though I certainly did that in my day, go for the headlines, but I hope that I didn't do it inappropriately.

KD: Yes. I guess you were looking at some desired effect, like making salesmen decide not to take jobs with boiler rooms, things like that.

OM: Yes, yes.

KD: And you had the criminal where you would bring, you would bring people to court and try to send them to jail, but you also had this injunctive relief and things like that. Was the criminal stuff in the minority? Was that a pretty small amount? Would you generally bring proceedings and make somebody stop doing whatever it was?

OM: I don't know. I never took a count as to how many criminal proceedings and how many injunctive. I know we had much more injunctive proceedings than criminal proceedings, certainly. Because usually, those were consented to and it was easier to get, so to speak. But you couldn't ask that guy, a person that you wanted to really do a number on to say, "Well, you want to plead guilty to a felony?" Thank you. But if you offered them maybe, a two-year injunction or something, maybe he'll think about it, which we didn't do. We usually didn't. It was either all or nothing at all type of thing. Either a permanent injunction or nothing. That's, basically, what our principles were.

KD: So you seldom had these two-year injunctions.

OM: Seldom. Yes, yes. Right.

KD: I remember reading about a case, and it might've been in one of those news releases, where you had some guy that you served an injunction down in Brazil. And he came back and said, "Well, you know, this is not permanent. This is –"

OM: Charles Stahl. That was an amazing case.

KD: Tell me a little bit about that if you remember. He was Swiss or something like that?

OM: He was certainly European. I don't know if he was Swiss. But he was with Swiss Bankers, I know that. And that was an amazing case. He was sort of like a European mystery man. And he, apparently, had established Green Bay Mining Company, which was listed on the Edmonton Stock Exchange, and he was also affiliated with a company called de Pontet & Company, which was a, supposedly, legitimate firm in New York and Switzerland. All of a sudden, the overnight collapse of Green Bay Mining came about, and there were all kinds of articles in the newspaper. He fled to Brazil, he was coming back, he had a publicist who came, and actually, I went to see—he was coming by airplane back from Brazil, and he was going to make a statement in La Guardia or someplace, and I went out to listen to him and hear what he had to say.

There was a guy named John Van Allen, who was sort of a European mystery man, and he was involved with that. Senator McCarthy, Senator Brewster received stock in these companies. It was a very interesting case. Frank Costello was supposed to be involved with it too, and we called in Frank Costello to testify, and he, naturally, invoked his privilege. He came in all by himself, actually, without a lawyer or anything. Just walked in the door like you wouldn't know this guy from a hole in the ground.

KD: He just stopped by your office?

OM: No. But somehow we got in touch with him, with his lawyer or something. He came in without a lawyer, came in, and we asked him questions, and he refused to answer. And there was nothing else we could do at that point because we were just trying to figure out what his connection was, but we could never prove anything. I remember the other gentleman that was in the office with me. Costello came over and shook hands with both of us. The other fellow went to the sink and washed his hands right away. [Laughter].

KD: So the idea was that he had agreed to an injunction. This guy Stahl.

OM: Yes, Charles Stahl.

KD: And then later on, he contested it.

OM: He did, yes. He was not successful. He started up some sort of a business in Philadelphia, I think, some kind of a Green's Newsletter or something like that, and continued to do whatever he was doing. He always protested that he was innocent of any of the charges.

KD: But as long as he was doing business in Philadelphia, he was okay.

OM: He was okay.

KD: He just couldn't come back.

OM: I think we actually enjoined him, or he consented to an injunction from doing any business in the State of New York, that's what it was, and he tried, I think, to overturn it, unsuccessfully, and then he opened up this newsletter in New Jersey. And then they just sort of lost track of him.

KD: I came across some other ones. I don't know if you'll remember them. There was one called Southwest Chemical and Iron where, apparently, they were selling stock or something like that, and somehow, you found out they didn't have a factory, or they had a factory but there was nothing inside, or something to that effect.

OM: Well, it's very probable, but I don't remember it.

KD: All right. And there's one more, which was you provided some documents that had to do with flying saucers and some sort of scam involving flying saucers.

OM: It had something to do with somebody whose shtick was flying saucers. At that point, I guess flying saucers were the thing, right? I don't remember the details.

KD: It was all about coming up with the right story, I guess.

OM: I think you're right. I think at that point, we had a good story. Working for people who were elected to office, and you had to come up with stories of whether they were, you know, gigantic stories, you know, which involved thousands and thousands of people, or maybe one person who got swindled, that made a good story. And there's nothing wrong with that, you know. The little guy is entitled to whatever the New York Securities Act could do for him too. Put a little pressure on the guy, get his money back. That's okay. You don't have to enjoin him or put him in jail, but just politely ask him, "Hey, give the guy your money back."

KD: When did you decide to retire from the securities group in New York State?

OM: I was reaching my retirement age, I guess, in the Attorney General's Office. I think it was 55. This is an interesting story. I decided I was going to seek employment elsewhere. I went to several places. I went to a headhunter. And she told me that I should go to people that I knew and try to tell them that I was looking and so forth and so on. She sent me to this well-known lawyer who had just become a partner in a major New York law firm, whose name I forgot. He was very well known. Somehow I got the appointment, and he was sitting behind this huge desk, and an opulent sort of place. He had rings all over his fingers, he was just incredible. He asked me what my curriculum vitae looked like, and I came back and I told my wife, "I don't think I'm going to get that job." [Laughter].

KD: Don't have enough rings?

OM: Yes. But then eventually, eventually, the lady who was my head hunter, she said, "You better make sure you've got people that you can say recommend you." I said, "Oh, that's a good idea." I said, so I said, "Well, I got Stanley Sporkin, I got Steve Hammerman," and I named a third person. I forget what. So she said, "Well, you better call them up and tell them that you're going to use their name," which I did. I called up Stanley and Steve Hammerman, who was, at that point, with Merrill Lynch. He said, "Oh, yes, Orestes, that's good. You know, that's good." So meanwhile, in a few days, or the next day, I get a call from one of his associates who says, "Orestes is looking for a position?" So that's how I got the position. Just happenstance, because the lady told me to get some good recommendations, and I went to Steve and got it.

KD: It's all about knowing someone. How did you know Stanley Sporkin? When did you work with him?

OM: We worked with him when I was with the A.G.'s office on several matters, all the time. He was a good guy!

KD: When he was doing enforcement?

OM: Yes. As a matter of fact, we had a case involving the American Stock Exchange. They came out with a press release, I guess it was an article in the newspaper that said, basically, that they had painted the tape. They had put something on the tape that was not true.

KD: AMEX said that they had done that.

OM: The release that they put out stated that, to that effect. I thought that was outrageous. I just couldn't figure it out. Here's this major firm admitting it, basically. I called up Stanley, and I said, "Stanley, X, Y and Z." I says, "I'd like to do something about this. I want to go against them criminally." Stanley says, "Yes, go ahead." He agreed with me. Let me get the story straight here. So we decided we're going to go ahead with it, and we had a wire put on one of our police guys who engaged in a conversation with someone from the AMEX on the street. Exactly how that happened, I don't remember. But when he got back to the office, the wind was so high that it was unintelligible, so we didn't have the proof enough to go for a criminal prosecution, and we settled for something less than a punitive thing against AMEX.

KD: You brought somebody in from AMEX and said here's the deal?

OM: Yes.

KD: What kind of punitive damages—

OM: I've forgotten. I've forgotten.

KD: Okay. Well, that gets to an interesting question. One of the things with the SEC, of course, is that, you know, there's this period in the 70s where enforcement is everything under Stanley Sporkin.

OM: He was a good guy, and we liked him. The states liked him. We used to go with, you know, talking about NASAA conventions and NASAA meetings, every spring time there would be a NASAA meeting in Washington. They'd have the SEC come in and give a talk. We used to go upstairs to the hotel room and play pinochle just for fun, with Stanley.

KD: When he brought this change to the SEC and it's taking a more activist role in enforcement, did that make a difference for you in changing the general tenor within the industry at all?

OM: I welcomed it. I didn't say, "Hey, well, Stanley's going overboard. He shouldn't be taking my turf." No! There was plenty of stuff to go around. Everybody had enough to do, you know. So, no, I didn't think that was bad.

KD: Were relations between the states and the SEC pretty good at that point?

OM: Yes, I believe so.

KD: You talked in general about how there's this inevitable tension between the federal and the state regulators.

OM: Some of the SEC people, were like "it's all mine" type of thing. It's my case, and we said, "It's my case," and you had a little give and take there.

KD: So it's as much personal as anything else, I guess.

OM: Yes, true. Yes.

KD: Well, is there anything that we haven't covered?

OM: Gee, probably so, but I don't remember. [Laughter].

KD: Appreciate your talking to me.

OM: Nice to be with you.