Securities and Exchange Commission Historical Society
Interview with Phillip D. Parker
Conducted on February 25, 2008 by Kenneth Durr

KD: This is an interview with Phillip D. Parker on February 25, 2008 in Washington, D.C., by Kenneth Durr. We're talking about background. Where did you go to law school?

PP: UVA.

KD: Did you have any inkling that you might be involved in securities when you did that?

PP: I really didn't. My securities law professor was Ernie Folk, who was, at the time, known as Mr. Delaware Corporation Law, and a very gentlemanly, Southern type. He got me interested in it. Sitting on the bench in D.C. at the time was Judge Charless Richey, who had grown up in my hometown, Delaware, Ohio. My father was a doctor, and used to pay a house call on Judge Richey's mother something like once a week, because he lived right around the corner. When I was in Washington, I stopped in to see Judge Richey to say hello. I forget the relationship, but he was a very good friend of Stanley Sporkin's. When I was sitting in his office, he called and said "Stanley, I have somebody here you should talk to." I walked from the courthouse over to the SEC and spoke to Stanley. And he offered me a job.

KD: You were in still in law school at this time?

PP: Yes.

KD: What was it like, meeting Stanley Sporkin? Did you know him by reputation at that point?

PP: Not really. He's not someone who'd stand on ceremony. He cut to the chase immediately. I remember I had a transcript, and he said, "There are no Cs here, you must not be a gentleman." Other than that, it was all business.

KD: What was the business? Did he tell you about what he was doing with Enforcement, and what he wanted young lawyers to come in and do?

PP: It was more like: "you come here, you'll get experience from day one, and be sitting across the table from the best lawyers in the country." Most government agencies make that pitch. It happens to be true in Enforcement. There is very little start-up time.

KD: You must have had a little bit, because you had to finish law school.

PP: Yes, but this was in my final year.

KD: Tell me about your breaking-in period. What was it like starting out in Enforcement? What did you work on? Did they throw you right in, and see if you could swim?

PP: I think for the first cases I worked on, I worked with more experienced attorneys. But by more experienced, I mean they were two years out of law school. The Foreign Corrupt Practices Act had not yet been enacted, but we were back in the days of questionable payments. I remember there was one management perks case—a self-dealing case, that I worked on. I also remember working on an accounting case. I had never taken an accounting course in my life. I knew debits were on one side and credits were on the other, and I knew that they were supposed to balance at the end of the day—but that was it.

KD: Who were some of the people that you worked with, some of those senior folks in Enforcement at that point?

PP: Ed Herlihy was my first branch chief. Ted Levine was the assistant. They reported to Irwin Borowski, and then to Stanley. That was for about two years. Then there was kind of a reorganization in which Ted became an associate, and Ed Herlihy became an assistant. Rick Sharp was my next branch chief.

KD: This must have been a pretty exciting period, because this is the moment in the sun for the Division of Enforcement—mid to late '70s.

PP: The questionable payments thing got a lot of publicity. There was Stanley Sporkin on one side and corporate America on the other. What I remember is that they had the voluntary disclosure program, where if you agreed to do an internal investigation, restate if necessary, and make full disclosure, then the agency wouldn't come after you - but you had to volunteer. I remember that anyone who did that had an attorney assigned to go in and do due diligence—kick the tires, make sure they did a real investigation. I got Merrill Lynch. I remember being on something like the 73rd floor of their building down on Wall Street. I was six months on the staff, and here I was sitting right off the chairman's office in this conference room. I also remember that the amount of payments they came up with was ridiculously small. It was like forty thousand dollars for Merrill Lynch worldwide. It was interesting experience.

KD: Did you handle that one all on your own?

PP: Yes, but it was just a question of going up and reviewing what they did.

KD: Looking over somebody's shoulder, so to speak.

PP: Right. Reading the interview notes and that kind of thing, to make sure. Because they really hadn't found that much. My review was something that was probably done in two days. Merrill Lynch back in 1976 didn't have offices throughout the globe like they do today. Or if they did, they were small.

KD: Right. And at this point, this wasn't a Lockheed case, with the questionable payments.

PP: No.

KD: They were the poster child. What were you learning? As you come in, and you're in your six-month, year period, I would imagine that you're soaking things up pretty quickly. What were the folks in Enforcement imparting to you, as a young lawyer?

PP: The obvious: learning how to take testimony, and learning what to look for. I think what you learned doing investigations is how corporate entities work. It's a really funny feeling that you don't get anywhere except in a position like the SEC. I'd go in and take testimony sometimes, and of course I'd read everything the witness had produced—this was before the days of e-mails, but all the internal memos, et cetera—if it's an accounting case, I've read the accountant's work papers, so I have all their internal memos. A lot of times there are big loan files from their corporate lenders, from their banks, contra parties on big transactions. You'd go in there, and you'd think: I'm the only person on the planet who's read all of these. He knows what's in his files, and he may have an inkling as to what's in their files, but nobody knows everything. It's a tremendous advantage. You get a lot of insights, just being able to look at it from different perspectives. How the memo may say X, but they're really saying Y when they meet. It's especially true in accounting cases—the calculus that goes back and forth with the company and the accountants.

KD: You're seeing the give and take that leads to whatever decision.

PP: They understand they can't lie to their accountants, but they talk themselves into thinking: "If they don't ask, I don't need to tell."

KD: I guess you saw this over a number of different corporations, and you start to get a sense of similarities?

PP: It's just a way of learning how to assess things in a slightly more sophisticated way. Not to react to the literal words that are on the paper, but to look at the context and the motivation, and everything else that plays into it.

KD: How long were you in Enforcement before you got your first promotion?

PP: You go from GS-11 to 12 to 13 —I mean it's not automatic, but a great percentage of them do. I became a branch chief after about three and a half years or so.

KD: How do your duties change at that point?

PP: You're responsible for the care and feeding of a lot of different people. Not a lot but whoever's in your branch—five or six. You're still actively investigating as well. It was like having somebody who's relatively new, and there's testimony, and maybe the branch chief and that person doing it together.

KD: So you're training people—things like that.

PP: But training by example. Not by having little classrooms and tutorials, but by working together.

KD: You talked about some of the big cases, and I see they're laid out here. William F. Buckley is a very interesting one. That must have happened fairly early on in your career.

PP: Yes. I was a third or fourth year attorney. I can't recall how it started, but it was a very interesting cast of characters; and it was the kind of case that a newspaper reporter dreams about, because there were a lot of things about the case that were just funny. It was also, in a sense, tragic because the CEO of this company was William Buckley's former neighbor and newspaper delivery boy. This guy started a company that was not real large, but they owned about a dozen radio and TV stations, and Buckley invested in the company and became Chairman of the Board. Part of the humor in the case was that some of the radio stations had all-black soul formats—which is not what people associated with Buckley—but those happened to be their most profitable stations. Aside from that, the Starr Brothers—Peter Starr was the former newspaper boy—had a private partnership, in which Buckley was a participant. .

The private partnership invested in drive-in movie theaters, and the business plan assumed that the theaters would throw off revenue to cover the carrying costs while the land on which the theaters were located would appreciate,and they'd sell the land and make a fortune. They got caught, I think, back in the late '70s. The prime rate went from five to something absurd like eighteen, so they just had enormous debt service, which they couldn't meet. You can see what's going to happen. Sitco, the private partnership, sold all the assets and liabilities to the public company. That's what the case was about. It was the disclosure related to that. They ended up unwinding the deal, and Buckley paid back a little over a million, which was really the debt that was taken over.

KD: This was money that went to the shareholders?

PP: The money went back to the corporation. It wasn't necessarily distributed to shareholders. They basically rescinded the deal between the partnership and the company.

KD: Was this the kind of thing that you would get routinely? It just happened to have a famous name attached to it?

PP: It could have been John Smith. It happened to be William Buckley.

KD: Any other notable cases from those early years?

PP: In the early '80s I had a case that was an insider trading case that you could have written a daily blog about what was happening in the investigation. It was : a.) funny, and b.) dramatic. We had a group of people in New York; the named guy was Dominick Musella. There was another guy named DeAngelis. Anyway, these people, as far as we could tell, had never traded securities in their life. The day before a major takeover, they open up new accounts, buy out of the money call options, and make several hundred thousand dollars.

KD: Their names came up pretty quickly.

PP: Right. We called them in to testify. Musella wouldn't even say: "I refuse to testify on the grounds of the Fifth Amendment;" he'd just hold up his hand and say: "Take five." Then he says: "You guys have the whole afternoon, now you can have lunch." He was smirking at us. They went on and traded in four or five more deals. And always, out of the money call options at the last second, and so forth. The network of purchasers kept getting larger, and it ended up being eight or nine. Some of the new ones were buying much smaller amounts, but all were buying at the same time. We tried to see what these deals had in common. The first five deals had Merrill Lynch as investment banker for either the bidder or the target, and the people at Merrill were literally turning their place upside down trying to figure out where the leak was from. They were acting as if they were entirely convinced that the leak was somewhere in Merrill Lynch—as were we. It was the only common link that we saw. And then, another deal comes by. These guys buy, and Merrill's nowhere on the horizon. At that point, they're celebrating at Merrill. They break out the champagne, and we go back to trying to find the link. We had a big graph of all the deals, and Sullivan & Cromwell was the next suspect because it had been involved in all but one. Somehow we found out that they were also in that deal—the third or fourth in the chain—behind the scenes as counsel for a potential white knight.

KD: In that one missing deal.

PP: Yes. Then at some point in the chain—there were something like nine or ten transactions in which these guys bought—they bought the wrong stock. They bought the bidder rather than the target. So that's when we think: These aren't the brightest crayons in the box. We tried to figure it out. As it turned out, the tipper in the case worked at Sullivan & Cromwell, and he was the head of courier services. If they were sending a confidential memo across town, he apparently was looking in the envelope first, and then dispatching it off. But in the deal where they bought the wrong stock, a separate corporation had been formed for the purpose of the transaction. If you're buying Acme, it was called Acme Com, or some derivation. I think they even had a draft lawsuit that was never filed. Anyway, you could see how somebody who didn't know what they were looking at would get the impression that A is buying B, rather than B buying A.

KD: So you knew this wasn't somebody up in a corner office in the top floors.

PP: Yes, and they weren't the kind of tippees that such a person would have either.

KD: That's for sure. How did you catch the guy?

PP: Good question. I remember we filed the case without any consents or anything. Right after we sued, Musella was in a car accident or hit by a car, so he was deceased. Somebody then cooperated with us in the litigation. One thing I remember about the filing is that we never referred to Sullivan & Cromwell because we really didn't think it was fair. We said it was information misappropriated from a major New York law firm. The case was filed one day at nine o'clock, and by nine-fifteen, a reporter asked, "Why didn't you just name Sullivan & Cromwell?" It didn't take them long to figure out.

KD: But you figured since it was just a courier, it didn't rise to the level of involving the firm itself?

PP: Yes. I can't remember exactly what our thinking was. But I think it was just that we didn't think it was good for the newspaper reports to be playing that angle up. Some of the remote tippees of Musella and DeAngelis who bought stock were New York City policemen.. That, of course, got a lot of publicity.

KD: Tell me about your involvement with Gulf & Western, which I guess was Charles Bluhdorn?

PP: If I'm in Manhattan and see the MetLife building, I still think of it as the Gulf & Western building. That investigation went on for a very long time, at least three or four years. I was involved only in one aspect of it, towards the end—which was kind of interesting, in terms of the international aspect of it. We used to joke that the Dominican Republic was virtually a wholly-owned subsidiary of Gulf & Western, because they had these huge sugar plantations there. The part of the case that I worked on involved Bluhdorn's trading in sugar futures. Bluhdorn, and the prime minister or the president of the Dominican Republic—a guy named Joaquin Balaguer—were hedging against the production of their crop. Bluhdorn started off as a commodities trader, so this is what he really loved to do. Bluhdorn and Balaguer had an agreement that they would split the profits, something like sixty/forty, from their trades. At some point, they got into a terrible disagreement over the future direction of sugar prices. Bluhdorn was convinced they were going to go up, and Balaguer believed they would go down, or vice-versa. Bluhdorn was the one actually executing these trades, and he began trading the way he thought he should trade, while basically telling Balaguer he was trading the way Balaguer wanted to trade. So it was like Bluhdorn was keeping two sets of books, and the divergence eventually translated into a fair amount of money. It was almost like a contingent liability owed to the Dominican Republic. There was also the question of what Balaguer would have done to Gulf & Western if he found out. It's a rather bizarre allegation for the SEC to make. But that was that aspect of the case.

KD: That was a much more complicated case, I guess.

PP: Oh yes. The case had a lot of moving parts that were unrelated to each other. Gulf & Western was one of the first conglomerates of disparate companies. They had motion

pictures, car bumpers—I'm trying to think of what else was in there. And you put it all together. I'll always remember when Bluhdorn died. He died on the corporate jet, on a Saturday, of a heart attack. The stock had closed at something like seven dollars a share on Friday, and on Monday it closed at something like twelve dollars. And I always thought that if Bluhdorn knew he was going to die, he would have told everyone he knew to short the stock; and instead it almost doubled, because the market's reaction was that the company was worth more. With new leadership, it was going to recoup more of its value.

KD: Well apparently it was, because Paramount did really well after he was gone. I think that was toward the end of Stanley Sporkin's time in Enforcement.

PP: Yes, the Musella case was actually in John Fedders's era.

KD: How did the division change as you went from the Sporkin era to the John Fedders era?

PP: I think it stayed the same more than it changed. I always remember John's catchphrase when he started was "procedural tightness." He wanted more regularity in the processes—the different units acting in the same way, more in an organized way, rather than a personal way. Stanley tended to let people adapt to their own style. I don't mean that in a pejorative way—it's just that he was less focused on that kind of stuff. But I'm not sure things changed that much under Fedders. Maybe a little bit more review at the end of cases. But we're talking percentages here, not a sea change.

KD: I know one of the things that John Shad wanted to do was get the SEC back to where Enforcement wasn't the big show.

PP: Shad also set up the unit in the General Counsel's Office. He supposedly said: "I want you to find something wrong with every Enforcement recommendation that goes to the Commission." I don't think he literally meant: Kill every enforcement case. He just said: "If there's an issue, I want it teed up. I want to know about it." I think Commission meetings became longer than they were before, and there was more discussion of the issues. When I started, you had Phil Loomis and Irv Pollack on the Commission. I remember Loomis saying stuff like "that's not what 10b-6 means, and I know, because I wrote it." He literally knew the history of everything that was in front of him. Irv had been Enforcement director for so long. They didn't need someone in General Counsel's Office to brief them on potential issues; they had it right at their fingertips. Throughout the '80s, you had very good Commissioners, but you didn't have people with that kind of experience. It was useful to have people teeing up issues that might otherwise be missed. Shad, himself, was not a lawyer. He came from an investment banking background, and I think, at least initially, was a little bit insecure about the legal niceties and phrases people were throwing around. I think he got up to speed pretty quickly. He was a very conservative guy, in certain ways. He didn't like to make mistakes.

KD: Not willing to fly by the seat of his pants.

PP: Right. On insider trading cases, that really comes across, because they're either guilty or they're not. It's not like in accounting cases, where there's a violation, but how bad is it? Or you'd get some insider trading cases that looked suicidal, where a senior corporate executive put his entire career at risk. Those were the kinds of cases where he'd be: "Are you sure?" He'd really want to get comfortable.

KD: So you would take these things to Shad, and say: This is the set of circumstances we're looking at. Can we proceed or not?

PP: Yes. But it wasn't a question of killing cases that deserved to be brought. It was just he wanted to be personally comfortable before he pushed the button that said: File the case. It worked both ways though. Because I can remember back when Guiliani was U.S. Attorney, and was arresting people at Goldman Sachs and d marching them out of their office. These were people that the SEC hadn't sued civilly, and Shad was wondering: Why aren't we bringing the case against these people? What's Guiliani know that we don't know? It was really more a question of what the lawyers in Enforcement believed was the law, versus what Guiliani believed was the law, because some of these people were never prosecuted.

KD: He'd just pick them up, and see what he could do with them, and the SEC didn't operate that way?

PP: The cases I remember—Boesky, and then Marty Siegel. You get a Marty Siegel—a cooperative witness who's telling you everything he knows, because he wants to reduce his sentence as much as possible. Sometimes he's telling you stuff that doesn't sound right, it doesn't look kosher; but when you really think it through, it's probably not a violation of the law. It gets to the point where you get these deals with white knights and third parties, and all this stuff going back and forth. Sometimes it gets confusing. You have to distinguish between a situation where somebody's breaching the law and giving you information that's inappropriate, and a situation where someone is telling you something that they have a right to tell you. If I'm a third party and I decide I might make a bid for a company, and it's in my interest to tell you I'm thinking of doing that, that's probably okay.

KD: There's a lot of gray area in there that you're thinking about all the time. John Shad didn't let a lot of gray area stand between him and the fact that he was going to prosecute insider trading. That was the thing that he was going to do.

PP: Hobnail boots.

KD: Did you see a great increase in insider trading cases because of that?

PP: I think they were always around ten percent of the total. They may have gone up, but they tended to give more publicity because it's easier for reporters to grasp them. You had the feeling there were more, but I'm not sure, statistically, there was that much of an

increase.. Offsetting Shad's intent was the fact that we kept getting hit over the head by the Supreme Court in cases like *Dirks* and *Chiarella*. So you always had to go back to the drawing board and rethink the issues. After *Dirks*, I can remember a couple of cases I worked on that we chose not to bring. I truly believe that if an Enforcement attorney today had the same case, and was told "we're not going to bring the case" we'd probably be sending memos to Capitol Hill or something. The facts - the circumstantial evidence - really looked pretty compelling. . But we had lost twice in a row in the Supreme Court, and it just wasn't in our interest to make bad law. I don't mean to imply that there were a lot of these. I just happened to have one where we spent a lot of time, and then ultimately decided not to bring the case.

KD: And at that point, the argument was fiduciary responsibility, or something like that? All the things that the Supreme Court was hitting at were basically the rationale for insider trading, or how you define insider trading.

PP: Yes, it's not only you have to breach a duty, you have to show that the person intended to obtain a benefit. Well that's something we just took for granted; we never really thought about it at all. But all of a sudden you have to start analyzing the facts in a different ways, and become prepared to prove the case in different ways. A lot of time has passed now, and we won the *O'Hagan* case, but I used to joke that insider trading was a body of law consisting largely of cases the SEC had lost. It's twenty years later, and people forget that. They think you're always going to win an insider trading case, but the SEC's record in litigated cases wasn't anywhere close to a hundred percent.

KD: Certainly not at that point.

PP: There was an insider trading case against Barry Switzer, who was the football coach at the University of Oklahoma. Switzer's testimony was that he was at his son's high school football game, and it was a nice day, and he decided to sun bathe, so he was lying on his back on the top bleacher. In the row in front of him was the president of this company and his wife, and Switzer said that he happened to overhear the president of the company telling his wife whatever the inside information was. A jury of his peers accepted that as true and acquitted him.

KD: Yes. And not insider trading.

PP: They chose to believe his testimony, that he was an innocent bystander who happened to overhear it. As I recall, the wife even testified that her husband never spoke business with her. People thought: That's a preposterous alibi. But he went to trial, and he won.

KD: So that was another one of those things that would run through your mind when you'd think about whether to take an insider trading case or not—things like that. Well, you said that that was consistently ten percent of what you were doing—more or less. What about the other ninety percent? Did that change with the times? Or was that also fairly consistent?

PP: Well, in the '80s, the contested takeovers became a big deal. The M&A activity was much greater, and there was more going on in that arena.

KD: How would that end up in Enforcement?

PP: What I remember is you'd have a contested takeover, and both parties would come in to Enforcement, requesting meetings and screaming about the outrageous fraud being perpetrated by the other side. It would be going back and forth for three or four weeks. All of a sudden, they'd cut some sweetheart deal, and neither side wanted to talk to you anymore. They'd just kiss and make up. Effectively, they were using Enforcement to gain leverage.

KD: Was Gary Lynch the head of Enforcement by that time?

PP: He started in '84, I think. So he was the director throughout Boesky, Levine, Siegel—that whole trifecta of cases.

KD: Did he bring a change of culture, a change of focus to the Division of Enforcement?

PP: I think Gary had superb judgment. Those cases I was describing before— where Guiliani was indicting people and Shad wondering why we're not bringing civil cases—those were on Gary's watch. He wasthe one who would have to go through the analysis, step by step, with Chairman Shad, and explain what we were doing, and what we were not doing, and why. This was a time, too, when international enforcement, especially in insider trading cases, was becoming more pivotal. In tthe Santa Fe and St. Joe cases the agency had to deal with what was obviously insider trading through a Swiss bank. The trading was totally irrational unless you had inside information—buying deep out of the money options just before the announcement. It was those cases that started of the process of negotiating an MOU with Switzerland to pierce bank secrecy. . Gary did a lot of that, although Michael Mann, day-to-day, was the person negotiating and also coming up with creative ways to approach foreign regulatory authorities and convince them that it was in their interest to help us—which he was very good at doing.

KD: Did you, yourself, have any involvement with the foreign enforcement cases?

PP: Not really. When they first set up the Office of International Legal Assistance and Enforcement, I was chief counsel then. I think, on paper, Michael reported to me, because they had to have some box for him. But in reality, he was just kind of free-standing, reporting to Gary Lynch. I would be involved tangentially, but I never really worked on one of the cases where we had to pierce foreign secrecy.

KD: As chief counsel, would you just be in this office on the side, and looking at the broader picture? Making sure things were kosher, as far as the legalities are concerned?

PP: Yes and we had oversight, in a sense, over the regional office enforcement. The regional office enforcement recommendations would go through the Chief Counsel's Office. In

part, just to make sure everyone was on the same page, and that the Miami office wasn't advocating a theory that contradicted what the Seattle office was. And in part, because a lot of times the regional office attorneys would not be in Washington when the matter was presented to the Commission., We would present the cases on their behalf. We'd also focus on programmatic issues, legislative issues—whatever John Dingell was upset about would be our problem, until it went away. There was a lot of that..

KD: What kinds of things was he upset about?

PP: He dabbled a lot in the insider trading stuff. He was very interested in the accounting cases. I guess it's pretty hard to think of anything that he was not interested in.

KD: He let you know about it, if he wanted to see something happen.

PP: He'd send what we called Dingell-grams. These would be letters: "Please answer the following twenty-three questions." It'd be an enormous amount of work, just compiling all the stuff and putting a happy face on it.

KD: You were coordinating the regional enforcement offices in the 1980s, is that right?

PP: For a couple of years: '84—or '85, '86, '87.

KD: Did those regional offices have very different priorities because of where they were, and what the business was in that area?

PP: There was a little bit of that. The Denver office would have more cases involving mining companies. New York would have more cases coming from the Street—broker/dealers. But they were all doing a little bit of everything.

KD: Was this a new system? Having them report through the General Counsel's Office?

PP: No, there had always been a group in Enforcement that did it. Fedders created the Chief Counsel's Office. That was part of his wanting to have a more programmatic focus.

KD: So your job was to ensure the programmatic focus, so to speak.

PP: The office, by the time I became Chief Counsel, had been around for three or four years and Fedders was gone. Fedders made me Chief Counsel, so he was still there. I was trying to remember the timing of when he left.

KD: Somewhere in here you had the Paul Thayer case, which is another one of those cases that the reporters enjoyed.

PP: I was a branch chief. That was a case that you've got to believe was vetted pretty closely by John Shad. But, by the time we brought it, there wasn't the slightest bit of doubt in our mind. The case related back to the time when Thayer was chairman of LTV, prior to

becoming Deputy Secretary of Defense. There had been two acquisitions made by LTV, and a group of Thayer's friends had bought in front of both. But he steadfastly denied tipping anybody. At some point towards the end of the investigation, we found that there had been a third situation which preceded the two deals we knew about—and I can't remember the particulars, it may have been a deal they were going to make, but backed off at the last instance. Anyway, we found that the friends had all bought that stock too. Lightening doesn't strike three times.

that the case had a cast of characters that, if you put them in a novel, it'd be panned for unrealism. Thayer's principal tippee was a stockbroker who people said was known by more people in Dallas than Thayer himself was. He was a close friend of Don Meredith from Monday Night Football fame, and one of his tippees was Billy Mathis, who was the fullback on Namath's Super Bowl team. I forget who some of the others were, but it was like, what do these people have in common? They all went back to Thayer. He actually was indicted not for the insider trading, but for false statements in the testimony before the SEC.

KD: One other one that your name was involved in, which is really interesting, had to do with a stockbroker being a CIA front? It was Rewald. This is out of a *New York Times* article. This guy had been acting for the CIA, supposedly, and meanwhile his business had gone bust, and all his investors were stuck. Would have been in the early '80s.

PP: I'm having a senior moment.

KD: That's okay. An interesting story, in that I think Dingell was running around saying: Okay, what other CIA fronts are out there selling securities?

PP: Dingell was where he was when Bill Casey was chairman of the SEC, and Casey in the early '80s was at the CIA, and Stanley Sporkin was over with him. So, I can see Dingell making the connection in his mind pretty quickly.

KD: Going into the '90s, moving through enforcement and the insider trading cases, I noticed there was some new focus on municipal bonds. This must have been an Arthur Levitt kind of a thing. Did you have any involvement in that?

PP: Well, I can remember spending a lot of time reading the *WPPS Report*—the Washington Public Power thing. I think that was just a case of Gary Lynch coming in one day with this eight-inch thick binder, and saying, "I can't deal with this. Read this." Yes I remember, because the report was something like five hundred pages; we were trying to edit it down to something more manageable, and that just took a long time to do. I think we ended up doing a fifty-page executive summary, and attaching the original report as an exhibit, for those people who really wanted to become versed in the details. But actually, I was in the General Counsel's Office when Arthur came in. I worked a little bit on the municipal bond rule making issues, but I really wasn't directly responsible for any of them. . I think the focus on municipal securities at that time was a good thing. I

think it was a part of the securities law that probably hadn't been looked at closely enough before that time.

KD: It seems to me that the move from Enforcement to the General Counsel's Office—it seems unusual. I don't know if it was a common thing. Why did you make that move?

PP: What I was doing in the Chief Counsel's Office was, in a sense, more similar to what I did in the General Counsel's Office than to what I was doing before then; because I was not actively investigating cases. I basically enjoyed reading and writing, and if I hadn't gone to the SEC, I probably would have gone into academics. I just enjoyed doing it.

KD: So you were really working with the law, and working with the cases in that way?

PP: Yes, more so. The General Counsel's Office job was fun because, in a sense, you're responsible for everything and nothing at the same time. You're always working on what's topical, what's current that day. I eventually got quite tired of Congressional hearings, and legislative stuff. But that was after several years. We did a lot of legislation in that period.

KD: How did you get involved in that?

PP: There had always been an Office of Legislative Affairs, but it was just one or two people. I think, historically, the General Counsel's Office would typically work on legislative matters with whatever division was most interested, whether it was Market Reg or Corp Fin. We also tended to handle a lot of the oversight stuff, just because somebody's got to do it. It was easier to have a dedicated group of people.

KD: Was there more legislative activity going into the 1990s and Arthur Levitt's time? And why would that have been?

PP: Just before I got to the SEC you had the Securities Act Amendments of '75. That probably was the biggest piece of legislation since 1940, when the Investment Advisors Act and the Investment Company Act were enacted. In '77 you had the Foreign Corrupt Practices Act, which was really kind of a focused thing. A lot of the legislation in the late '80s and '90s was focused on enforcement. There was ITSA, then ITSFEA—both dealing with insider trading—in '84 and '88, I think. The Enforcement Remedies Act was in 1992. That was when Richard Breeden was in his first year as Chairman. He thought it was preposterous that the agency didn't have the authority to seek or impose civil fines, and that we really needed to beef up our enforcement remedies. And then in '96 there was the Private Securities Litigation Reform Act, which was driven by the Hill, not by the SEC.

KD: Part of Newt Gingrich's Contract with America—that Republican renaissance.

PP: I think so. Though I'm kind of thinking at least parts of it had started before that, but that certainly gave it the momentum. I think it was mostly House driven, as opposed to Senate.

KD: And this is when you spent all your time on the Hill, during this process for that piece of legislation? Tell me a little bit about that process, how it's done. Did you work with the Commission? Did you work with Arthur Levitt?

PP: It depended on the legislation. With enforcement remedies—as I recall, we worked with Enforcement. We would come to a consensus at the staff level as to what made sense, what we should ask for, and then work it out with the Commission. When we do that, we actually draft the legislative language, and we draft all the background pieces: why this is needed, why it makes sense, et cetera.

KD: And then you take that up to the Hill?

PP: Yes. the legislative affairs people would have already talkeded it through with people on the Hill, and would would know we had a sponsor when we went up there. It would often be Markey from Massachusetts.

KD: Ed Markey.

PP: Yes, he was a big sponsor for us when he ran the Telecommunications and Finance Subcommittee of Energy and Commerce. He was with Dingell. He was big supporter of us. Chris Cox was also on that Subcommittee, I think, at the time. I know he worked on the Private Enforcement Litigation Act when he was a Congressman.

KD: Right. I think he introduced that. You said you spent a lot of time on the Hill. What's a lot of time?

PP: In those years I was probably spending thirty percent of my time, not on the Hill, but on Hill-related type things. I haven't been back. Watching Roger Clemens up there two weeks ago, I thought to myself: That's why I don't want to be there anymore.

KD: You would actually appear before the Congress, and the Congressman, and explain why you need this stuff.

PP: No, I would be meeting with their staff people in some conference room. At a hearing it would be Arthur Levitt or Richard Breeden. But yes, there's just so much posturing that goes on at those hearings, that you have to prepare for all these "When did you stop beating your wife?" questions. It just goes on and on. And for the Litigation Reform Act, you had all the interested constituencies who wanted to weigh in on everything.

KD: What was your perspective from the General Counsel's Office, and certainly on the Commission itself? Depending on who you ask, the Litigation Reform Act was a terrible

reversal, a step backwards; and of course, somebody like Chris Cox would argue: No. What was the sense inside the SEC at this point?

PP: People felt strongly both ways. I did not want to see them cut back too much, but certain parts of the Act, I think, were good things. I mean the whole notion back then that whoever filed the first lawsuit would become lead plaintiff was just an absurd result. I always thought it was a good idea to have a process whereby the constituencies with the most at stake would decide who the plaintiff's attorneys were going to be, and would actually run the case. It did get pension funds, and entities of that type, more involved in the process, which I think was good. To me, that was the most important aspect of the legislation. Many other parts of the bill I just thought were nonething more than legislative micro-management, things about pleading standards, and the like. I don't think it's done tremendous harmbut I'm not sure it's done that much good either.

KD: Would you work with the divisions to help frame the language that you would contribute to this?

PP: Yes. It was mostly Enforcement. It was obvious that some type of bill was going to pass. Just the whole gestalt was working in that direction. So we were playing defense some of the time. We wanted to make what was inevitably going to happen do so in a way that caused the least harm.

KD: We've moved right through your career at the SEC. Is there anything that we've missed—anything having to do particularly with your relations with international affairs?

PP: The international thing kind of grew agency-wide so it got to the point where it was hard not to be involved in international stuff. By the late '80s, early '90s, there was a lot of significant rule making—such as Reg S and Rule 144A. Market Reg was also establishing market links, and Rule 15a-6 was adopted at that time. So internally, within the Commission, a lot of the most important rule making was in the international area. Everybody was focused on it. Also, with the collapse of the Soviet Union, there was much more technical assistance work going on in Poland, Hungary, Bulgaria—places like that. I know at some point, we got like a three million dollar grant from AID for technical assistance in Eastern Europe.

KD: Did you ever take part in any of those efforts?

PP: I went on one trip to the Czech Republic. Actually, I went to Czechoslovakia, and I was in Bratislava on the day that Slovakia became independent. So I went to Czechoslovakia and came back from the Czech Republic and Slovakia. That was a ten-day, or a week-long thing. It was very interesting, because at the time they were developing a market in the Czech Republic, , and they were torn somewhat between having a NASDAQ type computer-to-computer market, or having the old-fashioned New York Stock Exchange, with real people. I remember talking to people, and they'd kind of try to see which side you were on, and react appropriately. The sub-plot was that a lot of the most computer literate people, either were, or were suspected of being, former KGB types. So that

pushed people to the other side of the pendulum, in some cases. I also went—I think at the request of the State Department—to the European Parliament—not the EU, but the European Parliament, which some people don't even realize still exists—in Strasbourg. They wanted to have a European-wide definition of insider trading, and I went over there on two occasions to help in that effort. Each time, where we spent something like four or five days debating, piece-by-piece, the ins and outs of insider trading. It was very fascinating, because they had little or no experience with insider trading. This was in '87 or '88, and most countries didn't even have laws addressing insider trading. And yet, by the end of the process, they were doing pretty well in their attempt to define insider trading. In the United States, we still don't have a solid definition of insider trading, sothey were doing at least as well as we were.

KD: The question would have been: Why do you want one? Because I've heard it said that, it's intentional that we don't have a definition here, because if you had one, then people would figure out how to get around it.

PP: There was one situation in the 1980's where - it was either the Senate or the House – said to the Commission: We demand that you come up with a definition of insider trading, and we demand that you have it to us within fourteen days. I'm trying to think if it was after Shad left and before Ruder came, or after Ruder left and before Breeden—it's a weird way to say it, but I distinctly remember there was no sitting Chairman at the time. It must have been between Shad and Ruder, because Cox, Grundfest, and Aulana Peters were there. But anyway, : I remember meeting for about four hours on a Saturday with the Commissioners—kind of informal, but it was in the Commission meeting room—going through a draft definition line-by-line, and then working all weekend. I can remember driving the redraft around, and dropping it off at their houses or apartments on Sunday evening. It was actually a lot of fun. What I remember about the process is that we developed a list of something like fifteen hypothetical questions, and each person had to vote: Is this insider trading, not insider trading? The first thing we did was to go through those fifteen questions, and if there were differences of opinion, people had to explain why they believed what they did. It forced people to focus. As I recall, we came out with a definition that everybody was happy with—and people had been pretty far apart on some issues at the beginning. But it wasn't like we came up with something that a man on the street would pick up and say: "Oh, now I see. That's what it is." It probably had eight or nine parts—with sub-section As, sub-section Bs, et cetera.

KD: You did have a definition of insider trading.

PP: Yes. I don't know what ever happened to it. We sent it to the Hill, and—it it probably died because it was an election year—different people in power. But we did have a definition that was workable in the sense that everybody was happy that it reached the result they would have wanted in all the hypotheticals. It's just extraordinarily hard to do if you want the definition to make sense in all the different contexts that come up—you have trading in your own company stock, trading in someone else's company, tender offers, mergers. Then after *Dirks*, there was the question of what to do with analysts?

What to do with newspaper reporters? Remember the Winans case and the *Wall Street Journal?* I recall that we drafted separate provisions for reporters and analysts.

KD: Insider trading has always been a pretty protean concept. Anything else that we haven't touched on?

PP: Now that I am on the other side, I have cases now where I want to say: "You can't possibly believe that's insider trading." These are cases where the staff doesn't like the conduct, perhaps understandably so, but and doesn't want analyze the issue in terms of duty. I always like to say that if I'm walking down the street, and a truck turns the corner too fast, and a prospectus comes flying out and lands at my feet, and it's about a takeover going to happen the next day—I'm just lucky and I am free to trade. The staff will say: "But you knew it was material, and non-public. You knew it!" And I say: Well, yes, I did. But, you know, you can't make that illegal. Once you start going down that road, you get results that don't make sense.

KD: Did the SEC ever come close to doing that, in your experience?

PP: I think they do it all the time, without thinking about it. They just say, "He knew it was non-public. He knew it was material." A lot of times it's true.

KD: Right. Would the thing flying out of the truck have been covered by that piece of paper with the nine points?

PP: No.

KD: So maybe you need to work that in.

PP: There may be people who lie on the top row of the bleachers and overhear things. It that is what actually happened in Spitzer's case, the result was correct..

KD: Or overheard at a party, or something like that. Anything else that we haven't touched on that we should talk about?

PP: No, I don't think so.

KD: Did the Litigation Reform Act just wear you out, and that's why you decided to retire from the SEC?

PP: A little bit of that. It was also my kids being three years away from college.

KD: Yes. That has a way of focusing one's mind as well. How has your time on the SEC affected the way that you work now, and your approach toward your practice at this point? Other than the obvious, in that you're working the other side of the street?

PP: I don't know. I don't think of it in those terms. It's the only place I worked before here, so it's hard to compare. People always say, "Well, don't you feel funny now that you're on the other side?" "Don't you feel funny, psychologically?" I've never really felt that way at all. There's always something to be done for your client that really deserves and needs to be done. I also find it remarkable how many people get into trouble, or come close to getting in trouble, without really meaning to. I like to refer to what I call the "Lost Sleep Test." I ask myself: "Did this person lose any sleep because of a guilty conscience, because they consciously thought they were doing something wrong?" It's remarkable how often you conclude they did not. Maybe they were insensitive; maybe they didn't pay attention to details; maybe they just didn't focus. But there are a lot of people charged with fraud who never really worried that they were doing anything wrong. In accounting cases you get situations where people get deeply enmeshed in transactions. They want to make them happen. They want to generate the revenue. But they're totally indifferent to how it's accounted for. It's not even on their radar screen. They say: "That's why we have a chief financial officer, and that's why we have accountants. If there's a problem, the accountants will tell us." If that goes too far, you can still be charged with being reckless. You can't just be indifferent.

KD: But there are a lot of things going on, and it's easy for one person to lose track of. So you keep track of them for them. Well thank you very much for talking to me. I appreciate it.