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Securities Exchange Commission Historical Society
Interview with Richard H. Rowe
Conducted on May 24, 2004
by John Huber, in Washington, D.C.

JH: Hello. My name is John Huber. This is the interview of Richard H. Rowe on behalf of the SEC Historical Society: Topics for Oral History. The date is May 24, 2004. The location is Mr. Rowe's offices at Proskauer Rose at 1233 20th NW, Suite 800, in Washington, D.C. The time is approximately nine o'clock in the morning, Eastern Daylight Time. And this is an interview of Richard H. Rowe, who worked at the SEC and left as the Director of the Division of Corporation Finance. My first question, Mr. Rowe, is what was your educational background and how did it prepare you to work at the SEC?

RR: Well, John, I'll start with high school, where I took an aptitude test. And the results of that test were that I should be a financial reporter for a financial publication. I decided not to follow that career and I went to college, which didn't really prepare me for the SEC at all. I majored in history and politics. Then I went in the Marine Corps after college. I think that helped me at the SEC because it taught me that I could stand up to anybody.

JH: What was your rank in the Marine Corps?

RR: I was released from active duty, honorably I might say, with the rank of first lieutenant. I then went on to law school at Harvard. Again—although it's a great education in the Socratic method that was being used in those days—there was very little practical education. I took a course from the then leading light in the securities field, Professor Louis Loss, but I must say there was no practical application in Mr. Loss's class. In fact, Mr. Loss said it would be beneath the dignity of a great law school to teach you anything practical, and that's almost a direct quote, although he did give me a good backing in statutory interpretation, particularly Section 5 of the Securities Act of 1933, which I've never forgotten.

JH: It's a very interesting observation—first lieutenant in the Marine Corps. The first time I ever met Dick Rowe was when I was interviewing for a job in the Division of Corporation Finance. I was just getting out of the Army and then going to law school. And I was a first lieutenant in the Army, so when he hired me, it was one first lieutenant hiring another first lieutenant. What interested you in the SEC?

RR: Well, when I was in my first year of law school, I started inquiring around—I wanted to do government service. I had no thoughts in those days of going to a law firm. And I started inquiring around and I was advised—I don't remember by whom—that the three best places to work in the summer in Washington were the Appellate Division of the NLRB, the Civil Division of the Justice Department, and the Securities and Exchange Commission. Now, I applied to all three. I didn't hear from them and I—between my Marine Corps service and starting law school, I had some time and I took a civil service exam. So, while I was waiting to hear from these agencies, I received an offer for a temporary appointment—as a GS-9, I believe—as a management analyst at the Veterans Administration. I needed the money. It was a lot more than I would have made at any of the agencies that I had applied to, so I took that job.

JH: What year are we talking about?

RR: This must have been 1962. After I accepted the job, I got a call from the SEC, and they said, we have this Special Study going on, we'd like you to come over here and work for us. There's a little story behind that. The reason that I got the offer from the SEC, I think, is that I had helped save the life of the head of the then Postal Office and Civil Service Committee in the House of Representatives. I had helped pull him out of a fire and he was

sort of indebted to me, and I suspect that he had something to do with my getting that offer. But in any event, I had committed to the Veterans Administration and I went there. But the SEC said, please contact us after your second year. I worked at the Veterans Administration—it soured me forever on management analysts, let's say.

The next year, I applied to the SEC and I got a job as a summer law clerk in the Branch of Administrative Proceedings and Investigations in the Division of Corporation Finance. In those days, each of the major divisions had its own enforcement office. and that Branch of Administrative Proceedings and Investigations was that in the Division of Corporation Finance. At that time, the Commission was made up of Barney Woodside, who was a former director of the Division of the Corporation Finance; Jack Whitney, who had been a practitioner from Chicago; former Senator Freer; William Cary, who had been a professor at Columbia Law School; and Manny Cohen, another former director of Corporation Finance. As a summer law clerk, I had very little contact with the Commissioners, however.

JH: Who did you work with on the staff of the Commission when you first joined?

RR: Well, Ed Worthy was Director of Division of Corporation Finance. At the time, I thought Alan Levenson ran the Branch of Administrative Proceedings and Investigations because of his strong personality, and I worked directly with him. It turned out that there was actually a man named Ben Levy, whom I almost never saw, who was actually the head of the office. But anyway, I worked directly with Alan. And in those days, it was a smaller staff and there was a lot of contact with the director. Ed was a very gregarious person. And actually—this was back in 1963—the government was still on a half day on Saturdays, so we would show

up on Saturdays and sit around in Ed's office and shoot the breeze, which—nothing very much substantive got taken care of, but we were getting paid for half a day, at least.

JH: Did you work on any interesting cases while you worked there?

RR: I worked almost entirely on a case called Atlantic Research. And just because this is a Historical Society interview, this is—the history there was, since this was an off-balance sheet case, which is a buzzword these days, but what was happening is Atlantic Research was mainly a government research organization down in Virginia. And they—or at least the top executives—allegedly had cooked up this scheme where they dumped all of their bad assets and liabilities—a lot of their liabilities—on a little company in Texas called Texas Capital Investments, which was run out of the garage by a friend of the chief executive officer of the company. The case was ultimately settled. The position of the staff was that Texas Capital Investments ought to be consolidated. The accountants rose up in arms and said, you can't consolidate, you don't own 51 percent of the stock.

Andy Barr, the then chief accountant to the Commission, backed the accountants. And I don't recall exactly what the form was, but there was a set of financial statements cobbled together with a black line running down. And on one side you had the historical financial statements of Atlantic Research, and on the other side you had Texas Capital Investments. [laughter] But there's another aspect to this case. I don't recall whether it was when I returned to the Commission as a lawyer or when I was still a law clerk, but there were a lot of private civil actions brought against Atlantic Research. And Alan Levenson had persuaded the Commission to make the entire investigatory record public, and it was put in a room on the first floor of the Commission's offices, which were then in a tar paper shack over at—off Fourth Street, I guess it was.

JH: Yeah. Fourth and E.

RR: And one day I got a summons to go to the room. There's a lawyer there named Sidney Silverman. And he said, "I'm just a sole practitioner in New York. I have this case. I need you to take me through this record," which was, piled high to the ceiling. And first of all, I didn't think that was ethically the right thing to do. And second, I didn't—although I had worked on the case—I didn't have all that much knowledge of this massive record. And third, I knew that this guy was working with Abe Pomerantz, the classic class action lawyer of his day, the Milberg Weiss of his day, so I refused to do it.

JH: What was the fallout for your refusal?

RR: Nothing. Nothing. It was, as I say, you stand up to people and if you're right, usually nothing happens.

JH: Why did you decide to return to the Commission after graduating from law school?

RR: Oh, I had a wonderful experience that summer. And as I said, I thought that this was the place to come, one of the three places to come, anyway. And I got the offer. And in those days, it was a lot of money. It was seventy-five hundred dollars a year, John, believe it or not. [Laughter]

JH: When I started, it was seventeen thousand dollars a year, and that was a huge increase from eleven thousand for a first lieutenant in the Army.

RR: Yes, well, I had been making two hundred and twenty-two dollars a month. [Laughter]

JH: And what year are we talking about?

RR: We're talking about 1964. And I had just recently become married. We had a child on the way. And I got into the honors program at the Commission. And as soon as I passed the bar, my salary went up to munificent nine thousand dollars a year.

JH: A fifteen hundred dollar raise.

RR: Yes. But in those days, that was . . .

JH: Major league.

RR: Major league.

JH: And outline your progress after you started again as a permanent staff member.

RR: Well, I was an attorney—what was it—trial attorney was my title. I worked on cases there for a couple of years. And then I had an opportunity to become a legal assistant to Frank Wheat, who was then on the Commission. And I jumped at that opportunity. I worked with Frank for a couple of years, which was about the limit for legal assistants in those days. I interviewed with Frank, possible successors, and the one that was chosen was Mr. Harvey Pitt, actually. I then had some experiences, which sort of soured me on the Commission a little bit. When it became clear that I was leaving Frank's office, Dick Phillips and Mike Eisenberg in the General Counsel's Office said, "Well, why don't you come here? We can

get you a GS-14—which was another promotion—and you can work with us." Well, I liked both of them and I said, "Fine."

And the time came for me to go into the General Counsel's Office. And the General Counsel spoke to me, and he said—it was Phil Loomis, to me the greatest General Counsel the Commission ever had. But Phil said, "Well, look. You don't have any experience, you know, brief writing, which is the main thing that we do." And Phil was the best brief writer ever [laughter]—that ever came across this earth. Frank Wheat used to say Phil wrote in the iambic pentameter. So Phil said, "Look, why don't we make you a GS-13 and, we'll try you out." Well, I think he was right, actually but I didn't think he was right at the time, and with a couple of kids the promotion meant something to me. So Alan Levenson said, "Well, why don't you come back to Corp Fin, we'll get you the grade."

So that was all well and good, except Alan left and went out to California to be with Shareholders Management Company. And Charlie Shreve, who was then the director of the Division—Ed Worthy had passed away with a heart attack—said essentially the same thing as Phil—well, he didn't say it—he said, "Look, we'll give you a GS-13." Well, I was already a GS-13. I said, "Look, I have been promised a GS-14. I think it would be fair—I came back because of that." And he grudgingly said, "Okay." And I was a special counsel in his office. But I was starting to wonder, "Is this the place for me?" And I started looking around.

As a rule maker, John, you'll appreciate—well, I'll give you one little story about working in Charlie's office. I had some responsibility for the rule making and drafting the releases on the rule making. And I can't even remember now what—and there was another lawyer there, Ed Shevlin, who had been doing this for years and years and years. And they gave me an

assignment and I wrote a release of ten pages explaining the rule. I get called into Charlie's office. Ed's sitting there. Charlie throws the draft at me and says, that's not the way we write rules in this office. And Ed writes a three-page release. [Laughter] As you know, as the years went on, there was a case, National Resources Defense Council against the SEC, a rule making case, which went on for a number of years. The Commission eventually prevailed, but the judge initially ruled that there wasn't enough explanation of the rule. Harvey Pitt, who was then the General Counsel, got a hold of that, and now the Commission writes four hundred page releases, not four page releases.

But anyway, so I was a little upset about how things were going, although I was progressing. I started looking around. I interviewed with one law firm where a friend of mine, Jeff Bauman, who had actually been one of the three people when I came on in '64, who had come onto the Division. Jeff's now a professor at Georgetown. He said, why don't you try Arnold & Porter. So I interviewed there—actually asked them some very difficult questions and told them I didn't want to review registration statements [laughter] that go to the printer. And they said, "Of course you wouldn't have to do that." And Jeff told me, "Well, of course, you will have to do that."

But in any event, then I got a call from Al Levenson inviting me to go out to California and work for the mutual fund management company, more specifically for a closed end fund that invested in private placements. And the salary was a munificent eighteen thousand dollars a year and an opportunity to get stock options. So I decided to accept that. I called the partner at Arnold & Porter and told him that—sorry, I couldn't—I declined their offer. And he said, "Well, what did they offer you? Maybe we can get you some more." And I told him eighteen thousand dollars. And he laughed and he said, "Take it!" [Laughter] In those days, lawyers, at least here in Washington, were pretty much closer to the salary level

at the Commission than they certainly are today. The difference was that there was a year-end bonus that the Commission employees didn't get. But the salary levels were about the same. And they were, for several years after that.

Anyway, I went out to California. Moved my family out there. My wife got a job as an assistant producer of a television program in L.A. and we were doing pretty well—in fact, probably better than I've ever done because eighteen thousand dollars in those days went a long way.

JH: This is 1969.

RR: This is 1969. And it was sort of an exciting time. There were a number of SEC alumni out there—Alan Gordon, who had been chief counsel of the Division of—what now is the Division of Investment Management; Alan Levenson; Gabe Daniheil, who had been a financial analyst and investigator in the Branch of Administrative Proceedings and Investigation. And there were a few other people out there. And it was an enjoyable time. And then things started happening. The management company was taken over. I had liked the people who were out there when I first went out there. I didn't dislike the people who took it over, but they were of a different breed, shall I say. The people who had been running it were sort of the old school investment managers. The people who took it over were much more aggressive and wanted to branch out into a lot of other areas of financial management. And for that and other reasons—then Alan Levenson left to come back to be Director of Corp Fin.

JH: What year was that?

RR: 1970. So I started looking around again and—law firms—and considering going back to the Commission, because Alan said he wanted me to come back there. And I interviewed at a couple law firms here in D.C. and one in Chicago. Actually, the one in Chicago was interesting, because it was—when I got out there, they said, well, we're sorry you can't meet Brad Cook [laugher], who's our securities guy. Well, Brad eventually became—I didn't meet him, and he eventually became the Chairman of the Commission—General Counsel and then Chairman.

But they took me to the house of one of the partners to stay that night. And I got up in the morning and I look out on the vast expanse of lawn and the garden and everything. Well, it turned out it was a replica of the governor's mansion at Williamsburg. [laughter] I said, wow, this is how you practice. But eventually, I decided, you know, I'll go to the Commission. And Hamer Budge was then the Chairman of the Commission. And Alan had suggested I talk to him about being the Chief Counsel of Corp Fin. And I talked to Hamer, and he said, "No that's already promised, sorry." And it turned out it was Neil McCoy that got to be the Chief Counsel. He had been administrative or legal assistant to Hamer, and I ended up in the Chief Counsel's Office for a short period of time. And then Ralph Tracy, who had been heading the Office of Administrative Proceedings and Investigations, became a hearing examiner, which now is an administrative law judge, and I got that position. And, you know, things just went on from there.

JH: So Charlie Shreve died of a heart attack and he succeeded Ed Worthy, who died of a heart attack.

RR: Right.

JH: So heart problems and division directors go sort of hand in hand.

RR: Well, hopefully not, John. [Laughter] The two of us are still sitting here.

JH: And in good spirits, I might add.

RR: Yes. But—and eventually Manny Cohen, after going into private practice, did pass away from a heart attack, too.

JH: Once you returned in 1970 and was working in the Division again, did you work on interesting cases? What was the workload like?

RR: Well, let me explain. The office in Corp Fin handled mostly administrative proceedings, but after I took over, we started to, one, work with other offices on civil actions, and two, we got limited authority to go court to enforce the reporting provisions of the '34 Act. And there were a number of those cases. And we won them all. And one case was the only case I ever argued in a court on a motion for summary judgment, which I won decided I would quit while I was ahead.

JH: What case was that?

RR: I don't ever remember. But it was a case where the president of the company came from Texas to argue pro se that we shouldn't put this little company out of business by forcing it to file reports with the SEC. And I felt sorry for him in a little way, but I had to argue for my client, so my argument was, look, these people went public, they promised the public that there would be reports, and Your Honor, you just can't not render this injunction. So I don't know whatever happened to the company, but we did win on the motion.

JH: But, in essence, people from the Division went into court.

RR: In most cases, yes. But again, in those days most would settle anyway. But there were two cases that have a historical significance, I would say. One was an administrative proceeding that was settled, "In the Matter of Great Southwest Corporation." And that was a revenue recognition case. You recognize the term "revenue recognition," which is half of the Commission's cases these days? But this was a sale of an amusement park, or amusement parks—I guess plural—and our argument was that the risks of ownership and the rewards of ownership—the risks of ownership didn't pass and the rewards of ownership were kept by the ostensible sellers. And for a change, our accounting—that's not fair, not for a change. We were fully supported by the Chief Accountant's office and the accounting profession and that solidified some positions in the law.

But by far the most interesting case, I would have to say, is the National Student Marketing case, which was the first case where the Commission really took off after reputable law firms, shall I say? And that came about because a young lawyer in my office who had been investigating the matter came to me and said, I don't know what to do, the lawyers are in on this. They know—they knew all about it. And I said, I'll tell you what you do, you go and keep investigating, get the facts, and then we'll decide what we're going to do. So he did. I decided to take the deposition of one of the lawyers involved. And I only mention that because I—in questioning him, I said, look, I would like you to go back and ask your client to waive the attorney-client privilege so that we can fully investigate this matter. And this lawyer, who was a very experienced lawyer, kept insisting that the privilege was that of the law firm and not the client [laughter].

And so eventually I just dropped that. But—and then—so we couldn't bring those kinds of cases in court, so I went to Ted Sonde, who I think was still in the General Counsel's Office at the time, because there was no Division of Enforcement. And Ted became interested in the case. We worked together. We went to the Commission. We anticipated because of the charges we were recommending to be brought against law firms, that we would have problems with the Commission. But the Commission had no problem. They approved the case.

At that time or around that time, the Wells Commission had made its report to the Commission. And the recommendation, which the Commission adopted, was that at the Commission's discretion a prospective defendant had an opportunity to make a submission to the staff, which would then perhaps be brought on to the Commission. But to try to explain what was going on. In this case, in the National Student Marketing case, we learned that there was going to be a leak to the newspapers. As far as I can recall, somebody had left a complaint sitting out on their desk and a reporter had seen the complaint.

JH: In other words, the reporter had access to the staff area . . .

RR: . . . was wandering around in the staff's areas, yes. And I don't think they could do that these days. But in those days they did.

JH: They could still do that when I was around in the early 1980's.

RR: So we went to the Commission and it became important to bring the action immediately rather than waiting around for Wells Commission submissions. So the case was brought. It later became an issue that they weren't given an opportunity to make a Wells submission.

But the upshot of it was that this was not an absolute right, that it was at the discretion of the Commission to permit this sort of thing to be submitted, and it may have been if we hadn't had that threat of a leak.

JH: And then what was the resolution in National Student Marketing?

RR: Well, there were several resolutions, and the law firms ended up consenting, I think. Some of them did, some of them didn't. There was one case here in the District where the judge said the lawyers should have done something, but—more than they did, but the court never said what that something was. But it changed practice in that, as you know, we now—most law firms have second partner reviews of opinions. Opinions were at issue in that case. And one of the settling law firms said, well, we'll—as part of the settlement—we'll have a second partner review our opinions, at least in securities cases. And the rest of the bar jumped on the bandwagon. And I think that was a good thing. The Commission received lots of pressure after the case was brought, but they held fast. And Brad Cook, at the time the case was brought, was the Chairman of the Commission, I think, or at least he maybe—I think he was the Chairman.

JH: 1974? '75?

RR: '75, I believe. Right around there. I'd like to backtrack a little bit.

JH: Ok.

RR: There was one another—my career was about to leave enforcement, but there was one other case that I—though I had very little to do with—and that was Texas Gulf. I was on Frank Wheat's staff at the time.

JH: This is back in 1968?

RR: '68, '69.

JH: Right.

RR: And the Commission was going over the brief in that case, because they filed an amicus brief—or no, I'm sorry, they filed a brief in the appellate court—and that was a groundbreaking case. And Frank Wheat and the other Commissioners went over that brief with a fine-toothed comb. And that set a lot of law. Ok. Now let's move on to . . .

JH: We're into post-National Student Marketing and we're into, in essence, the creation of Enforcement while you were there.

RR: Yes. There were—Bill Casey became the Chairman. Bill was a wonderful guy. He would listen to the staff. It was easy access to him. He got along very well with Stanley Sporkin. There were . . .

JH: What was Stanley's job at that time, before Enforcement was created?

RR: Stanley—he was—he and Irv Pollack—Irv Pollack was the head of the Division of Trading and Markets. And Stanley was his associate director and handling enforcement cases. And that's where a lot of the enforcement cases came out of. And Bill, as I say, would listen to

people and generally would take their advice, but it frustrated him at times, and particularly the enforcement cases that were coming out of Corp Fin and out of Trading and Markets. And he had a management study done. And the upshot of that, that it was inefficient to have three, four, different enforcement shops and that that ought to be combined into one, a Division of Enforcement.

And this all happened with—the actual—it was—oh, I was interviewed by the management analysts, my favorite people [laughter] from my days at the Veterans Administration—and the upshot was this recommendation, which was kept pretty close, because I wasn't aware of the recommendation. And I was off on a holiday with my family. And ordinarily I didn't—I told people generally where I was going to be, but then I—you know, plans would change. And we were at one of the beaches in the eastern shore of Maryland and decided we'd get on a ferry and go over to the New Jersey shore and . . .

JH: The Cape May Ferry?

RR: . . . Cape May Ferry, and then go up and visit my grandparents in Maine, drive up that way. And nobody knew we were going to do this. And we're about to get on the ferry and I hear the loudspeaker saying my name and would you go to the phone and call this number. And somehow Alan Levenson had tracked me down. And he said, hi. He said, how long do you want to keep playing the game of cops and robbers? And I said, well, what do you mean? He said, "Well, we've just done this reorganization, created a Division of Enforcement. You can go down there, or you can stay and become an associate director of disclosure policy." And I said, "Well, I think I'll take the disclosure policy job"—which was a good career decision. I hated to leave the enforcement shop, where we had a bunch of really good

lawyers, and very close camaraderie—Carl Stewart; David Belkin; Dick Nesson, who's now General Counsel with the Depository Trust Company's holding company; to name a few.

And we had some great times there. We had a basketball team that played on weekends—until I fell, cracked my head on the cement floor that we were playing on, and decided at thirty-five I was going to give up this game. But—there were a couple of humorous stories coming out of there. One, in those days, things were different. There were parties at the Commission, John. And sometimes something stronger than Coca-Cola was served at those parties. And our office used to have the party on Fridays. And the liquor was kept in a locked cabinet in Carl Stewart and Dick Nesson's office. People shared offices.

And we also had bomb scares in those days. And we had a bomb scare, and they would, you know—whoever the bomb squad was would go around—I don't know—with dogs or whatever, sniffing around. And all of a sudden comes on, will Dick Nesson and Carl Stewart please report to their office. Well, they had found a locked file drawer and they wanted to inspect it for a bomb. [laughter] They had to open it up. Nothing came from that.

JH: Did they lose their liquor?

RR: I don't recall. [laughter]

JH: Good answer.

RR: I don't recall. But if they did, it was replaced. But between bomb scares and presidential alerts and emergencies, it was interesting. I remember one Saturday being called in. It was

an emergency that the president had declared and all of the top staff on the Commission had to appear at the Commission, which—I think this was after we went over to 450, or—North Capitol Street.

JH: Mm-hmm. 500 North Capitol.

RR: 500 North Capitol. And I showed up and I showed them my I.D. And this gentleman comes up behind me and said, "I don't have an I.D." Well, it's Irv Pollack, who was then on the Commission, a Commissioner. The guard who's sitting there had seen him come in every day, knew he was a Commissioner and said, "No, sir, I'm sorry, you have to have an I.D." And I finally persuaded the guard, "I'll swear for this guy."

JH: The guards haven't changed, incidentally, over the years.

RR: No.

JH: So the Division of Enforcement was created and Irv Pollack became the first director of the Division of Enforcement. And Stanley went to Enforcement. And the people that you worked with in Corp Fin in the Administrative Proceedings section—did they go to Enforcement, too?

RR: Most of them did for a while. And Dick Nesson went there and then became General Counsel of the Municipal Securities Rulemaking Board and then went on to DTC. Some of the others went down there for a while and moved on into private practice. I think John Bermas, who had been in the office, stayed on at the Commission for quite some time and then went and left and—John's passed away now. But he was working with an international

organization, which would, on a pro bono—not on a pro bono basis, but on a very limited fee basis—provide advice to foreign governments, which he tried to get me involved in. But then he went on to better things maybe.

JH: I think we're going to turn the tape. Bear with us. We're going to try recording again. And we're going to see if the tape ends any time soon. So, Dick, what about Robert Vesco? And what do you remember about the Vesco case?

RR: Well, after Stanley became director, Division, and I was Director of Corp Fin, I would get Sporkin summonses, and . . .

JH: Sporkin summonses? What's a Sporkin summons?

RR: Well, for me it was—I'd be sitting in my office doing my job and all of a sudden I'd get a call, Stanley wants you in his office, or Stanley wants you at the Commission table. And I would walk in and there would be a bunch of people sitting around, and Sporkin would be working on a settlement or trying to convince these people that they were bad people or that their clients were bad people. And Stanley would ask me, what do you think about this? And I would sit there and say, Stanley, if you really want me to tell these people what I think about this, I think we'd better go someplace else and talk about it first. [Laughter] But Stanley would throw out ideas and sometimes they would work and sometimes they wouldn't work.

But to respond to your question, one of the Sporkin summons was to come down to Stanley's office. And I walk in and there's Robert Vesco and a battery of lawyers and a bunch of enforcement people. And Stanley says, sit down. I'd sit down. Stanley said, "You can ask this guy some questions about the filings with the Commission." And I said,

"Stanley, I'm not named in the order." And he said, "Ahh, don't worry about that." I said, "Stanley, look, for me to ask questions, I think I ought to be named in the order and, by the way, the way those orders work, you can name me in a supplemental order." "Oh no, no, no, I don't want to bother with that." So I turned to the lawyer who's representing Vesco and I said, "Do you have any objection to my asking questions without being . . ."

JH: This entire conversation happened in the presence of the lawyer for Robert Vesco?

RR: Yeah.

JH: Okay.

RR: So I said, "Do you have any objection to my asking questions without being named in the order? Mr. Sporkin could adjourn the proceeding and name me in the order if that was necessary." "No, no, no objections." So I start asking Mr. Vesco if he had seen the 10K, for example. "Well, I don't remember." "Did you sign it?" "Well, that looks like my signature." You know, those kinds of questions to try to pin him down that he'd seen this report and that he had signed the report. And he was very evasive. I asked a series of questions and then finally gave up. And then Mr.—just as an aside—we're sitting around. I guess there was a break going on. And Vesco turns to Stanley and he says, "Stanley, you've got a very nice house and you have very cute children, very nice children. Very nice children." Stanley looks at him and says, "What do you mean?" He says, "I have pictures of all of you." Stanley picks up the phone and the conversation's going around and around the table. Stanley called the FBI on Vesco. That kind of shows you the kind of man that Vesco was.

JH: Vesco just pointed this out right in the middle of the conversation without any lead-in or any reason?

RR: He just . . .

JH: Did his lawyer try to stop him?

RR: Not that I recall. I don't know that the lawyer controlled Mr. Vesco very well. Anyway, that case eventually—Mr. Vesco fled the jurisdiction and . . .

JH: Yes. The Fund of Funds case.

RR: Yes. And he had a U.S. company that was also the subject of Commission proceedings. And there was a civil action in New Jersey, I think. And it was a procedural matter, but all I can recall is that the court cited as the right—for the Commission to continue as they were continuing—was they cited the portions of the transcript that I had taken without attributing it to me.

JH: Never came back to haunt you, then.

RR: No.

JH: When were you named as division director? What were the circumstances in which you became the director of the Division of Corporation Finance? And which number director, if you can recall, are you?

RR: Well, I'm not good at numbers, but I can tell you who my predecessors were.

JH: Okay.

RR: There was Baldwin Bane, who was the first director, who came over from the Federal Trade Commission.

JH: And he was from 1934 to 1951.

RR: Something like that, yeah. And then Barney Woodside succeeded him. Barney went on the Commission. And Manny Cohen succeeded Barney. Manny went on the Commission. Ed Worthy succeeded Manny. Ed passed away. Charlie Shreve succeeded him. Charlie passed away. Alan Levenson succeeded him. Then I succeeded Alan when Alan went into private practice. And you know the story from then.

JH: Right. Baldwin Bane, Barney Woodside, Manny Cohen, Ed Worthy, Charlie Shreve, Alan Levenson. That's three, six—you're the seventh.

RR: I think that's right.

JH: By that—okay.

RR: Seven in—let's see . . .

JH: From 1934 to 1977, '78?

RR: '76.

JH: '76, okay.

RR: So, you know, Division directors serve longer than Chairmen of the Commission, on the average.

JH: Right. Well, after Baldwin—for seventeen years—he broke the average.

RR: Well, you know, I spent however many years I did as associate director of disclosure policy. Alan Levenson left to go into private practice.

JH: At Fulbright & Jaworski.

RR: At Fulbright & Jaworski here in D.C. The position was open for a while. While all of this had been going on, the Commission—Alan and Stanley—put together the first voluntary disclosure program, or the first cooperation program relating to foreign payments. And people would come in to either Corp Fin or Enforcement and reveal information about foreign payments that were questionable. And depending upon how it came out, they may or not be proceeded against, or they might have been proceeded against with something lesser than the maximum sanction.

JH: This is before the Foreign Corrupt Practices Act was passed.

RR: Yes. And then the Commission put together a report to Congress that—I think that the Foreign Corrupt Practices Act bills were pending in Congress—the Commission put together a report outlining the volunteers program that had come in and—but without identifying them. And that was submitted to Congress. I had worked on that report. We

got a—I think we were subpoenaed by a House committee, by a couple of lawyers who were real, shall we say, aggressive investigators but didn't know what they were doing. And the Commission had encountered them in other cases. The tape is still going?

JH: Yeah. I think so. Bear with us. We're going to check the tape again.

End Part 1 Tape 1

[End Tape 1, Side A]

[Begin Tape 1, Side B]

Begin Part 2 Tape 2

JH: We're back. We actually have successfully turned the tape. And we're back with respect to Dick Rowe, the interview. And Dick, you were talking about your experiences as a Division director in the mid-1970's.

RR: Ok. I wasn't quite Division director when the summons from the Hill to come up and testify on the report that the Commission on the voluntary disclosure program for questionable foreign payments. It always seemed like if there was something that was—I don't know quite how to—troublesome or was going to be a beat-up-on-the-staff inquiry, then I would be one of the ones to be sent up there.

JH: I share that feeling. Any time there was something bad that was going to happen up on the Hill, I'd testify.

RR: But I can recall, when I was the associate director, a hearing by a congressman from Ohio on a tender offer in the State of Ohio against—or for the stock of an Ohio company and wanting to know what the Commission was going to do to stop this, because it was going to be a loss of jobs and everything in Ohio. Well not much we could do about that. Another

one on condominiums where it was interesting because Carla Hills—Rod Hills' spouse—was the head of the office of the Department of Housing.

JH: Mm-hmm. HUD. H-U-D.

RR: HUD. And she was up there testifying—did a much better job than I did. And then Congressman Rangel got us up there on what we were doing about South Africa. The best one was Senator Proxmire, who summoned us up there on a Saturday and I guess it was Phil Loomis and I and I can't remember who else had . . .

JH: Phil Loomis was a Commissioner at this time.

RR: No, this was when Phil was General Counsel.

JH: He's still the General Counsel.

RR: Yes. And—I think that's right. And Secretary Blumenthal, the Secretary of the Treasury. And this was on who owns America, which had been a subject of congressional hearings and some rulemaking. And you look up there, and there's this dais and all of these television cameras and Senator Proxmire. And that's the only person from the Hill. And he put us through a ringer and, you know, why aren't you disclosing who owns America? And they wanted to go down to something like one-one hundredth of a percent ownership had to file reports with the Commission. And actually, Harvey Pitt and I had drafted rules some years before where it's 5 percent [chuckles]. And, anyway, I can't even remember the questions they asked the Commission.

But they asked Secretary Blumenthal, whose background was that he had been of a Jewish family in Europe and they had fled to Asia and then he came here and he became very successful and ran a very successful corporation, and then became Secretary of the Treasury. And Proxmire said, Secretary Blumenthal, if some Nazis owned part of your company, wouldn't you want to know? And Blumenthal said, I wouldn't care. [laughter] So, anyway—but, get back to the report on questionable foreign payments. So the Commission said, you're going to go up there and you're going to testify, but you're not going to reveal—our instructions to you, you are not going reveal the names of those companies. And we're sending Harvey Pitt, who is the General Counsel, up there. He's your lawyer. Harvey's not testifying, he's your lawyer.

JH: I see.

RR: So we go up there in the evening after work. We go into this room with these two lawyers whose reputation we knew very well. They once purportedly parachuted into an oil field when they were investigating the Federal Power Commission to surprise them. Anyway . . .

JH: These were the two guys that were aggressive and not very good.

RR: Yeah, yeah. Well, not that they were not very good. But they didn't sometimes understand the law or its workings. Anyway, they got us into the room.

JH: It was just you and Harvey and the two other lawyers?

RR: Yes.

JH: Up on Capitol Hill.

RR: Up on Capitol Hill, on the House side in a conference room somewhere. And they started asking questions about the report. And, ok, here's case number one: Who was the company? I said, I'm not allowed to tell you that. My client, the Commission, has instructed me not to tell you. And if you want the information from them, you can subpoena them.

JH: Why was the Commission concerned about the disclosure of the names of the companies?

RR: Because they had opened this up for people—for companies to come in voluntarily and reveal information to the Commission. And the understanding was that this would be kept in confidence unless the Commission decided otherwise.

JH: So if the names were disclosed to people up on the Hill and those names got out, it would ruin the program. People wouldn't come in voluntarily any more.

RR: Yes. That's absolutely correct. And our experience had been if once something gets into the hands of the staff on the Hill, it's going to be published in the Wall Street Journal the next day. I'm overstating the case, but that's generally what's happened.

JH: Well, actually, as a person who came down the pike several years later in the same position, I can tell you that if you did give the House or the Senate some piece of information, the staff would leak it to the press very promptly. There's a very efficient market.

RR: Well, anyway. This kept up for some time. And Harvey's sitting there smiling and not getting questions from them. And then these two guys say, ok, we have instructed the

Sergeant-at-Arms to lock the doors. And you're staying here until you answer these questions.

JH: You are staying. Was Harvey required to stay?

RR: They said Harvey could leave. [Laughter]

JH: Harvey could leave.

RR: So this went on for several hours. And then I kept giving them the same answer. And they finally gave up. And they let us go. And we go back up to the Commission to report to Rod Hills, who was then the Chairman. And Rod was still in his office. And he's wanting to know what happened up there. And at that time he said, look, I'm going to appoint you director, I'm not going to appoint you acting director, I'll just appoint you a director. So I became Director of Corp Fin that evening.

JH: Did your experience as a first lieutenant in the United States Marine Corps help you to withstand the scrutiny of the two fellows up on Capitol Hill?

RR: Absolutely. I mean, if you've had a drill sergeant with his face up against yours, screaming at you that he's going to kill you, these two guys talking strike no fear in your heart at all.

JH: After being in the Army from 1969 to 1972, I can tell you nothing could be thrown at you that the Army already didn't throw at you, and in your case the Marine Corps. So, you're now a newly minted number seven Division director in terms of the history. What were your first acts? What did you want to accomplish as a Division director?

RR: Well, I wanted to, first, run the best division in the Commission and a very good division, and it already was, so I mean, my predecessors had done that. But also, with my rulemaking background, I wanted to see what we could accomplish in rules in various areas. And some of those were tender offers, where we had been operating under temporary rules for—since 1970, I guess it was, which Alan Levenson wrote over a weekend at the instructions of the then Chairman of the Commission, after somebody else, I think, had tried for a while and not come up with something satisfactory. We were—I'm not—I can't remember exactly what the timing was, but going private rules.

JH: There was a famous speech by Al Sommer at Notre Dame with respect to going private transactions, in the late 1970's. And then the Commission started a series of investigations. There were seventeen of them. And Enforcement took the lion's share of the good cases. Corp Fin actually conducted several of the investigations. That was my first touch of being anything of any consequence, was—I was one of the hearing officers for the ATO America LaFrance going private transaction, which ironically—Al Sommer had been the lawyer to Harry Figge, who had taken American LaFrance private less than seventeen months after the initial public offering.

RR: Well, Al didn't say in his speech that all going private was—there was some good going private and some going private was bad.

JH: No, but I soon found out exactly why Enforcement didn't want that case and sent it to Corporation Finance. Because there was disclosure in there that said that we may, at any time, buy back this ten percent and take it private.

RR: Well, the Commission, wholly apart from their enforcement activities, also held hearings on going private, which ultimately resulted in rulemaking, which was an interesting rulemaking proceeding, because the Commission historically had been a disclosure agency on a theory that sunlight is the best disinfectant and the like. And the staff, at least, was thinking about and discussing with the Commission what I would call more substantive rules—that, for example, that if there ought to be fairness, not just disclosure of the considerations of fairness, but there ought to be fairness in these proceedings. Ultimately the CommissionCwiser heads at the Commission prevailed. And the rules are, while they are in some instances—lawyers think that—or the clients, at least, think that they're onerous rules because it's really, you know, an extensive disclosure. And the staff, as some of my colleagues would say, torture you in the comment process. But ultimately, it isn't a substantive rule and disclosure is made and the company goes private.

JH: Just to footnote that point. 13e—the section says fraudulent deceptive, manipulative act or process—there was no legislative history for that in the Williams Act. And the research with respect to what Dick's talking about talked about a concept known as equitable fraud. And under the concept of equitable fraud, fairness and the idea of the board of directors acting in an unfair manner, was fraudulent under state corporation law. And there was actually case law on that, and the Commission did propose 13e3 the first time with an equitable fraud standard.

RR: Right. But ultimately that didn't get adopted.

JH: It was finally adopted in 1979 in—and just to go back to the release that was ten pages long—the release that adopted 13e3 and while you were there as Division director, was a hundred and twenty-three pages.

RR: And I remember that because after the Commission had approved it, then the release has to go out. And Harvey Pitt was the General Counsel and I was the director of the Division. And we wanted to get—it was sort of like the National Student Marketing case—we better get that release out as fast as we can, because there are some Commissioners who are going get their hands on it and it's going to change. And we did get it out as fast as we could. These days, it seems like it takes the Commission, for a major release, it takes them a week to ten days to get it out after the Commission has acted on it. But I don't know what internal process goes on there now.

JH: Well, I'm chuckling, because I was the special counsel in the Office of Disclosure Policy who wrote the proposing and the adopting release, and when the Division Director says, that release goes out this afternoon, quite frankly, that went release went out that afternoon. The Commission meeting was in the morning and the release went out that afternoon.

RR: But I think part of—I know I was out of town and I think Harvey may have been with me or called me. But anyway, he was adamant that that had to get out. It was going to get worked on if it didn't.

JH: It's also one of the few releases that I worked on that Harvey actually reviewed the entire release. So, Harvey was involved in that. But your final ok was what was absolutely critical in terms of that release.

RR: And there were some other rulemaking proceedings. And here I'm probably confusing some of the things that went on when I was the director, some that went on when I was an

associate director to Disclosure Policy. But, for example, there were hearings on what I would call shareholder rights. And a subject of some controversy these days, too.

JH: That was Barbara Leventhal, Dick Nesson, and the definition of independence, was it not.

RR: What rights shareholders had under our proxy rules and other rules, I guess. But there's an interesting story there. Harold Williams was the Chairman of the Commission at the time, so I must have been director. And the staff was running the hearings and staffing the oversight of the hearings, acting as hearing officers. And we had one hearing here in Washington and Harold said, "I want to be on the panel, the hearing panel." So, ok, you're the Chairman, you can be on a hearing panel. And he said, "And I want it open to anybody who wants to speak there. And I want it open and obviously first come first served, because, you know, we're limited." I said, "Harold, are you sure you want to do that?" And he said, "Yes, I want it open to anybody who wants to testify, first come first serve." And I went to—I think Ralph Ferara was then his executive assistant—and I said, "Ralph, does he really want this to happen?" "Anybody?" "Yes." "Okay. He's the Chairman." We come to the hearing. And Harold had had a career as a corporate CEO.

JH: That was at Hunt & Wesson, right?

RR: Hunt. And perhaps another place. But anyway, he had, as the CEO of a large public company, he had had corporate gadflies appear at his meetings and give him a rough time. And so we open the hearings and the first witness to testify—or the first participant to testify—is a woman named Evelyn Y. Davis, a corporate gadfly if there was one. And she had been one of the ones that had been a gadfly at the meetings of Hunt. And she opens up

by saying,"Harold dahling." [Laughter]. And Williams looks at me and says, "How did that woman get here?" I said, "Harold, you said anybody, I tried to talk you out of it."

JH: On the tender offer rules, while you were a Division director, the tender offer went, the permanent rules went in several segments, but as a former rule writer, I can say one thing—your response for 14e-3. 14e-3 is insider trading in the context of a tender offer. And I remember the morning that you called me into your office. And you said something like, I've been reading in Forbes magazine about how people are buying securities that are going to be the subject of a tender offer because the price of the stock of the target company is going up before the public announcement. And you looked at me and said, I want you to write a rule on that. And could you help me with respect to it? I've always wanted to know this. As a former rule writer myself, and you being a former rule writer, how did you come up with an idea for a rule? Where did it come from, 14e-3 in particular, but also generally?

RR: Well, I don't have a precise recollection of that, but it seemed like there were abuses going on that couldn't be reached by 10b-5. It's—whether it's that there was no duty to disclose or some other criteria that was necessary for 10b-5, but people were taking advantage. And, as you know, 14e-3 creates the duty of disclosure or not trading, because it says that once you know that there's going to be a tender offer, you can't trade. And that was sort of the idea. I probably also wanted to get a jump on the Division of Enforcement.

And I think it was probably better to do the first draft than to have the Division of Enforcement. The Division of Enforcement always had a different outlook on things, and rightfully so because of what they saw. They see the worst in people and Corp Fin sees, for the most part, the best in people. And they would take positions that would certainly assist them in their enforcement cases but make it very difficult for others to comply with the law

or, if they had to comply with the law, very expensive and complex ways of going about it. So that may have been another reason.

JH: When the drafts of this release were going up, Phil Loomis was a Commissioner and he changed the word "create" a duty to "affirmed" a duty.

RR: Yeah.

JH: And also, this rule was being proposed and adopted long in advance of Chiarella. Chiarella was really unknown to the staff at the time, so the idea of this rule being a response to Chiarella was really a misnomer. But we did steal a march on Enforcement. Enforcement was pleasantly surprised with 14e-3 and, unlike the 13D rules, where they were really involved in the process of proposing and adopting, on 14e-3, basically the entire rulemaking proceeding happened outside of Enforcement. So your strategy worked, Mr. Rowe.

RR: Well, you mentioned 13D. That was an experience with Enforcement and—they wanted to get behind ownership to a much greater degree than was practical. And as I had mentioned before, there had been bills pending in Congress that would go down to the fractions of a percentage of stock had to be—holdings had to be reported, which just wasn't practical. And the Commission couldn't have handled it in those days. They didn't have a computer system that would have been able to handle it. And I don't know that they do today. But there are instances where there are rules on the books that are there before Enforcement wants to be able to, or at least thinks they want to be able to check up on things. And Regulation D and Form D is a perfect example of that. At one point, there was a move to do away with the filing of the Form D, so that could be done without causing too much consternation in the states with their blue sky uniform filing.

But Enforcement resisted that. I don't know that they use or even look at Form D's, but they insisted that it had to be filed. We had it—there's a rule 701, which is for offers and sales to employees of private companies. For many years, there was a form that had to be filed to avail yourself of the exemption under that rule. But the Commission was wiser in those days—wise in adopting that rule, because they made it a temporary rule with an automatic sunset and nobody was interested enough to try to undo the sunset.

JH: Also, while you were Division director, S-16, a short form registration statement, started to come in, and the whole concepts of the integrated disclosure system started to burble up and people started to talk about integration. Could you give us a little bit of picture from your perspective on the beginnings of shelf registration and S-16 and what your thought process was?

RR: Well, for some time there had been thought that the disclosure required—and we're talking now about '33 Act registration statements—ought to be somewhat less for what I'll call seasoned companies. You can define seasoned companies in a number of different ways. But the number of years they've been reporting what their market cap is. But there are certain companies that, because they're well known, because they're filing reports under the Exchange Act periodically, the disclosure under the '33 Act registration ought to be somewhat less. And the first such form, I think, was called S-7, but it wasn't much less. The management information was not required but just about everything else—very extensive discussion of business and . . .

JH: If I remember correctly, it was S-7 for equity and S-9 for investment grade—what became investment grade debt.

RR: That's right.

JH: That was my first registration statement that I reviewed when I was an examiner in Branch number 2, was an S-9.

RR: But going back to the time I was Frank Wheat's legal assistant. Frank worked on a report—ostensibly he was assigned the task because Manny Cohen wanted to get him out of his hair, although Manny didn't have any hair to get out of. [Laughter] And Frank did what's become known as the Wheat Report, which had a number of recommendations— the predecessor of Rule 144. But Frank also recommended that there be quarterly reports, which up until then there had been a semi-annual report, but it didn't have much information in it, and that there be beefed up '34 Act disclosure in general. And that was one of the underpinnings of allowing resales of restricted securities, because there was information available to the market place about the issuer. So that sort of underlay that if the company is seasoned enough, it's been disclosure's been out there enough, there are many, many more transactions in the marketplace that rely on the '34 Act disclosure than there are that rely on the '33 Act disclosure. Why shouldn't we loosen up '33 Act?

And the Commission generally does things in increments. And S-16, which was a, to the best of my recollection, at least first was a short—what I call short form registration statement, relying on incorporation by reference of the '34 Act reports but available only for secondary transactions—resales of restricted securities. There was also a Form S-8 for offers to employees where it, again, you don't need a full-blown registration statement. And then there was Al Sommer, after he left the Commission, headed up a disclosure study, which was staffed, although it was—the study was outside people, including Warren Buffet

and some others. It was staffed internally at the Commission. Mickey Beach, who was head of the Office of Disclosure Policy at the time, and others at the Commission worked very closely with Al and his staff.

JH: Mickey took your job as associate director for Disclosure Policy when you became Division Director.

RR: Right. And, quite frankly, I was trying to keep one step ahead of the committee. I mean, I obviously had staff there that knew what was going on and I could anticipate where they were coming from and saw no reason to wait, so we put forth some of our recommendations early on, but the report came out. I left the Commission. Ed Greene succeeded me. And within a few years, we had what today is the integrated disclosure system, relying on the '34 Act reports for seasoned companies. But the seeds were sown before that and Al Sommer and his study get a lot of credit for that. And Frank Wheat's report.

JH: Victory has a thousand fathers, defeat is an orphan. This period in the late 1970's, though, was really a very important period in terms of things like the birth of S-K, the birth of short form registration, really the whole groundwork, if you will, the framework for a lot of what happened from 1980 on—was sort of, not just built but developed during that time. I mean, what about S-K? Where did S-K come from, from your perspective? And what did you want to accomplish by S-K?

RR: Well . . .

JH: . . . because I was always taught that, you know, the S came from the '33 Act, the K came from the '34 Act, and what this was a one-stop shop with respect to disclosure for both statutes.

RR: Well, that's correct. The S forms were '33 Act forms and the K forms were the '34 Act forms. Don't ask me how they got those, except maybe it comes out of some letter in the U.S. Code. But we decided it didn't make sense to have registration forms under both acts that just repeated what the disclosure ought to be, that it ought to be standardized— for example, description of business ought to be standardized in 10-K and a S-1 registration statement. And if you're going to go to incorporation by reference, it made even more sense. So you would have the disclosure items in one place. And then we—I can't remember now what went in at first, but we started out small. After I left . . .

JH: There were about four items when you Division Director.

RR: . . . after I left and the proposals under Ed Greene were put out, the American Bar Association, Federal Regulation of Securities Committee, got involved. And Warren Greenenberger, who became head of the committee at that time, actually moved to Washington because—to their Washington office of his firm—because they felt he had so much work to do on this. Ultimately he had to go back because Ray Garrett passed away. And Warren came to me and he said, "Look, we got all these guidelines and other informal pronouncements by the staff of the Commission and we got all of this thing Regulation S-K." He said, "We need somebody not to work so much on the substance of what's been proposed, but just reorganizing all of this."

So he put me in charge and I—I was now in private practice—and we wrote an extensive comment letter to the staff about just reorganizing the guidelines and the SK and what you should put here, without really getting into the substance. And it was something that the Commission and the staff really welcomed, because they were dealing with substance and this was important but not something they wanted to spend a lot of time on. So they got the guidance and they practically adopted it.

JH: In toto.

RR: In toto.

JH: I became the chief of the Office of Disclosure Policy when Ed Greene became Division director. Not only do I remember that letter—that was the letter that was used as a guide with respect to the beginning part of integration, because while all of this stuff had been talked about, all of the factors had never been put into one place. And your letter put it in one place.

RR: Before you leave that thought, though. That demonstrates, and which has been more and more important over the years, is what the private bar can contribute to the Commission's rulemaking procedures, because particularly in my day, less so now, there was little private practice experience on the Commission staff. And the bar can impart to the Commission staff the practical consequences of their rulemaking and in some cases, as the one we've just been discussing, you know, really lay out things that will be very helpful to the Commission and staff. I mean, there are going to be disputes over substance, but over the years it's worked very well.

JH: And over the years, they haven't been politicized or viewed as somebody with a cause.

RR: In most instances. There are occasions. But . . .

JH: I want to conclude the part of rulemaking with a story about Dick when he was Division director. And the fact of the matter is, I was a rule writer under him and my favorite rule, the rule that I love the most is 14e-3. When 14e-3 was adopted, the Commission had an open meeting. This was under the Government in the Sunshine. And the press was there. And this was the beginnings of, in essence, a press interview of the staff after the Commission meeting. 14e-3 was insider trading in the context of a tender offer. By the time it got adopted, Enforcement actually understood that it was an important rule. The fact of the matter is, when Dick and I walked into this, in essence, press conference, they started asking Dick all sorts of questions about 14e-3, which, incidentally, he could answer every one of them, because he knew that rule cold and he knew the release cold.

And he looked at the reporters and said, "Talk to John Huber, he's the person who worked on this release." The fact that a Division director had, in essence, directed the reporters to talk to a young staff person about a rule was a moment in time for me that, quite frankly, I'll never forget. It became my operating philosophy that the contact people with respect to any release were not the senior people. The contact people with respect to a release were the junior people. It was their curtain call. It was their credit. It was the thing that would cause them to work real hard. And I learned that lesson from Dick Rowe. And I just want the tape to reflect that I thank him in public.

RR: Well, I think that our successor, John, has done a very good job in giving credit to the younger people who are working on these things.

JH: Oh yeah. It was part of a proud tradition. But what I'm really saying is, from this rule writer's standpoint, I saw it first hand.

RR: Another story along those lines and—I won't go into the specifics, but there was a particular rule proposal, very controversial, that had grown out of some of the hearings that we had done. And the staff had worked very hard. And our recommendation had been made to the Commission. And I get a call from the—I guess with this Chairman, it was probably from his executive assistant—but anyway, we want you to withdraw the recommendation. I said, I don't withdraw recommendations. Well, the Chairman is very unhappy, he doesn't want—this was after Government in the Sunshine there would be an open meeting. And we can talk about Government in the Sunshine and how I think it affected the Commission.

But in any event, I said, "I don't withdraw recommendations. I believe in the recommendation. You can reject the recommendation. The Chairmen can fire me. But I'm not withdrawing the recommendation." And he said, "Well, we just don't want . . ." And I said, "Look, the staff has worked very hard on this. I want them to go to the Commission table. I want them to make a presentation. And that Commission can do anything they want." Well, that's what happened. Because I could not go to that staff and say—I went to the staff and I said, "Look, the Commission's going to vote against you. But you're going to go up and make your best argument." And that happened.

JH: Paul Gonson used to call that the down-in-flames approach. And the fact of the matter is the Commission had, and has had in the past, a proud tradition of standing up for what was right, for what the staff actually believed in. When I was a young attorney, all of the Commission meetings were private. The Commission meetings were private both at the

time of a rulemaking and at the time of an enforcement proceeding. What happened in the early 1970's was that, all of a sudden, things like the Freedom of Information Act came about, the Government in the Sunshine Act came about, and by the time the mid- to late-1970's occurred, you would have a Commission meeting that, well, from a young person's standpoint, looked orchestrated. From the standpoint of the public coming in, it looked like it had already occurred in terms of a decision. What were your views about all of that?

RR: Well, let me go back to when I was a young attorney, John. [laughter] When Hamer Budge was Chairman and . . .

JH: This would have been 19 . . .?

RR: '70. When I came back to the Commission from California, it was a very close place then. And Commissioners and staff went to lunch together frequently. I don't know how many times Hamer and his assistants and I would go over to the watering hole next door to the Commission on North Capitol Street and have lunch. And you would talk about, not always Commission business, but you'd talk about Commission business. And other Commissioners would come and you would sit around and you'd talk about Commission business. If there was something we talked about during the day, there would convene two or three or four Commissioners. And you talked about it. And I've always felt that if, first of all, the Commissioners—if they could get together in an informal setting—could discuss things and there would be fewer of what reports in the paper that such and such a Commissioner opposes this and such and . . .

JH: Misunderstandings, yes.

RR: Yeah. And those things could be worked out in a more informal basis, not just sitting around a table or dealing through legal assistants or executive assistants. The other thing is that if you've had the opportunity to do those kinds of things, the Commissioners could sit down with the staff and explain, look we can't, we really aren't going to be able to do what you want us to do and here's the reasons and etc., etc.—and mollify the staff ahead of time. And if you tell somebody in a reasonable manner that you can't do what they're recommending, they'll understand that. But to call you up the day before or the morning of the hearing and say, we're not going to approve and we don't want you to make the recommendation, just doesn't work from a staff standpoint.

So, I mean, I think that the Government in the Sunshine Act has had a great impact. I agree with you that a lot of these Commission meetings look and sound like they're scripted. I don't know whether they are or not, and I don't know that it matters, but it hurts the decision making process for an agency like the Commission. Now, when I was there, it was a much smaller agency, which also made a difference. You know, a large agency, it's harder to spend time with the top people. But even so—with the demands on their time. But I think it's had an impact. Before we leave rulemaking and the like and go on to some other things I'd like to talk about, I'd like to go back to an effort that came up in the mid-seventies. And that was the Federal Securities Code.

JH: Louis Loss.

RR: Louis Loss.

JH: The fellow who taught you securities law at Harvard but didn't get into the details.

RR: Right. Well, the American Law Institute—and the reporter was Professor Loss. For many years, he had been working on a federal securities code, which would have codified all of the securities—the '33 Act, the '34 Act, the Investment Advisers Act, the Investment Company Act, the Public Utility Holding Company Act—which the Commission for years has wanted to get rid of anyway—and maybe some other statutes. It was a very comprehensive code. Definitions applied across the statutes. Many, many substantive changes. For example, in the '33 Act area, stockholders could force a company, without contractual rights, to register securities, which always troubled me. But in any event, the code was finally approved by the Institute. Phil Loomis, who was a Commissioner, and Al Sommer, who was a Commissioner, were very supportive of the code. In the past, senior staff of the Commission had been supportive.

And it came to pass that Congress wasn't going to consider this piece of legislation unless they heard from the Commission. And it was supported by the Commission, which meant that Professor Loss and others had to come to the Commission and make a presentation or make presentations to the staff, so that the staff could formulate recommendations to the Commission as to what position they would take if the legislation was introduced. Professor Loss had always been a very proud man and also—let's put it this way—believed that he was right. So he was not very happy about junior staff members, being me when I was an associate director and Ted Sonde, who's the other one I can remember—junior staff members—having to make a presentation to them and defend this elaborate which had gone through the process of the American Law Institute and had the support of at least two Commissioners and others that had been Commissioners.

But we were troubled by this for a number of reasons. I mean, there were substantive provisions that were troublesome, and I gave you an example of one. But basically, a couple

things—one, we thought that the Commission could accomplish, if it wanted to, through rulemaking, quite a bit of what the code was substantively trying to do. And that was even before the Commission had broad exemptive authority. And they had done that in a number of cases—by interpretation, granted—but they could do it. That was number one. Number two, we were very concerned that if you wrote—there were problems in interpreting various provisions of these statutes . . . **End Part 2 Tape 2**

[End of Tape 1, Side B]

[Begin Tape 2, Side A]

Begin Part 3 Tape 3

JH: This is now the A side of the second tape of the interview of Dick Rowe on May 24, 2004. If somebody's looking for the other tape, the other tape is A and B side, and has been filled. We've been talking for an hour and a half about this and we're now going to go back to Dick Rowe and continue the conversation that Dick Rowe was talking about with respect to the Louis Loss code and his presentation to the staff in terms of trying to get the SEC to follow his recommendation on the code. Dick?

RR: Well, okay. I started to say that the second thing was that the courts had become used to interpreting the statutes as they were. There were flaws in the statutes, obviously, but—and the staff had become used to interpreting it. And no action letters were now—or interpretive letters were now public. Beginning in the early '80's, they became public. So they were available. And we were concerned that if you adopt this code with a whole new set of provisions and a whole new set of definitions, that you throw out all of that prior SEC interpretation, the judicial interpretations, and you start all over again. And twenty years from now, people would get some certainty.

So it could create a great deal of uncertainty. The third major concern that we had is that this was a carefully crafted code. Everything was interrelated with everything else. And if you put a piece of legislation before the Congress, it's not going to sit there and pass it verbatim. There are going to be pressures brought on Congress to change this and that and everything. And once you change one piece of that code, it has effects all over the code. And what you're going to get is not what went in. It's going to be like putting beef into a grinder and coming out with hamburger. So those are the three major reasons, wholly apart from substance, that were concerns. And there were substantive concerns, too.

JH: As it turned out, the Commission did do almost everything it had to do with very little help from Congress. The Commission did it all administratively. Integrated disclosure didn't have any congressional help whatsoever in terms of its proposal and adoption. The fact of the matter is, it took things like the beginnings of the shelf rule and adopted it, which for all intents and purposes allowed companies to achieve company registration with the universal shelf registration statement ten years after integration began. And the Sarbanes-Oxley Act is a wonderful example of your third reason. Once Congress gets a hold of the federal securities laws, Sarbanes-Oxley is a very good example of what happens.

RR: Professor Loss was sort of offended by these young pups questioning his code. But it never got support at the staff level and therefore it just sort of died an honorable death. If you go back and read the volumes of the code, there's a lot of historical background in the volumes that is very useful—you know, why things were done this way and not a different way. But in any event, Al Sommer for a long time never forgave me for not supporting the code, although after a few years we became good friends again.

If I may, John, I'd like to spend some time on sort of the administrative side. We've been talking about rulemaking and the excitement of that, and we're talking about enforcement

cases. I'd like to spend a little time on what I would call the administrative side, I think, because after all, I was running a division of three hundred and fifty employees and doing budgeting work and interacting with the people on the administrative staff.

JH: As a person who started out as an examiner in Branch Number Two, I'd love to hear about the administrative side. Those of us at the bottom of the boat who were rowing would like to know.

RR: Let me start out with—and some of the people that were very important to the Commission and probably don't get as much credit as they would. First of all, I think I'd start with the Office of Personnel. The first Director of Personnel that I came in touch with was Harry Pollack, who was actually Irv Pollack's brother, and did a good job. And he was succeeded by a gentleman named Al Fontes.

JH: Well remembered.

RR: And I had most of my interaction with Al. And I'll tell some stories on that. But after Al came, Jim Foster, who I just—was a delight—and I really got along well with him. Al and I had some interesting controversies, shall I say. One was a young—you know, as you've mentioned, I did a lot of vetting of the hiring of young lawyers, even when I was Director. And it came across my desk—a young man, Bruce Mendelsohn had a tremendous record. I interviewed him. He was great. I said, "Hire him." Fontes comes storming down to my office and he said, "How could you do this? Did you know that this guy is the son of Sidney Mendelsohn, the director—your colleague director—it was the predecessor of Division of Investment Management." I said, "No, I didn't." I said, "If I did, I'd still hire him." I said, "I didn't know. Sid's never talked to me about him. This is all substance.

He's got a terrific record. Here's his record. Hire him anyway." Grrrrr! You know, he growls, but, you know, Bruce went on to a fine career at the Commission and he's now in private practice.

JH: He worked with me on disclosure policy. And Bruce Mendelsohn was one of the people that actually tackled management remuneration, executive compensation, during the early 1980's.

RR: And then the second thing that I remember is that we had a rather senior lawyer who was very valuable to the Division, and the Commission has rules as to what investments you can have and what kind of accounts you can have. And this guy had come out of private practice and he had two accounts, family accounts or something, but they were on the proscribed list. And I—he didn't even think about it. He wasn't doing anything wrong. There wasn't very much in the accounts. He wasn't trading in them. So Fontes comes down and says, "Well, he's got to go. He's violated the rules." And we fought for this guy, and we finally lost.

And I appreciate that if you have rules, I guess you have to follow them, no matter how hard it is. And that was one of the hardest things I had to do is fire people. A lot of my colleagues didn't want to go through the grief of firing people, not only because from the human standpoint, which was the hardest point, but if you fired somebody, you're going to get a EEOC complaint or you're going to get a grievance of some kind and have to go through a proceeding. And I said, "Look, if we have a solid record that this person is not performing or is a danger to the agency, I'm going to fire him, and I'll take the heat. I'll go to the hearings. Don't worry about. We'll do it."

And I've done that and I've gone through hearings. And, you know, luckily it was few and far between, but it's—it was hard both from a personal standpoint, in some cases, and just because of the grief that you're put through by having to go through a hearing. But the interesting thing is that Fontes, who I've had some tangles with, comes to me one day and said, "I need your help." He said, "I've had a complaint lodged against me." And in those days, the Commission would allow Commission lawyers to represent Commission employees who were the subject of internal complaints. He said, "I want you to represent me." [laughter]

JH: You would represent Mr. Fontes.

RR: Yes. So I said, "Fine, I'd be happy to represent you." So I took on the representation. And I get a motion to disqualify me from the complaintant. And then I saw—without getting into details—I filed a counter motion to disqualify the complaintant, which never went anywhere. But I said, "Okay, fine. I'm not going to have a secondary controversy here. I'm off the case. But my two best lawyers are on the case. Barbara Leventhal and Dick Nesson." Of course, being disqualified, I don't know how it came out in the end. But it was interesting to have my sometimes adversary coming to me and saying, "I want you to represent me."

JH: A compliment of no small proportion. But the operations of the Division of Corporation Finance is where the heart of the entire Division is.

RR: Right.

JH: The review process.

RR: And then—yes, and the review process. I must say that I never worked in a branch, a reviewing branch, and I never worked in an assistant director's office. It was always through the enforcement side and the disclosure side and then on up to director. So I relied very heavily on the associate directors and the assistant directors—and the branch chiefs, for that matter. But people like, well, Ralph Hocker, who was the principal associate director under Alan, who actually ran the place. It was—Ralph could do some very interesting things. You know the Sarbanes-Oxley Act has a provision that says that you will review the reports of public companies once—at least once every three years. Well, you know, the Commission in those days, under its budget, or its operating budget, had to review the '34 reports and clear them—every year.

And that was physically and practically impossible. They spent a lot of their time on the '33 Act, which has been historically where the Commission focuses. The '34 reports got very little attention. For a long time there was very little in them, but even afterwards. And I became curious as to, you know, how do you meet this clearance? And I can't remember now if it was Ralph Hocker or Bob Bagley, his predecessor, who said, very easy. He pulled over a list and he signed the bottom of the list and it said "Cleared." [laughter] Those guys operated that way. But the one I remember the most, and most fondly, is Bill Wood, who was the associate director for operations when I was the director. And I relied so much on him. And he just ran the place.

JH: Bill Wood was the associate director for operations when I ran the place and he ran the place as well.

RR: And the assistant directors also were, well, you know, historically gone through various iterations, but in those days there were assistant directors and then branch chiefs. And the assistant directors were people like Mark Koeppel and Joe Bernstein, Ernestine Zipoy—were really the bulwarks of that . . .

JH: Actually, during that period of time, it was sort of standard operating procedure that a branch chief—in order to be a branch chief, you had to be in the branches for ten years, and before you even became an assistant director, you had to have about twelve to fifteen years of experience. The backbone, the institutional memory, of the division was the assistant directors and the branch chiefs.

RR: Absolutely. And that was where the bulk of the work was done. On the other side of it, on the accounting side—again, I'm not an accountant, although I had been chair of the ABA's Law and Accounting Committee—I was graced by having Howard Hodges as the chief accountant of the division. Another person who I could rely on completely, albeit who'd be amused at my lack of understanding of bookkeeping, but . . .

JH: Yes. Actually, Howard P. Hodges was the chief accountant throughout the entire time, and he was the chief accountant throughout the entire time I was the division director as well. One of the best accountants you'll ever see, and capable of doing something that I would submit to you is increasingly rare—balancing the needs of accounting with the practical needs of a particular company in order to get transactions done.

RR: Right, which is something that is important that the division had its own chief accountant, because the—I won't call them ivory tower, but the chief accountants to the Commissions are more involved in setting accounting policies and making rules that then have to be

applied in a practical matter. And that's not up to the division. And I—during my tenure there, there were three chief accountants, I believe, to the Commission, starting with Andy Barr, who was feared and loved by everybody, very protective of the profession.

I can remember working in Administrative Proceedings and there were several 2(e) proceedings recommended that Andy didn't think were in the best interest of the Commission or the accounting profession, and they never went anywhere. And Andy could—the Commission just relied on him 100 percent. And he was a powerful, powerful man. The accounting firms looked to him. And just a story. When I first got there, there was no such thing as casual Friday at the Commission, or casual anything. The accountants would all dress like Andy, which was with a straw panama hat in the summertime and a blue suit and a white handkerchief in the pocket and a grey fedora in the wintertime. [laughter] And, you know, we wore suits. And I remember when we used to come in on Saturdays when Saturday work was de rigeur, whether you had anything to do or not. Ed Worthy would let us come in in sports jackets and ties. [laughter]

JH: Dressing down.

RR: Dressing down. But Sandy Burton was the next chief accountant that I worked with. And I worked very well with Sandy, except in one area. There are things called staff accounting bulletins, which are guidance put out. They're not rules of the Commission. They're guidance put out by the staff of the Commission. And they got their start under Sandy. And it was a good idea, except for one thing. And I told the Commission this. I said, "Look, you may say they're not rules, but practitioners violate these things at their peril, because the staff had to adhere to them. So I think they ought to go through some kind of rulemaking process, or something like a rule—put out for comment."

And this went on. Sandy and I are back and forth at the Commission. The Commission finally got tired of it. And they said, "Okay, we're going to resolve this." "Well, how are you going do it?" They said, "From now on, no staff accounting bulletin goes out without the signature of the Director of Corporation Finance." [laughter] So they threw it back. So, you know, I didn't bother him any more about it.

JH: Well, I think in terms of that, that tradition continued until the 1990's, and it's no longer the case that the Director of the Division of Corporation Finance has to sign the staff accounting bulletin.

RR: But they still recite that it is the views of the Division of Corporation Finance.

JH: I appreciate that. But it doesn't go through the Director any more.

RR: [laughter] Okay.

JH: Much to my chagrin, because the point that you're making is an outstanding point, which is the Corp Fin director should be signing off on staff accounting bulletins as well as the chief accountant of the Commission.

RR: Technically, since it has their name on it. And the last was Clarence Sampson, who came up through the ranks . . .

JH: In Corp Fin.

RR: Yes, and then went to the chief accountant's office and became chief accountant and was very good. Very good chief accountant to the Commission.

JH: He then went to the FASB.

RR: Right.

JH: And he was a member of the FASB for almost ten years.

RR: More on administration. Budget. I hated the budget process, I must say. There used to be a—Frank Donaty was in charge of finance at the Commission. And in the old days, he would draw up the budget. He would take it up to his friends on the Hill, the staff, and lay it before them and, you know . . .

JH: Presto chango.

RR: Presto, it's gone. And then it started getting these creative management theories as to how you want to budget. They more or less change every year, but they're all the same. So as director, I would have to go through this budgeting process and justifying the staff and predicting how many registration statements were going to be filed that particular year. And also it was interesting the way these things would set up, because they're being set up along functional lines, so that I would have in my budget the office of the chief accountant of the Commission, because that's disclosure. And I would tell whoever then was the executive director or the budget director, I have no control over what those folks do. I don't have anything to do with them, other than, you know, typical operational matters—Nope! They're in your budget [laughter]. I also had the records . . .

JH: The regions?

RR: No, I didn't have any regionals.

JH: No regional disclosure?

RR: No. Because the Reg A may have been moved already. I don't recall now. If it hadn't been, it wasn't in my budget, or I can't recall that it was in my budget. But then also had the records people, because, you know . . .well, it wasn't even that in those days, but filings come in through them—they're yours, they're in your budget. [laughter] It was a . . .

JH: You also had zero-based budgeting under Jimmy Carter.

RR: Zero-based budgeting and then there was some other kind of budgeting, which seemed to me to be the same as zero-based budgeting. Anyway, but then . . .

JH: To provide a context, to provide a record, for people who served the Commission during your time frame, who were some of the people on the staff.

RR: Well, in no particular order—and if my leave somebody out and I'm sure I will, they should not feel slighted. It's either my memory or the press of time, but they all contributed. The first one I would think of is Orval DuBois, who was the secretary of the Commission and also acted as a chief hearing examiner. And he was the PR person, and he did many other things. And he was one individual—now I don't know how many people perform the functions that Orval . . .

JH: Fleets of people.

RR: . . . but many, many, many. And he was an institutional memory, as is Jack Katz today. And then there were people in Market Regulation, like Ezra Weiss and Bob Block, who—there was a rule in those days, 10b-6, which is now Regulation M. But nobody except Ezra and Bob understood that. I mean, they were Talmudic scholars as far as 10b-6 is concerned. If you wanted to know anything about how that rule operated, you had to go to one of them. And I think Ezra actually may have written a book about it, but . . .

JH: Sort of like Mike Macaleavy with the net capital rule.

RR: Mike Macaroli.

JH: Macaroli. Yes, that's it.

RR: Macaleavy would be very happy to know that. And another what I would call Talmudic scholar is Alan Rosenblat, who's still there at the Commission in the General Counsel's Office. But at the time, he was in the Investment Management Division. And if you wanted an interpretation of the Investment Company Act, Alan was the person to go to. And you really didn't want to go to him, because you normally would not get the answer that you wanted. But in any event, he was very well versed in that statute. Some of the people in the General Counsel's Office, in addition to Phil Loomis and Harvey, who I mentioned, and I guess Brad Cook when he was General Counsel—Dave Ferber, who was the solicitor to the Commission before Paul Gonson. He was a terrific appellate lawyer. Jake Stillman, who was an assistant associate GC and may still—is Jake still there?

JH: Yes. He's the solicitor now.

RR: Jake taught me how to—when—I mentioned earlier on that we got an assistant director—when I was assistant director of the enforcement office of Corp Fin, we got the authority to file complaints in court. Jake taught me how to draft complaints. So I was very happy to have him. Kathy McGrath, who was in our division for a while and ultimately became director of the Investment Management Division and went on to private practice and was very successful there. She was one of the—when Alan Levenson left, I took the opportunity to increase the diversity of the Division's upper staff by people like Mickey Beach and Ruth Appleton, who was head of our branch of small offerings regulation. And Kathy was among them.

JH: Ruth started as a file clerk, didn't she?

RR: Yeah. Ruth was one of the pioneers of the women on the Commission staff and for years she was not—I mean, everybody thought she was great, but she didn't get much recognition. I think we finally convinced the personnel people—I don't know what kind of—how many pints of blood we had to give up to do that, but that she ought to get a promotion to an assistant director.

JH: In the middle 1970's, Ruth Appleton was the chief of the office of small business and tender offers.

RR: Yes.

JH: And she administered tender offers without ever being a lawyer. [chuckling]

RR: Ok. Neil McCoy I mentioned, who was the chief counsel of Corp Fin, went on to a very nice practice here in Washington with Skadden & Arps, was my associate director for legal. Carl Bodolus was the first chief of the office of international corporate finance. Carl has since passed on, but he was responsible for the first shot at 20-F, which was the registration and reporting form for foreign private issuers.

JH: And for most people outside the United Stated, Carl Bodolus was the SEC.

RR: Yes. Some of my contemporaries that were division directors when I was there. Andy Klein in Market Regulation, Alan Mostoff in what became Investment Management. I mentioned Sid Mendelsohn, he was a predecessor of Alan's. Stan Sporkin, obviously. I remember once that there was an article—a full-page article—in the New York Times: "Where the Power Lies at the SEC". And there are pictures of Kathy McGrath and me and Harvey Pitt and Andy Klein and I believe it was Sid Mendelsohn at the time was head of IM. Division directors and the General Counsel. A lot of it was true. The part about Harvey getting up early in the morning was not [laughter]. Harvey would stay late, late, late at night, but I used to get in early in the morning, because I do my best work early in the morning. And I would call Harvey and he wouldn't be there. But if you wanted to come in at one a.m. in the morning, Harvey was there.

JH: You got people like Paul Gonson.

RR: Paul, yes. Paul. When I was considering leaving, Paul was one of the people I tried to get to come in to fill a deputy director's spot and so I would have a successor. Wisely, he decided he would keep to what he's doing. A lot of the associate directors down in Enforcement—Ted Levine, Ed Herlihy, Irwin Borowski . . .

JH: Ted Sonde became an associate director.

RR: Yes he did, eventually. Dick Kraut.

JH: Wally Timmeny.

RR: Yes. Wally and I over the years. Ted and Wally and ICI guess we're probably—Ted Sonde and Wally and I were probably the closest of this group, because I worked with them quite a bit. As you know, these days they talk about "silos" and the different divisions, which—"silos" is a new buzz word, but it means the separation between—and how hard the Chairman is working to try to break down the walls of the "silos."

JH: We didn't have "silos."

RR: As I say, Stanley Sporkin wanted to talk to me; he summons me to his office.

JH: Not only do I agree with that, but you mentioned Ted Sonde. Ted Sonde's experience with me was the Beckton Dickinson case, and based on his experiences with you, I was the person brought in from Corp Fin to help on unconventional tender offers. And the whole theory of the Beckton Dickinson case was a joint effort between Enforcement and Corp Fin. My highest honor as a young attorney in the Division of Corporation Finance was I was able to sign a complaint in the Beckton Dickinson case. And the fact of the matter is, I agree totally with you with respect to this point. There was a lot of coordination and cooperation. There was good argument, very spirited discussions and a community of

interest with respect to the divisions that were not silos at all. They were all on the same team.

RR: Couple of others. Ed Greene I mentioned, but had succeeded me when it was clear that I was going to leave, started interviewing—that's another story, but that—started interviewing—we can get into that, too—but started interviewing people to be deputy director . . .

JH: That was a brand new position.

RR: Yeah. Neil McCoy had left and then we de facto deputy. But Harold Williams wanted to create the deputy. And two of the people that I interviewed were Ed Greene and John Fedders, who later became director of Division of Enforcement. And we all agreed that Ed would be the one. And Ed later became the director and then became General Counsel to the Commission. A gentleman that you and I both know, a branch chief but also a photographer, Charlie Leber, who was responsible for the portraits, or at least my portrait that . . .

JH: All the portraits up to Linda Quinn. I don't think he took Linda Quinn's portrait. But he certainly took mine.

RR: Yes. All of the division directors' portraits were taken and hang in a conference room at the Commission's office. And interestingly enough, once I was over there for some reason and I said, you know, I've never seen my portrait hanging. So whoever I was with, oh come on, we'll show. They opened the door to the room and they were having one of these

international visits from a Japanese delegation. And I could see all these people looking at me standing there in the doorway and then looking up at the portrait [laughter].

JH: They call it the Pictures. The staff calls it the Pictures and sometimes when all the division directors are there, the staff will say the Pictures are here.

RR: A couple of other people. Dave Butowsky, who was sort of my opposite in the Investment Management Division, and then of course has since passed on. A number of the regional administrators—in those days, we spent a lot of time with the regional administrators. Len Rossen, Jerry Bollz, Bob Davenport in Denver. Jerry was all over; cannot attribute any particular office to him. Ed Kwalwasser, who was in the Reg A branch in the Washington regional office and since became an executive vice president of the New York Stock Exchange. Jack Bookey in Seattle. Bill Schief all over the place and later went over to the NASD. Mike Stewart, Mike Wolensky.

JH: Mike Wolensky was Atlanta, if I remember correctly.

RR: Yeah. He was also in the General Counsel's Office. Rich Tucker in L.A., who was on the staff. He wasn't a regional administrator. And my favorite of them all, Alex Brown, who was head of the Washington regional office. And after he retired, he went around to retirement communities, retirement homes, and sang for the older folks. And here's a man in his late seventies. [laughter] But Alex was quite a character. I really enjoyed him.

Some of the executive assistants to the Chairman—Art Fleischer was Bill Cary's executive assistant. Leonard Leiman, Mike Eisenberg, and Dave Ratner from Manny Cohen's office. Sandy Whitman for Bill Casey. Sandy was an interesting character. Anytime there was a

dirty job to be done, Bill Casey would say—and the staff was saying, "Bill, you shouldn't be doing this." And Bill would say, "Sandy, go do it." Tim Green for Judge Budge, Ralph for Harold Williams and Rod Hills. Bob Craft, I think, was with Rod Hills, too. Harvey for Ray Garrett. Ray was one of the nicest people that you ever could have met and as Chairman of the Commission he was just great. But I used to frustrate him.

My first experience with Ray was that I was a young lawyer arguing a confidential treatment case before the Commission's hearing officer and Ray was arguing the other side. And I had come up with this novel theory that it was a public standard. And I was arguing that it was in the public interest to disclose this information. And Ray thought I was arguing that it was a violation of 10b-5 not to disclose it. And it was not what I was arguing. So he settled the case. But he was turning red [laughter]. And then he would listen out the staff and he would find that what they were saying is reasonable and he would go along with them, but you could see he was very frustrated. That's not where he wanted to go. But he was very lovable.

Some of the legal assistants I worked with. Jack Daugherty, who's Dick Smith's—was Dick Smith's assistant, and we're still friends. Sven Johansen, who was Hugh Owen's assistant; I've lost track of Sven. Some of the people on the Commission that I got to know outside of the Commission, like Dave Ruder, who later became Chairman. And there were others outside of the Commission that contributed to the Commission or where there before I was or who were even never there but still practitioners, like Ken Bialkin and Jim Cheek and Marty Lipton. Jim Treadway before he became a Commissioner. Jim Sargent was a former Commissioner. Since Armstrong was a former Commissioner. Milt Friedman, Milton Kroll. Anyway . . .

JH: How many years were you there?

RR: Well, I started—if you count '63 when I was there in the summer and I started in '64. I left in '69, came back in '70 and left in '79. You do the math, John.

JH: So about twelve or thirteen years total.

RR: No, no, no, no. I have a fifteen-year pin. [chuckling] I think I got credit for my Marine Corps time.

JH: The math is sixteen years. Why did you leave?

RR: There were a confluence of reasons. One contributing factor was, Stan Sporkin called me up—you know, Stan left the Commission and became a General Counsel at the CIA under Bill Casey, later a federal judge. Stan called me up one day just out of the blue. And I thought, here we go, another summons. And he just started talking about saying it's no fun anymore. And I suddenly realized, you know, he's right. And I always said, you know, I want to do something that I'm having fun doing. And I said, no, it's not. So that was one reason, although it wasn't a determinative factor. I thought I had accomplished everything I had set out to accomplish in terms of rule making, setting up the Division the way I wanted it run.

Quite frankly, I had three kids and I was starting to think three kids are going to college and the house is getting too small for house and Congress keeps cutting back or not letting our salaries increase. And although my wife was working, between the two of us we were barely making ends meet. So, that was a very important consideration. Over the years, I

have been given a lot of headway, shall I say, by the Chairmen that I've worked with. Rod Hills, who surprisingly enough would take my recommendations. And Harold Williams had a different management style. He worked through his executives. He took a long time to make decisions when I thought maybe had to be made, whether they were right or wrong. Faster.

JH: He also pitted division against division at the time.

RR: Well, I'm not so sure of that, because, you know, division directors got along but in a sense—it's who had his ear at that particular point in time. And I'll give you one example. The Commission was outgrowing 500 North Capitol Street. The staff was just too much. And they wanted to move part of the Commission over to some buildings over on Louisiana Avenue. And the first choice was to move Market Reg over there. And Andy rightfully so went to the Chairman and said, it's going to destroy the morale of my division, etcetera, etcetera.

So I asked Harold to hear me out. And I said, you know, splitting the division is—because they would have moved some of the branches over there. Splitting the division is going to be an administrative monstrosity. You know, we didn't have emails in those days. We didn't have all these modern communications. We would be just running back and forth. And, you know, I can also argue the morale factor, and I'm arguing it as a practical matter. Frankly, you're making a mistake. Well, I got this opportunity to make this argument in a car running to the airport for five minutes. Be that as it may. So the upshot was that they moved our people over there. I don't know if that was the right decision or the wrong decision.

JH: It was a wrong decision. As a person who used to go shuttling back between North Capitol Street and the old building, which was a Federal Home Loan Bank Board Building. It was exactly what you thought. It was an administrative nightmare.

RR: Well, also I remember that once they were over there, that they had the feeling that they were sort of lost over there. I went over there one day and I was visiting with Ernestine Zipoy in her office. And there was this tremendous racket and I said, what's going on. And she said, they're cutting a stairway through the concrete next to her office. Well, then it came summertime in Washington and the temperature's up like it is today, nineties. And the air conditioning doesn't work very well over there. And I went to . . .

JH: I don't think there was air conditioning [laughter].

RR: Well, whether there was or not, it wasn't working. And I went to the executive director. I never got along too well with executive directors either.

JH: Was this George Kundahl?

RR: No, this was Ben Milk. And I said, "Ben, you've got to do something about this. This is not the Chairman's job, it's your job." He said, "They can open their windows." [Laughter] It's ninety-five degrees out and they can open their windows!

JH: Exactly.

RR: Anyway. You know, for all those reasons. And then I just happened to come across an opportunity with the firm that I'm with now. And it sounded very attractive and I like the people. So I made the decision.

JH: Bottom line: What would you like people to remember in terms of Dick Rowe's division director of the Division of Corporation Finance?

RR: Well, there's a movie with Jack Lemmon and somebody else which I can't remember, but the other guy says—"The Apartment," I think it was . . .

JH: Yes.

RR: And he says to Jack Lemmon, be a mensch. I want to be remembered as a mensch.

JH: Yeah.

RR: But, no—I was given a plaque when I left the Commission and I think it had something on it about the tender offer rules and the going private rules and maybe a few other things, but, you know, some of the rule making projects. But if you'd really go back to the—there was a poem and I don't have it. I couldn't find it. But there's a poem that Ray Garrett wrote about Alan Levenson and Jean Gleason and me writing Rule 144. And if I stop and think about the most important thing that I did when I was there, is that we wrote Rule 144 and saved the legal profession and our clients millions and billions of dollars [laughter] by just getting that rule out there.

JH: In one fell swoop.

RR: In one fell swoop. It was a great time. And I would do it over again, John. I'd do it over again. I met a lot of nice people there. I still have contacts with many of them. I wish I had

contacts with more of them. I miss those that have gone on. And it's a terrific place to work.

JH: Exactly. And I can tell you just from personal experience being an examiner in your division and being a special counsel in your division, you were one of the best division directors the Commission ever had.

RR: Thank you, John.

[End of Interview]