

**ORAL HISTORY OF  
JUDGE STANLEY SPORKIN  
NOVEMBER 6, 2003**

This is the first interview of the Oral History of Judge Stanley Sporkin as part of the Oral History Project of the D.C. Circuit Historical Society. It is being held by Alexander Bennett on November 6, 2003. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin which ultimately will be made in the form of a written donative instrument.

Mr. Bennett: I'm Alex Bennett, a Partner with Arnold & Porter, and have been asked by the Historical Society of the D.C. Circuit to interview Judge Sporkin for the purposes of the oral history. And now we'll just start with Judge Sporkin, if we may, and ask you what was it like in the early years growing up in Philadelphia.

Judge Sporkin: I was born in 1932, which was at the depths of the Depression. We lived in a row house in the so-called West Philadelphia section of Philadelphia. Although my father was an attorney and we seemed to be more fortunate than most of our neighbors, we still had to struggle. Things were not easy. I remember that we had to watch our pennies. We lived in a house, I think it cost us two thousand dollars. It was a row house, four bedrooms, one bath, which I shared with my Dad, two brothers, a sister and a dog. It was a little crowded there. We had only one bath, and my two brothers had to live in one room. My sister had her own room, I had my own room, which I shared with my dog, and my parents had their room.

Mr. Bennett: Were you the oldest?

Judge Sporkin: No, no. I was the third. I had two older brothers. I was the third. My sister was the youngest. My parents wanted a girl and so they kept trying until they got a daughter and then of course they stopped.

I don't know if people realize what it was like living in those days. No television. We had what was known as an icebox, no refrigeration. We had coal for our heating system. Our bread and milk would be delivered by a horse and wagon. I guess the milkman also was the butter and egg person. We had no such thing as a supermarket. We lived within a block of a number of stores that went for about eight blocks, and when I look back at it now, I thought how much better it was then, than now. Each one of these stores were local stores, no chains, and each one of them of course served a different purpose. There were delicatessens, there was a fish store, there was a meat market and a place that just sold canned goods. My mother everyday would have to go shopping with her cart and she would go to the fish store for fresh fish, she would go to the bakery, fresh baked goods, and then she would go to the delicatessens and meat markets.

And when I look back now how great that was opposed to what we have now, where everything is sort of packaged. And I remember when the first supermarket came to our neighborhood. Everybody thought that was a great thing to have. But now I think it would be very interesting – to go back to the old days and have separate establishments to serve our needs.

Remember that cars in those days had mechanical brakes. Some of

them you still had to crank in the front to get the motor started. And so these were such rudimentary times that, if you now tell a youngster what it was like then, they just wouldn't believe that was the way society was. And the interesting part of my life is I was fortunate to see all these dramatic changes taking place.

I think the first big change came in 1939, namely the World's Fair in New York. I remember people going there and reporting back and telling us what the future would be like. At the World's Fair, they introduced the concept of television. They introduced the refrigerator and a lot of other concepts that turned out to be the great changes for society.

In those early days, my father was in politics, he was a practicing lawyer. He also held a position with the city. He was an Assistant District Attorney. In those days, you were allowed to be both an Assistant District Attorney and practice law, so long as your practice did not include criminal work. So he was part-time prosecutor and a lawyer. His law practice was strictly civil. Most of it was subrogation work. That involved suing people to try to recover money from third parties to reimburse the insurance company for payments that they had made. That was considered to be a pretty good practice, especially for a small firm.

The firm consisted of himself and his brother and a variety of other people that would work for them from time to time. Many of the people that joined them later turned out to be judges. My father was deeply rooted in local politics. He was a Republican in the city of Philadelphia, which was one

of the few cities that were still Republican, except for presidential elections. In presidential elections, the city was always Democratic voting for President Roosevelt. I remember that my father used to be so disappointed in the national elections, because it didn't matter that he was a good committeeman or not, he wasn't able to get the votes of the people. It used to be that the committeemen could pretty much obtain the votes of people by virtue of the favors they did for their constituents.

I attended the local public schools, throughout. I went to the Hamilton school, the Bryant school, Shore Junior High, West Philadelphia High School. When I graduated from West Philadelphia High School, because my father had to educate his two other sons, there wasn't a whole lot of money to go around. And so I went to the state school, which was Penn State. It was interesting because the tuition in those days was, I think, six hundred dollars; I think it was for the year, although it might have been for a semester, I'm not sure – but I know the six hundred dollars was something that was affordable even in those days. And that's where I went along with one of my brothers. My other brother was able to get GI Bill help so he went to the University of Pennsylvania. My sister later also went to University of Pennsylvania. The University of Pennsylvania is a private school.

So I went away to Penn State, and while in college, I did not know whether I would be able to go to graduate school, even though I was very much taken with my father's law practice. But it was made clear to me that the family's finances might not permit me to go on to law school. And so that

dictated what major I would pursue in college which was accounting. The reason I took accounting was because if I could go no further, I would at least be trained to have a profession when I graduated from college.

I went four years to Penn State. When I graduated from Penn State, I started to practice accounting with a firm in Philadelphia called Lybrand Ross Brothers and Montgomery. Lybrand Ross Brothers, which is now PricewaterhouseCoopers, was one of the big national firms at that time – whether the big eight or ten, I don't know, but it was a big firm. My first salary was \$275 a month. That was considered a wonderful salary. Indeed, I think it allowed me to buy a car which I paid six hundred dollars for. I practiced for about two years. During the course of my practice, I sat for the CPA exam and passed it on my first try. So I was well on the way to becoming a Certified Public Accountant. It was pretty hard to become certified in those days, and usually it took a number of years. You did have to pass several parts of the exam. It was very unusual for someone to come in and pass them all at once. It was less than 10 percent who passed all parts on the first try.

In 1952 and 1953, when I was practicing accounting, my father's financial situation changed. My father always wanted to be a judge, and the Republican Party would never slate him or recommend that he be appointed to the position by the governor. By that time, Philadelphia like all other big cities in the U.S. had turned Democratic. There was a groundswell for the Democrats. In Philadelphia they had two reformers. One was a fellow named

Clark, and the other was a fellow named Richardson Dilworth. Clark and Dilworth took over the city. Clark became the Mayor and Dilworth became the District Attorney. When Dilworth came in as District Attorney, he decided to fire everybody in the DA's office. Now my father had held this job for over 20 years. As I look back at what happened at that time, I now know what depression is. I didn't know at the time, but my father was so taken back by the loss of the job which he absolutely loved that he became physically ill. He adored being an Assistant DA. He was paid thirty-two hundred dollars a year, but he just enjoyed the position. And so when he was canned, all his hopes were dashed that he would somehow, someday be a judge.

Philadelphia was the last holdout of a big city turning Democratic. So it seemed like once the city became Democratic, the Republicans would never have a chance to regain control.

In 1953, there was a city-wide election for judges. The Republicans had very few takers for these positions, because they knew they were going to lose, since the city had gone Democratic. Well, my father wanted to be a judge so badly, he convinced the Republican party to slate him, which was not hard to do since they needed candidates anyway. And he set about to run for the judgeship. Nobody thought he had a chance to win. I was among those that never thought he had a chance to win. We were very concerned about him, because we didn't want him to get disappointed again, as he had been when he lost his district attorney job.

But this man, and I guess this is one of the great teachings of my life, was convinced he was going to win. He went on a campaign which took him virtually to every house in the city. He went on radio. He would speak to every group that would listen. He fought and he fought.

Then one of the great miracles of my lifetime happened. He won. I think to this day nobody can explain how the Republicans were able to win in that environment. This was an off year election, so it wasn't an election for mayor. My recollection is my father had about a sixteen thousand vote plurality. It was an amazing thing, it just shows what happens when somebody believes in himself.

My father had now achieved exactly what he wanted in life. This was his major goal, and he loved it. I don't know anybody who loved being a judge as much as he did. He was always in awe of judges. Even when he was on the same level as his fellow judges, he would treat them with tremendous respect, referring to them as judges – that's Judge Sloan, or that's Judge Curtis Bok. The Philadelphia judges were extremely well known for their competence. I just mentioned two, and I think everybody knows the name Curtis Bok but there were other great jurists at that time. It was interesting that at that time the great judges were state judges and not federal judges. The federal judges were not held in the esteem that the state judges were held. The federal judges tried admiralty cases, FELA cases and not very much more so they were not in the public's eye. It was the state courts that tried all the big

cases. As a result they had some very able state judges in those days. Judge Curtis Bok, Judge Joseph Sloan, and Nochem Wynett.

Mr. Bennett: And did that have some influence on your career decisions?

Judge Sporkin: No question about it. Because at that moment when he finally got this position – the position, I remember, paid about sixteen thousand dollars a year. And in those days – this was back in the '50s, '53 or '54 – that was a lot of money. And it enabled my father to send me to law school, at which time I applied to a number of law schools. I had done extremely well in college. My grades were high. I was Phi Beta Kappa. And so I applied to schools like Penn – my father wanted me to go to University of Pennsylvania (his law school), which everybody knows is a fine law school.

I think I only applied to Penn and Yale. I don't know why. I heard a lot about Yale, and everybody I talked to would tell me that Yale was a great law school. It was different than other law schools. It was not as competitive as other law schools. So I applied to Yale and Penn. I was accepted at both law schools. I decided that I would go to Yale. It was a tough decision, because it would be more expensive.

It was a great decision, and I enjoyed it very much. I was in awe of the place. I was scared silly, because here I was out of a state college and everybody in the law school was either Harvard or Yale or some other prominent university. During my first semester, I felt like quitting. I said, "I don't belong here." I'm in the midst of all these brilliant people who would

be talking in the classes, and I wouldn't even know what the hell they were talking about. We had some "greats" in my class. We had Arthur Liman, who was one of this nation's finest lawyers; he recently died, but was one of the finest lawyers in the country. Judge Becker (now deceased), who at one time was Chief Judge of the U.S. Court of Appeals for the Third Circuit, was another classmate. We have about twelve of my classmates who became judges. I was so awed that I did not do well in my first semester.

But starting in the second semester, when we started to get into economic courses and courses like tax there I really excelled because of my accounting background. As a matter of fact, I couldn't believe how my classmates came to me for answers because they had no background in any of these fields. And so they would ask me all about accounting and taxes. Many of the cases that you study are commercial cases and you have to have some idea of business. I think I was the only person there who had a CPA or who at least passed the CPA exam. I later had to fulfill a practice requirement to become certified. So I started to really do well, and as I say, in tax courses and contracts and those courses that required some knowledge of business and finance. At the end of the day, when I graduated, I believe I was either twenty-one or twenty-two in this class of over 160. I felt that I had achieved more than I had expected I would achieve when I started law school.

During law school I married Judith Sally Imber. A year later we had a child, Elizabeth. In order to support myself, because my parents would only go so far, I obtained a teaching position at a local college called Quinnipiac

College. I taught accounting for which I received \$45 a week. That \$45 a week, which came to \$180 a month, pretty much paid the difference between the tuition which my father agreed to pay and what I needed to maintain an apartment for my child and wife.

I graduated from law school. I always wanted to be a lawyer, because of my father. I always admired him. He was an amazing person. Now I think back on it, I couldn't understand – I still can't understand – how he accomplished so much. He was always engaged in numerous activities. He was always doing tons of things. He had to be occupied 100 percent of his time, and it wasn't enough to just be a judge or be a DA or whatnot.

He also taught me and my family certain values. For example, when he used to be an Assistant District Attorney, he would have to go to the so-called Magistrates Courts, one of which was about five blocks from our house. One day on the way to Court, he saw this tradesman beating his horse. Although my father was not particularly a strong person or anything, that bothered him so much he stopped his car, got out and physically restrained the gentleman who was beating the horse and was able to get the SPCA to take the horse away from the tradesman. I remember he received an award from the SPCA for what he had done. He did what was right. He was not going to permit a helpless animal to be beaten.

He was that way all his life. I remember early in his judicial career, he had a very famous case in Philadelphia where there was a large community pool and blacks were not permitted to attend the pool. There was a big

dispute as to whether the pool should be integrated. My recollection is he made the seminal decision that it had to be integrated. I should get the decision and find out the basis, because this was way before any of the Fourteenth Amendment cases had been decided. He did that. He was clearly a person who had values, who understood how people needed help and how he should be there helping the downtrodden or the people that couldn't fend for themselves.

Mr. Bennett: Did your siblings also find themselves influenced to do public service or go into a legal career.

Judge Sporkin: Now what happened, you see what happened at that time when the war came, it really got people off track. My brother – my oldest brother – was in the service, and he had to fight in World War II. When he came back, he was very restless and wanted to get on with his life. He never went on to become a lawyer. He wanted to get through college and then start work. He thought the three or four years he spent in the service were years he would never see again. My second brother was only two years younger. Again, he had spent some time in the service. And so I think that also took him off track.

I had an uncle who was my father's law partner and who was getting involved in business, in the building business. He had two daughters, no sons, and so he took my brothers and brought them in the business with him.

Mr. Bennett: When do you first recall your interest in practicing law? Does this go back to the very youngest years?

Judge Sporkin: Yes. I would go to my father's office at times when people would be out playing ball. I would love to go watch my father try cases, watch him in court, and it was a great treat to me to go down there and see what was happening. So I always wanted to be a lawyer. I always wanted to be a judge.

Mr. Bennett: Even from those earliest years?

Judge Sporkin: Oh yes. I said, "There's nothing better than being a judge." And later on when that opportunity came and people tried to dissuade me, it made it interesting for me as to what I had to consider. I was almost blinded by this desire to be a judge and never really looked at it in an objective way that perhaps I should have looked at it, later on when the opportunity came.

But after law school – what happened was quite interesting, Alex. Jews in those days were pretty much like the minorities that followed us – the women – I shouldn't call them minorities, but the people who had been discriminated against, the women and the persons of color. Jews graduating from law school had a difficult time getting jobs back in the '50s. The profession was ghettoized if that's the proper word to use. There were Jewish firms and non-Jewish firms. There were very few Jewish firms, and the few Jewish firms took the cream of the Jewish lawyers. There were a few that were mixed. I remember that Arthur Liman, who was first in our class, he went to Paul Weiss. That was sort of a mixed firm at the time. But the big

firms, the Cravaths, the Sullivan and Cromwells, while they did have some tokenism, they didn't take on a lot of Jewish students. And the thing that made things very difficult in those years is that while Jews made up 50 percent of the law school classes, they didn't make up that big a population in the legal business.

Mr. Bennett: {After a brief interruption} You were talking about looking for a job after law school.

Judge Sporkin: Right. And then I had gone to a firm like Morgan Lewis & Bockius, and there, the senior partner that I was interviewed by was the son of Judge Kirkpatrick. He later became the chairman of the FTC. I remember him telling me in my interview, he said, "Mr. Sporkin, "this is not the place for you." I got the message.

I decided that I wasn't going to fight it. My father said, Look, go become a law clerk, that's the best thing to do in this environment. At the time the judiciary was a meritocracy; nobody cared what religion you were. In the courts, you could get jobs, and I did. I had an offer from Judge Packil of the New York Court of Appeals. I also had an offer from Judge Caleb Wright in Delaware, and he impressed me. Judge Caleb Wright, came from downstate Delaware. He offered me a job. Indeed, his prior law clerk, his first law clerk, later became a judge. He was his first law clerk who was also Jewish, so that impressed me.

So I went to work for Judge Wright in Delaware. Those were the three greatest years of my life. He was a great jurist. He had gone on the bench two years before I came there. He was terrific. He loved his clerks. He insisted that we live our entire professional lives with him. We'd eat lunch with him everyday. We'd walk along the Brandywine with him. We would discuss cases. We'd discuss how to decide cases. He was completely honest and open and taught me that you looked at the facts of the case and you determined tentatively in your mind who should win on the facts and on the equities, and then you looked to see what the law said. And if the law would support that decision, then that would be the decision.

He was a great, great judge. I enjoyed it so much I stayed a clerk for three years, which was unheard of. Everybody was anxious to get out and practice law after one year. He kept offering me the clerkship and I kept saying yes. And a judge had only one clerk in those days. So the bonding between the judge and a clerk was super. And of course, he was a judge that would tell us what to do. The clerks would draft the opinions. I remember that he insisted that I meet with Murray Schwartz, my predecessor law clerk who later became a judge, before I took the job to find out how he likes to interact with his clerks. And Judge Schwartz, in a very confidential way, said, "Now look, let me tell you what he expects." He said, "You get the draft out and then he'll look at it. He's a good writer, he'll make many changes. And he'll make the decision." You would discuss it with him before. Once the judge made the decision, that was it. But there was tremendous input, and it

was probably three of the greatest years I've ever spent in my life.

What had happened, the major reason I stayed so long, was because we had a big case involving the four biggest shipbuilders in the country. There was a contractual claim against a supplier. It was interesting. This was during the Korean War. The Defense Department wanted to get fast transport ships built and put into the war as quickly as possible. And so they decided to divide up the contract among four shipbuilding companies. Each was to build four of them. Therefore, if there was a strike or something at one, the others could go ahead. So the whole concept was to diversify. And then, (laugh), what the government didn't understand or realize is these four companies got together and decided to give the contract for all the ship's hulls to one company, which was a newly formed company that never had any experience. And, of course, it failed to deliver.

So the great scheme of diversification backfired, and here all these ships were never able to make their scheduled delivery because they couldn't get this vital part of the ship. And then you had this big lawsuit, which is sort of a new definition of chutzpah, namely the failed company sued the shipbuilders claiming some sort of improper activity among them caused the supplier to fail. Judge Wright wanted to make sure there was continuity in that the same clerk would be with him during that period. The case was in court. That's why he gave me the offer each year. This case stayed on for three years. So I stayed on. And I enjoyed it. And I thought that the practice

couldn't get any better. I thought, "This is what the practice of law is about." Looking back I sure as hell made the right decision.

Interestingly, there was another important case we had. In Delaware, remember, it's a corporate jurisdiction, and therefore we had a lot of good commercial litigation. There were very few criminal cases. This was another reason I enjoyed it. In addition to the shipbuilding case, the other big case that we had was a case – the reason I mention it is, because it's so prominent and because it comes to mind now, in view of the problems that the mutual fund industry is having. There was a company called Wellington Fund, which is one of the original mutual funds.

The case involving the Wellington Fund was a derivative action brought on behalf of the shareholders of the fund against the management company. The management company wanted to bring out a new fund. It named it the Wellington Equity Fund. The shareholders contended that the Wellington Fund owned the name Wellington and that the equity fund had no right to use that name without receiving a license from the original Wellington Fund. There was a very fine lawyer, I remember, that was the lawyer for the plaintiffs. His name was Rome. I think that Blank Rodenko & Rome was the name of the firm. And his position was very simple, namely that since the Wellington Fund was a corporation, it had all the rights of a corporation, including the right to its name.

The defendants' argument was the fact that the fund itself was in corporate form was immaterial, that it was really the management company that had created the value, and that the management company had the right to use the name and the various corporate funds were nothing more than boxes of Kleenex. The argument was that the fund was a product and that therefore the fund shouldn't have any say as to the use of its name. Defense counsel portrayed it as much ado about nothing. It was an important case. And what the judge decided and why this case was important was that, look folks, despite all the arguments you make, the fact is that you used the corporate form. And once you use a corporate form, the corporation is entitled to the protections of the corporate form. You can't dilute those protections just because you take the position that it really doesn't mean what it's supposed to mean.

And so the court held in favor of the shareholders of the fund and said you cannot use that name, and, indeed, they had to change the name, it later became Vanguard. That was a very important decision, especially now when we're talking about corporate governance, because I think that decision is probably the seminal decision in this whole area about how corporations must operate.

The other interesting part was that there was a young man there who was the assistant to the head of the Wellington Fund Company, and I remember him. I met him. His name was Jack Bogle. Jack Bogle is the fellow that is one of the key voices in promoting reform for the investment

company sector. He later became the head of the company. Indeed, what he did, which is extremely important was to internalize the management of his companies so that Vanguard is now an internal operation where they do their own management. It is an interesting and progressive concept. That was a seminal case, and I'll always remember it. You'll see now that's what people are talking about – better corporate governance. In those days, of course, the mutual funds were made up largely of directors of the management companies, so there really wasn't the independence that was necessary.

Mr. Bennett: As part of the docket while you were clerking for the judge, were you also involved in criminal cases.

Judge Sporkin: Very little. Very few of them. They were mostly all resolved. Another great thing about clerking in Delaware is they have a lot of judges, they have three judges. And I think they had two senior judges, and we'd hand them a bigger case load. As a result, we would go all over. We would be sent to other parts of the circuit, then I guess later on other parts of the country, to try cases. So the biggest criminal case I recall was a case we had to try up in Wilkes Barre, Pennsylvania, and I think it was a corruption case. But I don't recall much about it. We didn't have much criminal work in Delaware.

Mr. Bennett: And while you were clerking, did you typically attend the trial sessions and things like that?

Judge Sporkin: Oh, Judge Wright made us be at his elbow all the time. That's why you have the name elbow clerk because you had to be at the Judge's elbow all the time. And of course, what I learned from him were the same things I would emphasize to my clerks. It was as a great learning experience.

What happened after Delaware was my wife didn't want us to spend the rest of our lives in Delaware. I didn't want to go back to Philadelphia. I don't know why, but I just didn't think that I wanted to practice law there. It was interesting that at about that time I got a letter from a law firm in the District of Columbia. I guess I was fairly laid back in getting jobs. I didn't really apply for many, and I guess, if you see my career, you'll see that the jobs sort of came to me, rather than my going out and having to seek them. I received this letter from the law firm in Washington, Haley Wollenberg and Bader. It was a simple letter saying that we're looking for a lawyer, if you're interested, let us know. I didn't have anything on the plate at the time, so I went down there, was interviewed and I took the offer. I didn't do the kind of investigation maybe I should have done.

My pay at the courthouse was forty-five hundred dollars a year. The offer was about seventy-five hundred. In those days, that was good money, we're talking now about 1960.

I graduated from law school in '57, stayed three years as a clerk. In '60, I came down to Washington. It was in September of '60. At that time I started to work for the firm. I was not very happy with the practice. It was a tremendous let-down from "playing judge" to dealing with the mundane sort of

things that a young lawyer does, looking at records and so on. But I did get a lot of responsibility, because it was a small firm. I remember one case that they gave me which involved a fellow under investigation by the FCC. He owned a radio property he had bought for around \$350,000. He wanted to sell this property, and he had a contract to sell it to one of the large radio companies for ten million. And this was over a very short period of time. J. Elroy McCaw is the name of the fellow that owned the station. The FCC had been investigating him for a period of time, and they wanted to take the property away from him. The FCC's theory was that the value of his property was dependent upon the fact that his station had a very famous disc jockey Alan Freed, who was accused of taking payola.

There was a payola scandal, meaning people would pay these disc jockeys money to play their records. And so, the FCC was investigating and I remember getting a call from the head of my firm, Andrew Haley. He said he wanted me to go to New York to attend a hearing that the FCC was conducting. The FCC was sending two investigators to take McCaw's testimony. It was the second or third time he had his testimony taken. Somebody else in the firm had been handling the case. On the train to New York I started to look at the file. I found nothing in the file that was informative. I found some notes I couldn't read, and so I said, "What the heck's going on here." And so on the train I decided that what I wanted to do, rather than just take notes, was to bring in a court reporter to take down the questions and answers.

When I got to New York and I went over to McCaw's place, he had this large apartment. McCaw, even though he had a lot of money, was a very frugal person. So when I told him I was going to get a reporter, he asked how much is that going to cost. I told him. He said, "No, it's too expensive." I said, "No you got to do it." He said, "No." I wasn't very good with clients in those days. I would argue with them. You're not supposed to, I know. And in any event, I said, "Well, let's call Andy Haley and find out his position." We called Haley and I said to Haley, "Look, we ought to get this in writing." Haley said "Okay," and we convinced McCaw to do it.

We hired a reporter. The next thing was the two people from the FCC came. They were very upset to see a court reporter. I had to calm them down. I said, "Look fellows, you'll get a copy of whatever's taken." I said, "Don't you think it's fair to everybody that we know exactly what was said." Finally they agreed. Remember, this is my first case. I didn't know what the outcome was going to be. But in any event, I said, "Let's do it." So the questioning began. They asked their questions and I listened. At the end of the sessions, I said to them, "I assume you're satisfied." I said, "If you're not satisfied, would you tell us before any proceedings are brought why you're not satisfied so we have an opportunity to respond before any recommendation goes to the FCC?" They said, "Yes, that sounds reasonable."

A couple of months later, we received an order for proceedings from the Commission. For the purpose of taking his license away. I remember going to Roger Wollenberg, who was one of the great FCC lawyers. He was a

brilliant guy. Roger was going to handle the case. I wasn't going to handle it. I worked with him. I said, "Roger, you know there's a transcript of what took place in New York." He said, "Yes." I said, "More important, in that transcript, I got their promise that they wouldn't issue an order until they let us know the reasons for the order and promised to give us an opportunity to respond." He said, "What?!" He said, "You're kidding me." I said, "No, I'm not kidding you." I said, "So let me show you." And then, of course, I got the transcript, and there it was in black and white.

He said, "Well, the Commission isn't going to buy this." I said, "What do you mean. We got it in black and white. Why not? Let's go to the Commissioners and tell them what the Staff promised us and that they reneged on their promise." He said, "Well, we'll try it." And we did try it. And the Commissioners agreed with us. They withdrew the order and told us the issues that concerned them. We then were able to file a brief. We answered every one of the questions and the Commission said, well, "We agree" and the case was over." That man saved his license.

By that time the buying company had walked away from the deal, the ten million deal. And so McCaw gets a new deal with MGM, at not ten million but twelve million. So here he took a \$350,000 property and turned it into a \$12 million property. Obviously, my boss was very pleased with our success. I know the investigators at FCC never forgave me for that. I remember seeing them later on at a function in which they let me know what they thought about me. I said, "You people made a promise that you didn't live up to."

I still was unhappy, though, with the practice, and I learned at that time that the SEC was gearing up for a study of the securities markets. And a neighbor of mine, a dear friend of mine, my chess partner, said he just got hired and I said, "That sounds good." So I went to the SEC and got hired. I told the firm that I was ready to leave. At which point, Andrew Haley said to me, "Look, you make seventy-five hundred dollars now here. The SEC is going to pay you eighty-four hundred. I will give you a contract to keep you here – \$25,000 a year for ten years." I thought that was all the money in the world. I didn't think that you could do better than that – \$25,000 a year, I mean, I would have it for life. Little did I know what the value of money would be in ten years. But I had made the decision to leave; the money wasn't an issue at that point. I said, "No thank you, I'm going to go," and I went to the SEC.

I was on the special study. I got an assigned area. I finished the study. And at the end of the study, the Commission said that they would like to hire some of us full-time. Here I was, with a wife and a child at the time, taking on a temporary position, turning down \$25,000 a year, and I could be out of a job in two years. So I guess that was the big risk I took in my life.

Mr. Bennett: So who was your chess partner who was hired?

Judge Sporkin: Bill Mammerella.

Mr. Bennett: Did he stay at the SEC, too?

Judge Sporkin: No, he, he went on to another agency. He went to the ICC.

Mr. Bennett: Were there others hired for this special study who were later colleagues of yours at the SEC?

Judge Sporkin: Yes, they took on a number of us at the SEC. I went into the division of trading and exchanges. Part of it had to do with overlooking the markets, part of it had to do with investigations. I went in the investigation area. At that time, the SEC had very little enforcement capability at the home office. It was all done through its various regional offices. But it was decided by my boss – who was Irving Pollack, and who is still one of my dearest friends and one of the great lawyers of all time – that we needed a capability at the home office. Otherwise, we'd have to sit around and wait for the regional offices to do the cases that the Commission wanted done. And so they set up three enforcement branches with five or six lawyers in each branch. And I became a branch chief. I was going to be head of one of those offices.

Mr. Bennett: And how long was this after you had taken on the permanent job at the SEC?

Judge Sporkin: Well, that was it. I became the branch chief.

Mr. Bennett: Right from the start?

Judge Sporkin: Right from the start. Because I had already spent two years as a line lawyer. There were other things that happened. For example, we had no accountants in these branches. And so I went with the recommendation that we ought to

hire an accountant. So they hired one, and then, later on, each of the branches had their own accountant. And as all government agencies, we started to grow. From being branch chief, I forget the year it was, I became in charge of the three branches. I became an assistant director. Then I became an associate director. At that time, Irv Pollack, he was the director, I was an associate director in charge of enforcement, and Gene Rotberg was an associate director in charge of the markets, overseeing the New York Stock Exchange and the over-the-counter markets. I might have been the assistant director. My associate director at that time was Tom Rae, who was a great administrator; taught me a lot about how to administrate, how to manage; he was a good manager. He later left and I took his job as associate director. When Bill Casey came in, he decided that he wanted to have a study of the enforcement program of the SEC. And he brought in a lawyer named Wells a name partner at Rogers and Wells.

Mr. Bennett: Okay, you were saying that Casey came in, and he hired Wells.

Judge Sporkin: Well, let me go back for a moment, because there is another point that is interesting. There was a job called the Chief Enforcement Attorney. And that became vacant, and Manny Cohen was the Chairman then. He was one of the great chairmen of all time. Manny was a staff person who rose to become Chairman of the SEC which was unheard until a few years ago when Harvey Pitt became chairman.

Manny was procrastinating in making the appointment of the Chief

Enforcement Attorney. All of a sudden I get a call from the Chairman. He said, "You know, Stan, you're Chief Enforcement Attorney." I said, "What's going on?" He replied, "Don't worry about it, you're Chief. Remember, if anybody asks you, you're the Chief Enforcement Attorney."

What happened was there was pressure being put on the Chairman to bring in an outside person, a political person, to take that job. And so when that pressure was put on him, he decided to avoid it by saying, "Well, the job is filled," and that's why the appointment came so quickly. He had declined to appoint me sooner, because he thought I was too young for the job. I forget how old I must have been. It must have been in the late '60s, so I must have been in my early 30s.

Later on, we had the Wells Report. The Wells Report focused on the fact that the SEC had four or five different enforcement programs. The SEC had a number of different divisions. It had a division that overlooked the markets, which was my division. It had a division that overlooked the filing of corporate forms and also dealing with the raising of capital. It had an investment company division and a public utility division. And each one of these its own enforcement programs. It was decided that it would be much more efficient to consolidate all of the enforcement programs in one division: A new division, the Division of Enforcement. And so that was the birth of the Enforcement Division. The Commission took the enforcement people out of every one of the other divisions and put them in the Enforcement Division.

Mr. Bennett: So you took that job because you were already . . .

Judge Sporkin: No. What happened as the second part of the reorganization market regulation was going to be a separate division. For some reason, the Street did not want Irv Pollack, who was my boss, to be the head of that division. And so they made Irv Pollack the Director of the Division of Enforcement and I became his Deputy Director. And there has been a lot of noise, background noise, about what was the purpose of forming the new division. Was it to get Irv Pollack out, who was a career guy? Obviously, the Commission was not going to fire him. Were there were other reasons? I don't know the answer. All I know was that Pollack was the best and that he was a terrific Enforcement Attorney. I do know that he was the person responsible for eliminating fixed commissions, which got the ire of the entire investment community against him. Because it lived by fixed commissions, because by having the fixed commission, there were rebates and give-ups. It was as gross a practice as you are going to find. By saying no more fixed commissions, all those practices became history. It was a great move just like a lot of other moves, such as breaking up AT&T that later turned out to be a great move. Many at the time thought unfixing commissions was a bad move.

At the same time that this is going on there's a scandal brewing in this country. As a fallout of the Watergate affair, we had a scandal at the SEC in which the then new Chairman had to resign because of the Maurice Stans incident. Nixon was president at the time.

Mr. Bennett: Well, wasn't this part of Watergate, because these were improper campaign contributions as part of the election of 1972? Then Watergate probably started becoming public in '73 and '74.

Judge Sporkin: Well, the only point is Nixon was still functioning at that time. And I think it was right about '72, and what happened was he said that with all this scandal going on, the administration had to bring in a clean person to be the new commissioner. And they also brought in a new chairman, Ray Garrett out of Chicago who was a Republican. Pollack was obviously a confirmed Democratic and so they decided to name Pollack a Commissioner. And believe me, if it weren't for the scandal, he would have never been made a Commissioner. But it was in the political interests of the party in power to name him, and of course they had to name a Democrat because it was a Democrat seat. So, he was in charge of the Enforcement Division, maybe about a year, a year and change. At which point, in 1974, that's the year I can remember, 1974, I became the Director of the Division of Enforcement. I held that position until '81.

We did a lot of interesting work during those years. We had a lot of emergencies. In '72 I would have been what – 40 years old I guess. I'm getting up there. But still a young man. I guess this occurred a little earlier than that. The kinds of things that I'm talking about. The first real challenge I had, of course I was in charge of the Enforcement program. Even though I wasn't named as such, I was pretty much running it. Pollack obviously was the leader. He set the policy and I ran the day-to-day activities. All of these things

in life as you know are learning experiences. Learning to deal with emergencies, learning to deal with challenges too, when people say things can't be done or whatnot.

The challenge we had at that time is that there was a tremendous amount of trading on the exchanges, and the firms couldn't process the trades. It was beyond their ability. They had not really planned for all of this increase in trading. They did not have the automated machines to do it, and there was a tremendous back office problem in these firms. It went to the point where some firms were hundreds of millions of dollars out of balance. There were two kinds of problems you'd find in the firm. One is they would have transactions where they would have securities which showed no ownership. Another was that the records would show that people owned securities but there were no securities that related to those people. And so the only way that you were going to be able to deal with it was to match them up, and it wasn't being done.

And this was rampant throughout the Street. And we at the SEC said: Look, if this continues, this is going to be a tragedy beyond belief. And the public had no idea what was happening.

We finally received word that Bache, which was one of the top brokerage firms in the country at the time, was out of balance by four hundred million dollars. In those days four hundred million dollars meant something. That's a lot of money. And we had to figure out how do we deal with this problem. These challenges teach you ways for solving problems. And as I

studied the statutes and rules, it occurred to me that there was a provision that says, if the SEC brings a case it may be made public. This meant to me that it could also be private. We always would bring public proceedings but there was a provision that had a “may” in it. It occurred to me that maybe we could bring a private proceeding and, if so, then what we could do is sue these people for violating the law. Not making it public, but making it a private proceeding. Bringing them in and telling them that we now are going to hit them over the head. We had the ability in such a proceeding to put the firm out of business. We told the firm we would put them out of business unless they took steps to correct their problem.

That strategy I was able to sell it to everybody. We agreed that we would go that route. We wanted in effect to tell Bache we were serious and they had to do something. And it worked. When we brought Bache in, we said, “Look, Bache, unless you do something you are going to go out of business.” We did it privately so the public wouldn’t know about it at that time. However, once the problem had been corrected it was our plan to make the proceeding public. To tell the public the problem has been fixed. This was an elaborate strategy, almost like a battle plan, and all of these things had to occur just right. And if they didn’t occur, it would have been a possible disaster. What happened is that we brought Bache in. Bache had never been sued before, so they were scared, they didn’t know what the hell we could do. When we told them we were going to put them out of business, they listened. And they said, what do we do?

Well, then we had to come up with the next part of the strategy, which we hadn't thought about. We thought they would know what to do. But they didn't know what to do. They said: "We don't have enough back office people, we can't do it." I said, I'll tell you what to do. Why don't you hire a public accounting firm and pay them whatever they want and have their accountants come in and clean up the mess, all it took was people to match the stock with the owners. So they bought into it, they said it can't be done, but they bought in anyway. They hired one of the major public accounting firms. They put in 80 accountants and within a very short time the place was in apple pie order. We then brought them back and said okay, "It's all done – what we'll do is we will announce this proceeding, we'll just censure you, no need to penalize you further. But then we will announce to the public what had happened." And that did it – and it all worked. And there was no ripple effect or anything else like that. But it was really one of the great successes of my career to be able to come up with a strategy and make it work without any blips at all and of course that became the way to deal with the problem. We put that formula in with respect to others, and it worked like a charm. Private proceedings, clean it up, then announce it.

Mr. Bennett: Did you actually initiate these private proceedings against any parties?.

Judge Sporkin: Oh sure – yeah, we went to the Commission. Got authority, brought proceedings.

Mr. Bennett: So there were private proceedings within the administrative framework of the SEC rather than public proceedings.

Judge Sporkin: Yes, not public. It was a proceeding in which we alleged that the firm violated the law by failing to keep your books and records up to date.

Mr. Bennett: And this hadn't been done up until then.

Judge Sporkin: Never been done. Well, had there been private proceedings? There could have been a private proceeding. But never done in this kind of a way. It was using the statute to the benefit of everybody. And of course, we avoided any kind of criticism – such as, why did you do it secretly? – because the fact is we could show positively to everybody that it was a win - win.

Mr. Bennett: What do you remember as the other major accomplishments that stick in your mind today about your time as head of Enforcement?

Judge Sporkin: The next thing that happened of course – I then became the Director – and there I'm involved with various things at that time. I would go home at night and watch the Watergate hearings. They used to be replayed at night on TV and toward the end of the hearings, they brought in a number of corporate officials who testified as to their corporations making contributions to the Committee to Re-elect the President, which was President Nixon. And I remember, after listening to the hearings one night, I came in the next day and I called in one of my lawyers. Because of my accounting background, what I wanted to know was: how could a corporation make an illegal payment – and

remember these were illegal because they were being made out of corporate funds. These were not PACs that were making these payments. They were clearly illegal. And I called in one of my lawyers and said – look, Gulf Oil testified yesterday to making these payments. Would you go visit Gulf Oil. Nothing elaborate – go and visit Gulf Oil and find out how did it make an illegal campaign contribution. How was it booked? What account did it use? And within a day or two the fellow came back. He said Gulf was very candid. He was told Gulf had set up two Bahamian companies, called Bahamian X, and Bahamian Y. Gulf funded it with five million dollars each. It then brought the money back and put it in the safe of a fellow named Dorsey, who was the Chairman of Gulf Oil. That provided Gulf with a slush fund of ten million dollars to do whatever Dorsey wanted to do with it.

And we brought in the Gulf people and asked them, “Why did you do it this way?” Interestingly, the reason Gulf did it this way, is that they capitalized the money rather than expensed it, because they were afraid of the IRS. So if you wanted to see mens rea or intent, it was there. They clearly knew that they were doing wrong.

But the problem we had was that there was no rule in the book that said that an industrial company had to keep accurate books and records. Financial institutions had to but not industrial companies. I couldn't believe it so I said that, look, a company that's engaged in illegal activity has to disclose it to the shareholders. And my theory was that shareholders should know that because we don't know what could happen to a company engaged in illegal

activities. They could lose their franchise to do business, and that could be a tremendous loss to shareholders. The problem I had was dealing with the concept of materiality. If we went strictly on the ten million dollars in a company like Gulf Oil, it would not be material. Quantitatively, it was not material because it was a blip. And so we had to construct materiality on the concept that it could jeopardize the company's business. That would be important for shareholders and thus meet the test of materiality.

And we took the issue to the five member SEC Commission. I must tell you there was a tremendous battle at the Commission. Some commissioners did not want to touch it, but with commissioners like Pollack, we were able to convince the Commission to go this route. Well, of course what happened then is what is happening today. It was not just Gulf Oil. It was not just some of these other companies. It became so wide-spread that over the period we had this program, we brought some 65 actions against corporations for making improper payments. We found out that the accounts that were being used for the improper campaign contributions were also being used for other nefarious activities – such as bribing foreign officials. In other words, they would use these monies to bribe foreign officials. We later learned they were used to bribe domestic officials as well.

Finally, I got a call one day at a conference I was attending to come home immediately. The SEC's Corporation Finance Director, Alan Levenson, a wonderful friend, also was asked to return to Washington. We were both out of Yale Law School, although at different times, and we were very close.

And we were both called back and the Chairman said to us – look, this has been going on long enough – we got to end it. So see what you can do, see what you can come up with. And what Alan and I came up with was the voluntary program. We put out the word to the corporate community that, if they would go out and hire good lawyers and do an internal investigation and report their findings to the shareholders and to the SEC, without giving them a promise of amnesty, amnesty could happen if in fact we were satisfied. So that program was another extremely successful program like the back office program I told you about – and it brought in reports, self examination reports, from I think it was 650 companies. And in very few cases did we take action – so it worked. It worked so well that, if you notice in recent times the Commission has dusted it off, and is now telling companies to do the same thing. So it's now in the arsenal of the Commission.

At the same time, there was a wonderful Senator, probably the greatest Senator of all time, Senator Bill Proxmire. There is no more honest person. Never took a nickel in campaign contributions, and walked the state of Wisconsin to get re-elected. He had liked the work that I was doing at the SEC. The Senator and one of his assistants, Ken McLain, called me and asked, “Stan, what do we got to do to fix this problem? We want to do something in Congress.” I said, “Senator, you're not going to believe what I'm going to tell you, but all you need is a one-line statute that would say that companies must keep accurate books and records. Because if they kept accurate books and records, they would have difficulty continuing with these

practices because the accountants would pick it up.” They would not be able to hide it. He said, “It can’t be that easy.” I said, “It is, Senator.” He said, “Alright, we’ll pass a law that says that.” He said, “But, we also want to pass a law that says that it shall be unlawful to bribe a foreign official.”

We had a wonderful group of people at the SEC. We had Alan Levenson and then we also had a fellow named Sandy Burton, who was the chief accountant. You couldn’t ask for better colleagues, smarter people. Burton added a provision that required companies to have good internal controls. And so that became the law – three parts: 1) accurate books and records; 2) an internal control provision, and 3) an anti-bribery provision. That became the Foreign Corrupt Practices Act, which is still on the books and is a very important part of the law. I was vindicated because if you look at the cases brought, you’ll see that the vast majority are brought under the books and records provisions. And very few under the bribery section, because bribery is hard to prove. So that is how the Foreign Corrupt Practices Act came into being. And I love it when I get called by foreign officials to ask about the process and the procedure that we went through for our government to adopt this law. They all think that there was a program, a plan, or something. I hope I have some humility left, but what amazes me was what one person can do is incredible in our government. I was one person. Now, whether it’d be me or somebody else, it was one person that’s responsible for this – which is an amazing kind of thing when you think of the power of an

individual – that you could have a law like this passed. An amazing kind of thing, when you think of it.

Mr. Bennett: It is amazing. Maybe that's enough for today.