Honorable Stanley Sporkin

Oral History Project
The Historical Society of the District of Columbia Circuit

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United States Courts
District of Columbia Circuit

Honorable Stanley Sporkin

Interviews conducted by:
Alexander Bennett, Esq.
November 6, 2003
March 23, May 14, October 4, November 4, and December 14, 2004

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.

Indexed transcripts of the oral histories and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Manuscript Division of the Library of Congress, and the library of the Historical Society of the District of Columbia

With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.

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.

ORAL HISTORY OF
JUDGE STANLEY SPORKIN
MARCH 23, 2004

This is the second 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 March 23, 2004. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin which have been made in the form of a written donative instrument.

Mr. Bennett: As discussed a little bit ago, we are basically going to defer on further discussion of your years at the SEC because we understand that there has been an SEC oral history underway just about the same time covering many of the same subjects. So we'll pass that and go on to some other things. But one thing that we did just want to ask you to start, Judge Sporkin, is why did you leave the SEC?

Judge Sporkin: I left the SEC in 1981. I had been with the SEC at that point almost 20 years. The last seven years I was the Director of Enforcement. They were very difficult years. They had taken somewhat of a toll on me. These were long days and nights – there were a lot of problems in the financial community – we had tremendous number of innovative programs. Matters seemed to be under control. I guess, let's see, in 1981 – I was about 48-49 years old – and I became restless. I was looking for a challenge. An election had just been concluded. There would be a new Chairman coming in. This would mean that I would have to go through a period of building trust between me and the Chairman. This would happen every time a new Chairman came in. And so I gave a lot of thought to what I wanted to do with the rest of my life. I thought that maybe this would be a good time to even consider private practice.

There was also an interesting report that was prepared by the Reagan transition team. The conclusion of the report was that the SEC had the finest enforcement program in all of government but that they thought that it might be time to change the leadership. It is my surmise that was based upon the fact that we had taken a number of cases against major corporations. Some of the cases were against political people. So it looked like that it may be payback time for these folks.

Now, nobody ever discussed with me that maybe this was a time that I should be leaving. John Shad, the new Chairman, and I had some discussions but none about my career. I had weathered other changes in administration, and I'm sure I would have weathered this one. Nevertheless, I thought this was a time that I should be doing some thinking.

But before I could even start that thinking, I received a call from the former Chairman of the SEC, Bill Casey. Bill Casey and I had hit it off when he was Chairman of the SEC. He had two favorite high-ranking staff people – myself and Alan Levenson. When Chairman Casey left the SEC, he became President of the Export/Import Bank. At that time he called upon both Alan Levenson and myself to go with him. He offered me the position of General Counsel. Alan Levenson I believe was offered the position of Executive Vice President, or the number two person at the Bank. I didn't know that Casey had talked to Levenson, and Levenson didn't know that Casey had talked to me. Nevertheless, both of us, without having discussed it with each other,

decided that we were not going to accept that offer. I told Casey that I didn't know anything about banking and I didn't care to be a banker.

Fast forward now to 1981 and Casey had just been President Reagan's campaign manager. He was the President's nominee to be the Director of the Central Intelligence Agency. Early in 1981, it might have been February or March, he called me and said that he wanted to see me at his apartment at the Jefferson Hotel. On my visit, Casey, as he always did, came right to the point. He said, Stan, you once turned me down when I asked you to be General Counsel of the Export/Import Bank. I'm going to give you one last chance to come to work for me. I want you to be General Counsel of the CIA.

I said, Bill, after deep consideration of your offer, I accept. That was the way Casey and I operated. We made quick decisions. I believe that was one of the reasons that endeared me to him.

To say that it was impulsive would be understating what that word is. I had not discussed it with my wife or anybody else. I just did it. Of course we had agreed that we would not tell anybody because there would have to be a lengthy investigation of myself to make sure that I would be able to take the job. It was interesting that, about a month before, I had been in New York and I had met with an old friend of mine, Dean Robert Mundheim, who had been the Dean at Penn Law School. We were having a drink in his hotel room when we discussed my future. He said with some authority, without telling me the basis of it, that I was going to be Casey's choice to be the General Counsel of the CIA. Bob Mundheim has never told me the basis of that

statement. Even to this day when I talk to him, he still won't tell me why he said that.

When I went home and told my wife, she was I guess a little bit put out because she wanted to know at what point in my life would I be discussing matters of this kind with her. She was sort of bipolar on this situation. On the one hand, she was looking forward to my going out and getting a position with a law firm and making some money. On the other hand, she was a devotee of spy novels, and she sort of had a vicarious thrill by my going to the CIA. Indeed, at one point she said to me that this would have been a better job for her, since she knows more about spying than I know, and that I knew nothing about spying.

So after I had accepted the job. I didn't hear anything. Months went by, and I didn't know where I was. I of course didn't say anything to the people at the SEC. Then one day I was at a funeral of a friend, who was also a friend of Bill Casey's. After the funeral, a strange looking person tapped me on the shoulder and told me to come with him. He led me to a limousine and inside was Bill Casey. Bill asked me to get into the car with him and we took off. I had gone to the funeral with a friend, a co-worker named Richard Wessell. He didn't know what was happening. He thought I had been kidnapped and later he told me he was very worried for my safety because he saw this fellow approach me and put me in this big black limousine.

We travelled to the CIA, at which point Bill sent me to the Human Resources office. Harry Fitzwater, its Director, asked, "Do you know what

position you've been offered?" I said I believe it was General Counsel. His instructions were to push me through the vetting process as quickly as possible. I then went back to the SEC, and I believed it was understood that we were going to run this like a covert operation, the CIA not making it public and I not telling anybody at the SEC. Within a couple of days I heard the receptionist at my office, saying "What, you're from the CIA?" And there were these two folks from the CIA starting to talk to people – or wanting to see me, I guess – at which point I hurried them into my office and told them I didn't expect that's the way they operated. But that began the vetting process, which shortly ended in my going over to the CIA.

One other interesting thing happened. During this transition period, when it was not known publicly that I was going to the CIA, all of the senior officials of the SEC and the commissioners were over at the White House at a ceremony at which, I think, one of the new commissioners was being sworn in by the Vice President at that time, George Bush. After the ceremony there was a receiving line and the Vice President was walking down the receiving line, and shaking hands. This is the first time I met the Vice President. He came over to me and pulled me aside. I did not know how he knew my name. He said, "Stan, I'm pleased that you're going to be working with us." This always impressed me about the senior Bush. He has a tremendous memory for faces and names because in subsequent meetings with him, he would always pick me out of a crowd and say to me: Hey, Stan, how are you? And it was tremendously impressive that a person who meets as many people as he

meets during any period of time could remember their names and also attach them to their faces.

So, that began my tenure at the CIA. The first day I went there, they put me in an office and there I was with nothing to do. Nobody came to see me and I didn't go out to see anybody. This happened for about two or three days when I was trying to figure out what was going on. During my tenure at the SEC my office was like a train station. People were moving in an out all the time, and I didn't appreciate this silent treatment. I guess it was because the lawyers in the office were trying to size me up and I guess they sort of were a little bit squeamish about coming in and being the first to say hello. But that shortly broke down. And I started to read about national security. I knew nothing about it. I had to learn a lot. But that never stopped me in the past taking on new challenges.

It was interesting that during the vetting process. I was asked: Why do I want to work for the CIA? What was the compelling reason? And my answer was: I didn't have this great desire to work for the CIA but it was only because I enjoyed my prior relationship with Bill Casey and I would like to work with him again. The inquiring office CIA staff psychiatrist seemed a little taken back by that response. People come to the CIA because they really believe in its mission and want to serve the country in that position. I certainly believed in its mission but I was never a person who had a great desire to work for a spy agency. This was especially so since I knew that, unlike the SEC, where if you left the SEC you became very employable,

working for a spy agency there's really not very much you can do once you leave the agency. So this is not a move I made to enhance my career in the sense of some day trying to earn money based upon having worked for the CIA.

Because I didn't know anything about national security law, I felt at the beginning like a fish out of water. Then one evening within the first three or four weeks I had been there I received this call at home from a fellow who said, "Hello, this is Max." This is maybe 9:30 in the evening. And I said, "Max, Max who?" He said, "Max, from the place." I said, "Max, from the place?" "What can I do for you, Max?" In the meantime, my wife is listening to my end of the conversation. He said, "I've got to see you right away." And I said, "Why?" He says, "The boss told me to get in touch with you and discuss this matter with you right away." I said, "Well, where will we meet?" He said, "At my place." I said, "Where is your place?" He says, "Near the other place." As I'm having this conversation, I can only think of a Bob Newhart monologue. I finally got an address and instructions how to meet this fellow, at which point my wife said to me, "Don't go, it's a set up." I said, "How could it be a set up when I don't even know what this is all about?"

In any event, as we long-standing husbands often do, we don't listen to our wives, and I went. And I met this fellow, Max Hugel, who was the newly appointed Director of Operations, which is the position that oversees the CIA spy network. He related to me a story about an article that was going to be

coming out in the *Washington Post* in a day or two concerning him and two brothers who had had certain relationships with him. The subject matter of the article was a stock transaction, and the article would be critical of his role in the transaction.

I went home that evening and said to my wife, "Would you believe it, here I got my first assignment working for the CIA – what is it but a stock transaction. Something I know something about. How in the devil could I get so lucky." The next day of course I went to the agency and called Bob Woodward who was the reporter on the story and whom I knew from my SEC days. I told him that I wanted to come by and see him to talk about the Hugel matter. He said he would see me on one condition. I said: what was that? He said I would have to bring Hugel with me. I told Woodward that I did not represent Hugel but I would see if he wanted to come and that I would get back to him. At that point, I spoke to Max and I told Max he'd have to get his own lawyer. I could not represent him. He wanted to go to the *Post* to be able to see what happened. I called Judah Best, who was an old friend of mine, and asked him would he represent Hugel. He said yes. Hugel liked him and retained him.

We went to the *Post*, at which point we entered a dark room. There must have been seven or eight people there. They started to question Max and the questioning went on for some time. I saw that there was a problem. While these two brothers were fugitives, I could see that this could cause a problem. In the middle of the session, who walks in but Ben Bradley, and he

was beside himself. He wanted to know who had turned the *Washington Post* into a court of law. He said he had never seen anything like this: with a transcript, with people being questioned, where lawyers were involved, objecting to questions. He wanted to know who was responsible for that. And he put an end to it.

In any event, I had the information that I needed to make a recommendation to the Director. I came back and, as I was coming back from the testimony, I prepared a draft of a letter of resignation. I went to see the Director and the Deputy Director. I talked to Max, and I told Max that: Look, I knew how Washington worked. If this continued, I was sure that this would have congressional repercussions. Since Casey was already under fire for allegations that he was involved in the so-called October Surprise, this could topple the whole Casey administration at the CIA. I also mentioned to Max that I thought what would happen to him is that they would call him before the Committee. If he denied the allegations, which he was probably right in doing so, that denial nevertheless could cause the Congress to refer the matter to the Department of Justice for prosecution for obstruction of justice and perjury.

Even at that early date, I had it figured out that the great joy in the prosecutorial community was to prosecute people for easy to prove crimes such as perjury and obstruction of justice. If you look at the history, you'll see that some of the biggest cases are those cases. I said, however, that, if he did resign, what would happen would be that the day after the resignation there would be a piece in the paper, and the day after that there would be

follow-up stories and that following that, you would probably never hear of Max Hugel again. And that would be the end of it.

What happened was that the Director and Max followed that advice. Max resigned, the Director accepted his resignation with regret. There were two stories, and I don't know if many people heard of Max Hugel again.

For a lawyer, when the strategy works as well as this one, obviously the lawyer gets great pleasure out of that. The problem is that nobody knows about it because it worked so well. This probably was one of my most memorable victories – if I can use that word as a lawyer – because it worked exactly the way it was supposed to work. Max was not pursued by either Congress or the Department of Justice. It almost reminds me of when a kid gets bar mitzvahed, the temple never hears from him again. Well, Max was never heard from again. Casey saved his job. The Administration didn't have to go through a bloodletting period. What happened to those two brothers we don't know. Max should have prevailed on the merits, but that's problematic in Washington.

Mr. Bennett: Apart from this, were there other important issues at the CIA that you feel you would like to talk about today?

Judge Sporkin: Oh, yes. But before I address them, I should add that the point of the story is I couldn't have asked for a better issue to come up early in my tenure at the CIA. It allowed me a victory very early on, because I knew the area. It gave the Director and the people at the Agency more confidence in me.

There were many other issues when I got there. We had an Executive Order which had just been rewritten. Casey had told me: don't worry about it, it's going to be signed and that I would have nothing further to do with it. Well, when the draft went over to the White House, the staff was very displeased with it. It was sent back with a notation that it's warmed over Carter, and that Reagan should have his own Executive Order. They were concerned because the Carter Administration had put so many restraints on the Agency preventing it from doing its job. So my next task was working on a new order. We were able to accomplish that. We got it accepted and that's why we have a new Executive Order. It's still operative.

Mr. Bennett: The Executive Order in that case dealt with what subjects?

Judge Sporkin: It dealt with a whole variety of subjects – domestic spying, all the things that the CIA could and could not do. It was designed to lift some of the restraints that were in the predecessor order.

Mr. Bennett: And this is basically the Executive Order that's in place today?

Judge Sporkin: It think it is. I'll have to check that out. Yes, that should be the one that's in now in effect.

Then we had the Nicaraguan situation. Here's where the Reagan doctrine developed. Casey and I had a discussion one day when we thought it might be appropriate for Reagan to enunciate a so-called Reagan doctrine. Casey understood that, at that point in time, wherever Communism overthrew

another form of government, there had never been an instance where Communism was later overturned. That was of concern to Casey and the Reagan White House. So therefore the Reagan doctrine was developed, which in effect said that we must do everything we can to prevent Communism from taking hold, because of the fear that it could never be turned back. And here we had this threat in our own hemisphere. There was a very serious chance that Communism could come up through Central America.

To meet that threat, the Reagan Administration wanted to send support to the Contras. The Congress did not want the CIA to be overthrowing the Nicaraguan Government. When I said the Congress didn't want the CIA to overthrow, I mean that they didn't want the public to think they were authorizing the overthrow. They thought that would be impermissible to do that. At the same time, most members of Congress wanted to give the aid. They were concerned about the encroachment of Communism. And so what was put on the budget was a rider that was called the Boland Amendment. As I recall, the Boland Amendment said that they would give funds for aid to the Central American governments but that the money could not be spent for overthrowing the leftist Nicaraguan government.

Now, when that amendment passed, everybody at the CIA thought that they had a big victory, because they had the authorization to spend money in that area, so long as it was not for the overthrow of the government. They could use it for other kinds of things – supplying food to the people and other

things so long as it didn't involve the overthrow of the government. When that came back to the Agency, everybody was happy and pleased.

I saw that this was a potential area for future problems. I could imagine a situation where money was spent for impermissible activity. I therefore convened a small group of my lawyers to tell them that we had to act as counselors to our client. It was interesting that the office – the lawyers – seemed not to understand the role of a lawyer as a counselor. In virtually all of their dealings, the General Counsel's Office was a reactive office, reacting to the present danger. I had to explain to the office what counseling was all about and that in this case we had to counsel our client in a proactive way. We had to tell them how to take steps they would have to take to comply with the Boland Amendment or to make sure that the Boland Amendment was not violated. And so we prepared a document which would tell our operatives in the Central American area what they could and what they could not do, so that we could be able to protect our people and make sure that was happening. Also, we made it clear to our operatives that this would be policed.

When this went to Casey, my colleagues said that he would be against it. And I, of course, knew Bill and I took it to him and I said: we have got to do this and we have got to comply with it because, I said to the Director, the Agency's going to be in hot water if it doesn't and this thing blows up. Because I could envision these hearings on the Hill where they're going to say how come we violated the Boland Amendment.

And Casey's reaction was typical Casey. He looked at it. He took his pen – remember he was a very literate person, a very good lawyer, the most brilliant person I've ever met in my life. And he took the paper, and he took his pen and he went through that document that we had drafted and instead of loosening it, he tightened it. And he says now we can't do this, we can't do that, and he made it into a much better document. And the beauty of it was to watch how Casey reacted, and he never would say you did a good job. You knew when you did a good job for him. But in this case what he said was "And I'm gonna have to teach you how to do these things and to write these things correctly." But that document – he was very pleased obviously – and that document I believed saved the Agency from a great deal of criticism because when some of the mischief makers on the Hill were going to try to prove that we violated the Boland Amendment, when they came up to it, when they saw that the Agency had been planning and had done what it should have done, of course they were unable to prove anything. And that became the end of the concept of the gotcha aspect of the Boland Amendment.

Now, of course, later on we had the Iran-Contra problem. And that problem arose when I was just getting ready to leave the Agency to go on the bench. I'd been confirmed. I had to clean up. I think I'd been confirmed. In any event I was very close to confirmation, and I had to stay about a month to clean up certain matters. And then I got a call one day from the Deputy Director, John McMahon, who told me that two briefers would be coming over to talk to me about a recent operation.

These two briefers came over to me. I talked to them. They told me about an operation that had taken place that weekend – this was on a Monday – in which a plane of the CIA's had been used to transfer certain arms all for the purpose of getting our hostages back. The hostages had been taken by Iran. After the briefers left, I heard them and I think Mr. Dietel, who was my deputy, was with me. We later convened a group of four when Mr. Clark and Mr. Makowka joined us.

As I was listening to the briefers, I saw what had to be done and I told these people at the meeting as we discussed it. I said what we need in this case is a Presidential finding to permit the Agency to do what it had been doing. We had a long discussion, as lawyers usually do, half the time being spent on discussion to the effect that this was not a covert operation and the finding was not necessary.

I said: we can't go that route. We've got to protect the Agency. The only way I know to protect the Agency is to do a finding. And at which point I called my secretary in, and I actually dictated the famous finding in which I had to cover several points. First, it had to protect the Agency, the people who performed this operation, and had in effect to acknowledge that the President was behind it, which would happen if he signed it. Secondly, I had to deal with the issue that these were arms being swapped for hostages. Therefore, the document had to spell out the arms-for-hostages aspect of it. Third, it had to deal with the fact that the activities had started to occur over the weekend. While there is a right way and a wrong way to deal with this

type of problem, I obviously chose to do it the right way, which was to have the President ratify all of the actions that had been taken up to that point in conjunction with that operation. This issue involved when Congress would be notified. Because of the sensitivity of the project, a provision to defer notification was included in the finding.

We prepared the document and sent it up to the front office. Casey wasn't around then – he was away – but McMahon handled it and apparently the strategy was approved and I was told it was taken to the White House. Now that document, even though it was maybe one or two paragraphs, should have really limited the flare-up that occurred about it. The problem was that I was out of the Agency at that time and that nobody brought the finding to the attention of the investigators. Therefore, during the investigation, as usual, a number of people told stories that were not consistent and got themselves into trouble. But the finding should have protected everybody who acted under it. The only person that would have been exposed would have been the President, but he should have been able to handle it, since Presidents do approve certain covert operations.

That really should have been the beginning and the end of the Iran-Contra problem. But of course it spun out of control and that's why it became a very big problem for the Administration. After the first finding, there came two additional findings, because the President and his people decided that they liked the idea and they wanted to expand it. But if the findings had turned up earlier, I don't think you would have the problems that

the Administration faced concerning it. I remember, when I was questioned in my chambers, the questioning really revolved around whether I was truthful in telling them that there was a finding. These investigators thought that this operation was done very carelessly and that there was no paperwork that supported it. I remember their saying: where is the finding? How come they don't have it? Is this something that I invented? The way we found it was that my former secretary, who had taken my dictation and had put the document in her machine, was able to retrieve it. And, of course, once that happened, all the findings were later recovered, and the investigators realized they had to go another route.

Why don't we end that today and we'll have to come back. I'm getting a little tired.

Mr. Bennett: OK. Fine. Let's end for today.

ORAL HISTORY OF
JUDGE STANLEY SPORKIN
MAY 14, 2004

This is the third 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 May 14, 2004. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin, which have been made in the form of a written donative instrument.

Mr. Bennett: We finished the last session just as you were commenting on the national-security Findings that had been signed by President Reagan in connection with the Iran issues. To start off today, let me ask if there is anything more about those incidents you would like to add.

Judge Sporkin: Well, I've already noted that I believe a good part of the sting could have been removed from the Iran incidents if early on the Administration had disclosed the three Findings that were signed.[1] Those Findings, since they were drafted in good faith and were intended to help the Administration in carrying out its obligations to the citizenry, would clearly absolve most of those who were involved from any liability when they acted under the Findings.

The Findings were drafted and signed in the utmost good faith. The only people who would have had to worry about the Findings were those who tried to turn the activity into personal benefit and possibly the President for having signed the Findings. I did not know anything about the redirection of funds from the Contra program. I did take into account, when I drafted the

[1] The three Findings were: (1) the Finding drafted by Judge Sporkin on or about November 25, 1985, and signed by the President on or about December 7, 1985, (2) the broader Finding signed by the President and dated January 17, 1986, and (3) a substantially identical Finding by the President dated January 6, 1986, which was effectively superseded by the Finding dated January 17, 1986.

early Finding, that the President's position with the public could be affected if he decided to sign the early Finding. While I realized that the operation had many risks and that the chances of it being pulled off according to the plan were probably less than 50-50, I thought that that was a decision that the President can make. I also thought that if it did go off as planned, then the President would be viewed as a great hero. Indeed, I could envision a ticker tape parade down Fifth Avenue with the freed hostages and the President being greeted by millions of people. So the decision was really up to the President.

The Findings were of interest in several other ways.

I will take full responsibility for the first Finding. It was my idea, and I drafted it shortly after I was briefed on the project.

The two follow-on Findings, which came to my attention in January 1986, were drafted by the President's National Security staff, which was clearly a validation of my advice and thinking on the original Finding.

In connection with these additional Findings, there was a dispute between Director Casey and Secretary of State Schultz. Colonel North, who was the National Security Staff member assigned to drafting the new Findings in January 1986, met with me in Director Casey's home one Sunday in January 1986. As I recall, the draft Finding did not include a mention that one of the purposes was to authorize the transfer of U.S. arms for the hostages. North reported to me that Secretary Schultz did not want that point made in the Finding. Schultz thought that it would be very detrimental to the President

that he was willing to trade arms for hostages, if and when the Finding became a matter of public disclosure or disclosure to the Congress. I insisted that the Finding include mention of that transfer of arms for hostages. I reasoned, based upon my SEC background, that for there to be adequate protection from a document, the document had to have full disclosure. I advised North that it would not be worth the paper it was written on without that Finding included in the document.

North again mentioned Schulz's objection. At that point we both approached Casey for Casey to make the decision. As noted, Casey had one of the finest and quickest analytical minds I've ever seen. After the issue was presented, within a matter of seconds he recognized the validity of the point I made and said that the subject had to be included. North said he would communicate that fact to Secretary Schultz. Later, I was advised that the Casey position prevailed.

Ultimately the position I had espoused that the Finding really protected everybody on a substantive basis was born out by what in fact resulted from the investigation by the Office of Special Prosecutor. No one was prosecuted for the substantive conduct covered by the Finding. The only indictments pertained to the twin issues of obstruction and perjury.

Mr. Bennett: Judge Sporkin, in addition to those issues, there was this issue about diversion of funds from arms sales subsequent to your departure from the CIA, which was another source of controversy and one that was looked into by the Office

of Independent Counsel. Did that sort of issue ever come up during any of your discussions?

Judge Sporkin: It never came up. I was as surprised as anybody when that issue surfaced a number of years later when I was on the Bench. The fact is that, if I had learned about something like that at the time, that's the kind of event that I would never have been involved in or would have approved.

Also, as I mentioned, the position I generally took was that, if a person is going to be absolved from a questionable activity, it would require that the activity be included in the Presidential Finding. So if we could imagine that I had a lapse in the first instance that allowed such a diversion of funds to be a part of a covert operation I knew about, I clearly would never have permitted that such diversion to be omitted from the Presidential Finding. Otherwise the Presidential Finding would have no effect to authorize or protect that activity.

Of course the fact is that the diversion of funds never was brought to my attention until the activity was publicly disclosed years after it took place.

Mr. Bennett: One of the things that we were discussing before we started here today were some of the dates when you were confirmed, when your commission was signed for the Bench and when you actually departed from the CIA. I think we were not able to identify the precise dates but we were pretty confident that you were confirmed by December 16, 1985, that your commission probably was signed at some point that month, and that you did not leave the

CIA until February 7, 1986. Can you fill us in on why you stayed at the CIA during this period after the commission was signed?

Judge Sporkin: It clearly had nothing to do with the Iran-Contra problem. What happened is that I owed a debt to Casey because it was through his efforts that I was able to be appointed to the bench. I therefore did not want to abruptly leave the agency and leave him without having a counsel in place. So what we attempted to do during that period is try to find someone who would take my place and to have a reasonable break-in period so that there could be an orderly transition.

Mr. Bennett: Judge Sporkin, just to go back on the issue of the national-security Findings. The first one had been drafted by you, as you previously explained, on or about November 25, 1985. We later learned that it was signed by President Reagan on December 7, 1985. This particular signed document ended up being placed in a safe at the White House and ultimately destroyed. The text of the Finding was later located through the efforts of your secretary at the CIA. The second Finding, in January 1986, of course became available too at about that time and came to be known.

That first Finding actually was relatively limited in its scope in the sense that it addressed the issue that you were confronted with when you first saw this set of facts on November 25, 1985. It authorized transportation and communication assistance in connection with this project and identified it as an arms-for-hostage proposal. Then later, in January 1986, the White House

itself came back with draft of a second Finding. Can you elaborate on what your role was with respect to the second Finding?

Judge Sporkin: My role was limited really to reviewing it to make sure that it would cover all of the activity that was contemplated and that it would be an effective document. And that's what I did.

You have to remember that it is really for the CIA to draft such documents. And so therefore it really needed my okay and to come up through the CIA to be an appropriate Finding.

Mr. Bennett: While you were at the CIA there were some other incidents that perhaps you cannot talk about. But one that you mentioned that you thought you could say something about was an incident involving ABC?

Judge Sporkin: The ABC case shows you the varied aspects of the position of the General Counsel. One day we found that ABC put on a TV program that indicated that a fellow named Raywald was a person utilized by the CIA to do various nefarious activities that were really contrary to the CIA's charter. The report was wrong. Casey was furious. He called me and asked me what I was going to do about it.

This was another example of Casey's method of operation. He forced you into making quick decisions in the course of which they had to be good decisions and with the exercise of exquisite judgment. You didn't get a chance to tell Casey: let me research it and I'll be back to you in three weeks. He demanded the answers at that moment.

I thought quickly about the ABC issue and advised Casey of a course of action that I thought might work. I requested of him the time for me to check on the accuracy and correctness of my advice. My advice was for the SEC to file a complaint with the Federal Communications Commission under its fairness doctrine. The theory was that we could draft a petition that would be like a speaking complaint normally filed in an injunctive action. We would thereby have the opportunity to get our side across without the risks involved in a court action, which would have subjected the agency to all kinds of discovery on all kinds of matters. That was always the problem that the agency faced when it was wrongly accused of doing something, because it would not be able to fight back and utilize the court system.

I explained my analysis to Casey. I mentioned to him that as far as I knew it had never been done before, which I later confirmed was true. But I did say that, before we invoked that strategy, I would like to visit with the ABC officials to see if I could get them to voluntarily retract the news story. Casey bought in on the plan and dispatched me to New York to visit with an ABC vice president.

My discussions with the ABC official got us nowhere. The network was arrogant and would not budge from its position that the story would stand as broadcast. When I arrived back at the agency and explained what had happened to Casey, he demanded that we immediately carry out the FCC plan. We did so. It worked even better than we expected. The complaint was filed, which caused the media to take note of what we had to say. Indeed, the *Los*

Angeles Times told the agency's story in a cover story in its Sunday news magazine.

ABC's reaction was to move to dismiss the action claiming that a government agency had no standing to make such a claim. We won that motion, which again made ABC look bad.

Sometime after the matter was closed, I was talking to a former high-level reporter of ABC, who told me an interesting story. He said that after I had spoken with the ABC vice president, the ABC vice president reported that I had said that if ABC did not publish a retraction, we would have to take appropriate action against the network. I did not tell the ABC vice president the nature of that proposed action. I wanted it to be a surprise attack.

The ABC vice president thought I was bluffing. He reviewed the matter with ABC's general counsel, who reported that there was absolutely nothing that the CIA could do to ABC in the form of bringing an action or otherwise. The former ABC reporter who was conveying the story to me said that, after we had brought our complaint before the FCC, the vice president went back to the ABC general counsel and said: "Damn it, I thought you told me that Sporkin was bluffing and that he could do nothing to us. How come he was able to think of the FCC action and you weren't."

The ABC reporter thought that the story that ABC had televised was inappropriate and was pleased that we had taken the action that we did, which gave ABC a good spanking.

Mr. Bennett: {After a short break.} During the break to take the call, we agreed to just come back and ask you what was Mr. Casey's reaction to your success with this matter.

Judge Sporkin: Well, Casey was the most incredible individual; the brightest man I ever met. I had maybe three great mentors. Casey, of course my father and Irving Pollack, who was my boss at the SEC for many years.

Casey's style is very interesting. He showed his appreciation for what you did, not by slapping you on the back and telling you that you are doing a good job, but by giving you more work and more responsibility and relying on you more. So after the ABC matter of course it meant that I would be called in on more matters and asked to advise him on a variety of things.

The other thing that was amazing is that Casey and I were able to communicate with each other without direct communication. Casey was always on the move, and he was doing so many things he oftentimes forgot to tell me about certain matters that I had to know about. This is what I mean about being able to communicate without actually being in direct communication.

For example, he would send people to me to brief me on a matter without having forewarned me that these people were going to be coming. However, the briefers did not know that Casey hadn't called me, and they assumed that I knew what they were there for and expected me to be prepared to advise them. Since this was the way Casey operated, I would not let on that

Casey hadn't called me. Instead I would tell the persons who were visiting that I would very much appreciate it if they could just quickly sum up where they are so that I could better focus on the matter. I knew that Casey expected me to run with the ball and to provide the advice, and that usually would turn out to be an effective way of doing business. It worked pretty well.

There are two other matters I think that would be of interest. I think that I mentioned on a previous occasion that when I first came to the CIA, there was a proposed revision of a basic executive order governing the CIA already underway. President Reagan had wanted to supercede the earlier order of President Carter, which very much limited what the intelligence agencies could do.

When I came in, I was told by Casey that I should not worry about the new executive order, that it was being worked on and that I would not have to get involved. I was told that it was ready to go over to the White House and be signed. And so I didn't do much with it.

It turned out that, when the proposed order did go over to the White House, it came back as fast as it landed. I think that I mentioned that the National Security Council stated that they did not want warmed-over Carter.

So when the document came back, I obviously had to get involved. We redid it. It went back over to the White House. When it came time to be signed, for some reason I did not receive the invitation. The people who had worked on the warmed-over Carter piece did go over, and they took all credit

for that. That might have hurt me a little bit. Casey's reaction was very simple. He said don't worry about it, Stan. We all know who did it. That soothed over things and also made it clear that Casey would realize what had really been done. There were a number of other instances where this happened.

Let me give another illustration of Casey's style. When I came in, we had put out a contract to build next to the CIA building, which was to be an addition of the same size of the existing structure. This had all been done before Casey or I came in. I learned that the company that they were going to award the contract to was a foreign company. I went to Casey. I didn't know anything about the way the agency worked. So I said to him: "Bill, does it sound a little odd to you that the company that's been designated or awarded the contract to build this new building is a foreign company?" He looked at me and said: "It does seem odd to me."

For reasons that I think are obvious, you need the highest degree of security when you construct an intelligence building. Casey said to me: "Okay, well, do what you have to do." I took that to mean that we had to do something to change who would construct it. It happened that the number two company that came in the bidding was a Detroit domestic company, and arrangements were made that that company would ultimately get the contract. Apparently the contract had not been signed. So we could make the change.

But all hell broke loose after that, because Casey gets a call from a

senior Senator – I don't remember his name, but a Senator that had a lot to do with the CIA's budget and a lot of other things – who obviously was behind the foreign company and wanted to know from the Director how dare that company not get the contract. So, Casey called me and said, you know you got me in trouble on this one. I said, yes. He says, go and fix it. I said, what do you mean? He said, go over and see the Senator and you do what you have to do.

Obviously Casey was being very facetious with me in the sense that he really wasn't chastising me for doing what I had done. He simply wanted me to go and take care of the matter. So I did visit with the Senator's Administrative Assistant to explain to him that nobody's going to look very good if it ever came out that the Senator was behind a non-American company to build this annex to the CIA. As you know, Senators are politically astute. They got the message and we never heard from them again. So that took care of that problem.

Mr. Bennett: Well, it is a quarter to four. There's one subject we could perhaps start but maybe not finish before your commitment at four. Let us move on to the next phase of your career when you went over to the bench. Let us start by asking you how was it that you came to be a judge?

Judge Sporkin: All right, I'll explain that. It was my goal in life to be a judge. I loved the law. I read the law from the beginning of my teenage years, I guess, and even before that. In those years my father was a prosecutor. He was an assistant

district attorney in Philadelphia. He was a career prosecutor, although you could be a career prosecutor and also have a practice at the same time. It was a part time job. Although you could not practice criminal law, you could practice civil law.

I was very taken with the law. My father did not encourage me at that time. He said he'd rather that I become a doctor. He thought the law was a difficult way to make a living. We were certainly not wealthy, though my father did make enough money to get by and educate his kids and do what had to be done. Now remember this is all during the depression and later war years.

Nevertheless, I very much enjoyed watching him operate. I enjoyed seeing him prosecute cases. I knew I wanted to follow in his footsteps.

My father later became a judge. I wanted ultimately to do that as well. At that point he encouraged me.

While my father had been in politics in Philadelphia, I did not really go that route. I knew you would have to have political backing to obtain a judgeship. I realized that it would be difficult to obtain a judgeship without getting into politics.

During my time at the SEC, I was on a list to become a judge and a number of other positions because of my record at the SEC. In addition to being put on a list to go before a judicial selection commission, I was also on a list to become the director of the FBI. But for one reason or another, I never made it to the top of these lists.

The next thing that happened was during my time at the CIA. Bill Casey and I had a mutual friend who we very much respected. His name was Milton Gould, a prominent New York attorney. Milton knew of my desire to become a judge and unbeknownst to me, and without my permission, he went to Casey and told Casey of my desire. Casey was not aware of my career goal to be a judge. I later learned that Casey asked Gould how he should go about helping me become a judge, at which point Gould told him: why don't you start out by writing a letter to the President. Gould reportedly said to Casey that, since Casey had been President Reagan's campaign manager, he certainly should be able to obtain some consideration for such a recommendation.

Casey did write such a letter, and it apparently worked. I remember – I guess it was in 1984 – receiving a call from Ed Schmults, who was the Deputy Attorney General. Ed and I knew each other, because he had represented persons before me at the SEC. He was an exceedingly competent attorney and worked extremely well with Attorney General Smith.

Ed Schmults said to me that the President would like to appoint me to be a judge if I agreed to such appointment. I said I would be honored to be appointed a judge. He then advised me at that time that there were no vacancies in the District of Columbia Court House, at either the district court level or the Court of Appeals level. He said that because my background would qualify me to be a judge on either of the two courts, he wanted to know

what my preference would be between the two. I told Mr. Schmults that I would take the first vacancy available.

Within a matter of weeks, Schmults called me back to tell me that Judge June Green had recently become a senior judge and that there was a vacancy on the district court. If I wanted it, I would be appointed. I responded that it sounds fine to me, and the process of becoming a judge began. This entailed first being vetted by the Administration and the FBI and then by the American Bar Association.

There was no real difficulty in the FBI investigation, and the ABA gave me a highly qualified rating. The real problem came about when my name was submitted to the Senate. It became obvious that my activity as the Director of Enforcement at the SEC had caused a number of people to declare it was payback time. The people who were particularly influential included Senator Denton of Alabama. My confirmation process spanned a period of some 18 months, including a Presidential election and a second nomination.[2]

This brought about a very difficult period in my life. There were several times when I was ready to quit the process and go out and do what some of my fellow SEC colleagues did and enter the practice of law and quit being a public servant. At each one of these occasions, Casey said he would

[2] Judge Sporkin's original nomination was sent to the Senate on June 28, 1984. The Senate never acted on that nomination, and it was returned to the President on October 18, 1984. The President renominated him the following year. The nomination was sent to the Senate on April 5, 1985. The Senate Judiciary Committee had closed hearings on October 29, November 7, November 15, November 20, and December 10, 1985. There was also an open hearing on December 10, 1985, and Judge Sporkin was confirmed by the Senate on Monday, December 16, 1985.

hear nothing of it.

My enemies brought up all forms of scurrilous charges, two of which emboldened me to fight on because they were so outrageous.

First, an investigator from the Hill interviewed the chief of security at the CIA to question my loyalty to the United States in view of the fact that I had taught at Antioch Law School and Howard University Law School. To this investigator it was thought to be subversive for someone to have taught at schools like Antioch and Howard. The Director of Security, Bill Kotavish, was a wonderful individual who was as outraged as I was for someone to make such an accusation.

The second incident involved a scurrilous charge that I somehow was involved in an obstruction of justice because I had arranged for a CIA agent to be represented by counsel during an investigation of the agent. The obstruction of justice charge got some play. One day I received a call from Senator Thurman's Administrative Assistant, who told me that I was under investigation for obstruction of justice and that there would be a hearing on the matter but that I would not be allowed to be present.

Because someone used the words obstruction of justice, I decided that I needed counsel and went to my old friend Edward Bennett Williams, who said he would represent me. Ed Williams could not believe that anybody would seriously consider such a charge on the sole basis that I had arranged to obtain counsel for a CIA agent who was under investigation. Because he was concerned that I was not going to be allowed to be present at the hearing, he

immediately went into action and contacted the Committee to explain to the Committee that, under the concept of due process of law, the person accused of a charge such as obstruction of justice had the right to be present when his accusers testified.

We won that battle, and I was present at the hearing. It turned out that the charge was based upon the facts that, when the agent retained the counsel I had recommended, the counsel needed some time to prepare his client's defense, that such preparation delayed the proceedings and that accordingly there was an obstruction of justice. You would not believe the expressions on the part of the senators when they heard that claim. Other than Senator Denton, no one could believe the basis for the charge.

One of the purposes for holding the hearing was to force the agent to take the Fifth Amendment. My opponents thought that, if this would happen, they could put my hearing off until such time as the issue was resolved, which would have in effect defeated my nomination. The agent was a stand-up person, who I believed was innocent of the alleged misconduct. Indeed, he was never charged with any violation, although he had to resign from the agency.

Mr.Bennett: OK, we hear the phone ringing so we'll end for today because of your other commitment and pick up here the next time.

ORAL HISTORY OF
JUDGE STANLEY SPORKIN
OCTOBER 4, 2004

This is the fourth 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 October 4, 2004. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin, which have been made in the form of a written donative instrument.

Mr. Bennett: I think the last time we got together we ended as you were telling us about the confirmation process. You had just at that stage explained how the issue raised by Senator Denton about your alleged obstruction of justice had basically been dealt with in a hearing. We wonder if you could continue and explain the rest of the process by which you came to be confirmed as a judge.

Judge Sporkin: I think I told you it was sort of bizarre when I was told that the issue of obstructing justice was based upon the fact that I had recommended a lawyer to a CIA Agency official who was under investigation. I think I mentioned that Edward Bennett Williams had never heard of anything like it. In any event, we had the hearing. The strategy of my opponents was to subpoena this individual and force him to take the Fifth Amendment. That blew up in their faces, when this gentleman came forward and testified under oath that he did not engage in the conduct that he was accused of engaging in. At that point, the hearing ended. This was all done in a confidential hearing.

The late Senator Paul Simon immediately left the hearing room and met with the press and told them that he had heard enough and that he was strongly supporting me. The vote then came out of Committee unanimously. It went to the full Senate but of course the timing was very close to the end of the

session. There was a real question of whether I could get a vote.

What next happened was that the Administration had a move that they wanted to make, namely they wanted to move Margaret Heckler from her Cabinet position to that of Ambassador to, I believe, Ireland. The Administration wanted to do it very quickly. It was on a Friday when the Heckler issue came to the Senate. Persons who were strongly in my court, particularly Senator Proxmire, put a hold on the Heckler nomination and told the Administration that the Heckler nomination would not go forward until they had a vote on me. The President and Majority Leader Dole did everything they could to assure Senator Proxmire that, if they allowed the Heckler nomination to go forward, I would be taken up at the beginning of the following week. Senator Proxmire to his credit refused to budge and the whole matter was put off until Monday, at which time my nomination came to a vote and I received unanimous approval. And that was followed by the Heckler and the Buckley nominations.

I do not know whether Senator Buckley realized it but the reason that he got a vote was that the two Connecticut senators who were holding up his nomination were strongly in favor of me, and they agreed to have his nomination come to a vote if my nomination was allowed to go forward before his. It was Senators Weicker and Dodd who were holding up the Buckley nomination. But once my nomination came forward, then Buckley was also confirmed as a judge on the D.C. Circuit. That's really the history of my confirmation process.

Mr. Bennett: Throughout this period of time when there were numerous hearings dealing with issues raised by Senator Denton and other persons, did any questions come up about political affiliations, judicial philosophy or anything of that kind?

Judge Sporkin: Those issues were not really raised. You've got to understand that I had extremely strong support on the Hill – extremely strong support, because many senators approved of what I had done at the SEC – particularly Senator Proxmire. This was the case also with Senator Weicker and Senator Dodd, and a host of others.

The only real issues in the confirmation process were those raised by Senator Denton. And these issues did not reflect what I believe was disturbing him. Senator Denton did not have a basis for holding me up for his real reason, which I believe was that, while I was at the SEC, we may have brought a case or two against people he had an interest in, and he thought that we were being a little hard on them. But that reason could not surface because they were people who had violated the law. So Senator Denton tried other strategies to stop me, and the one he used primarily was the argument that I had obstructed justice on the ground that I had advised the Director of Central Intelligence that we should assist one of our officers by arranging for him to have an attorney.

Mr. Bennett: Judge Sporkin, originally your nomination went to the Senate in June 1984 and it was not acted on during that year. The first nomination was returned to President Reagan in October of that year. And then you were renominated the

following year, 1985, and there were the hearings that we talked about previously. You mentioned, I think, in one of our previous sessions that you considered this to include some of your darkest days, personally.

Judge Sporkin: Right.

Mr. Bennett: I think in an even earlier session, one of our first that we had for this oral history project, you mentioned that, when you had the opportunity to become a judge, it was interesting to you that you were almost blinded by the desire to be a judge and never really looked at it in an objective way that perhaps you should have looked at it. Were you alluding to the problems that you were encountering during the nomination process that caused you personal distress?

Judge Sporkin: No. That had nothing to do with it. The only thing was this. My whole desire throughout my whole professional career was to be a judge. That was still with me because my father had been a judge and I saw the best in the profession through what this gentleman had done. And I wanted obviously to emulate him. He was my role model.

What I was saying was that I had not independently looked into the role of a judge, what the issues are and how to do it. When I became a judge, I then of course was faced with reality. In other words, I had to realize that you have to take every case. You cannot duck a case. You do not get exactly what you want. There is a lot of time that you spend which is not very productive but you have to sit days on end listening to testimony, almost mechanically ruling on evidence issues. Those are issues that I had not really focused on in this

process. I still think that it is a great position and would do it again. But I had not really contemplated those types of issues.

Mr. Bennett: Referring to your earlier years on the bench, when you got there you were sworn in and began functioning as a judge, did the job turn out more or less as you had expected it to be?

Judge Sporkin: It turned out in many ways to be better than I expected. Remember my experience with the courts was through my father being a judge and through my years as a law clerk. But what I had not contemplated were the matters that come before a court like the United States District Court for the District of Columbia. You get a much broader segment of judicial matters here in the District. It is an amazing court. I never contemplated a *Microsoft* case[3] or a *Keating* case[4] or some of these other major matters – matters that sometimes started out as a very minor case that just mushroomed into something very big.

For example, the *Prinz* case, Hugo Prinz.[5] That was a case that looked like a number of other matters that we had – involving somebody who had a

[3] *United States v. Microsoft*, 159 F.R.D. 318 (D.D.C. 1995) (ruling that consent decree was not in public interest in light of its failure to address all anticompetitive practices at issue and for other reasons), 1995 WL 121107 (D.D.C. March 14, 1995) (order setting forth additional observations on the court's decision), *rev'd*, 56 F.3d 1148 (D.C. Cir. 1995).

[4] *Lincoln Savings & Loan Ass'n v. Wall*, 743 F. Supp. 901 (D.D.C. 1990) (upholding the action of the Federal Home Loan Bank Board in appointing a conservator and receiver for Lincoln Savings & Loan).

[5] *Prinz v. Federal Republic of Germany*, 813 F. Supp. 22 (D.D.C. 1992) (denying motion to dismiss), 1999 WL 121301 (D.D.C., April 7, 1993) (denying motion for stay pending appeal), *rev'd*, 26 F.3d 1166 (D.C. Cir 1994).

beef for 50 years and thought he was entitled to something. When my law clerk looked at it she thought that this was a case that probably could be summarily dealt with as being like a lot of other claims where people had grievances but the case was not really there. Yet that case turned into a major, major case that resulted eventually in hundreds of millions of dollars being sent to victims of the Holocaust.

So you have a number of those kinds of things. A case I had, that I was looking at the other day, involved the Government's policy of Don't Ask, Don't Tell, for gays in the military.[6] I think at the time that I had the leading case on these issues.

People used to say to me how come I get all the good cases. It was not that I was getting all the good cases. It was these little cases that nobody else thought were much that grew into big cases. A lot of times we did not know what was going to happen.

Mr. Bennett: Were there any surprises when you took the bench? I am thinking about things like your friends might have become reluctant to return your calls or anything of that kind.

Judge Sporkin: No. My only surprise was that the degree of independence that you have. If there is anything that marks the greatness about that job is the tremendous amount of independence. Here I had managed big operations involving hundreds of people at the SEC and 100 to 150 people at the CIA. When I went to the courthouse, I had just me, a secretary, two clerks, a courtroom clerk and so I felt in control. I also

[6] *McVeigh v. Cohen*, 983 F. Supp. 215 (D.D.C. 1998) (injunction ordered to address Navy's violation of the "don't ask, don't tell, don't pursue" policy when the Navy sought information about an otherwise undisclosed identity of a particular e-mail user from an internet online service provider), 996 F. Supp. 59 (ordering hearing to determine whether defendants were in compliance with the Court's order).

had a tremendous amount of independence being able to call them as I saw them. And that was the best surprise.

Mr. Bennett: In those early days, did you have any special friends among the other judges?

Judge Sporkin: The district court judges are just super. They were nice. They were friendly. I became friendly with great judges like Judge Richey, a dear friend of mine. Lou Oberdorfer was a very close friend and still is. I had a good relationship with Judge Jackson, and with Judges Hogan, Lambert, Penn and Harold Green. And I should mention Bill Bryant, Barrington Parker and Joyce Green. These were all very strong, supportive colleagues.

When I first got there, I was sandwiched between Barrington Parker and Bill Bryant. Bryant was extremely pleased to see me. I didn't know what he knew about me but he must have known something about my background. He seemed to be very happy with my judging and the decisions I was making.

Mr. Bennett: Did any of those judges give you any special help in sort of getting your feet under yourself when you arrived?

Judge Sporkin: Yes. I learned from Judge Richey how important it was to control your docket and to dispose of cases. You have so much independence that there is a tendency to let things slip, perhaps with the thought that nobody is going to do anything about it. That was one thing in particular about which I disciplined myself – to get my decisions out on time.

I did not want to have anything that was reportable as pending too

long. You had to file a report every quarter. There were two judges there that had the lowest number of cases. One was Judge Gesell and the other was Judge Richey. It was not long before I was in a competitive battle with those two. They did not like the newcomer coming along, so they exerted even more effort to get their dockets down.

I kept my docket extremely current. It even got to the point where some of the lawyers used to say, Judge, we know that you decide cases quickly but please take a little more time in this case. I never had anyone complaining about the promptness of justice in my court.

Mr. Bennett: How did you find your law clerks and how did you deal with them?

Judge Sporkin: My clerks were super kids and are very close at this point.

We used to get almost 1,000 applications a year. This district court here is very sought after by law school graduates. One day it dawned on me that it was harder to become my clerk than get admitted to Harvard or Yale. I could not believe that was the fact, and it was the fact.

Early on, I decided that to sit down and sift through these hundreds of applications was not a good expenditure of my time. So what I did about hiring law clerks was to base it usually on a professor recommending someone or a former law clerk recommending someone. That is the way I would normally hire clerks.

Mr. Bennett: What were you looking for in a clerk?

Judge Sporkin: When I hired a clerk, I would bring him or her in and say exactly what I anticipated. I told them that we are going operate like the Supreme Court; we are not going to carry over any matters past the term that the clerk served, which was usually September to August. I told the clerks that they had to be prepared to work on what I called a real time basis. If they were not prepared to do that, then they should not accept the job.

The intelligence aspect was clearly there and reflected in their ranking in the class. But it was hard to tell how somebody was going to be smarter or more capable than somebody else based upon the written record alone.

Mr. Bennett: Did you have some particular things that you wanted to teach your clerks in their year with you?

Judge Sporkin: Yes, I certainly did. I did a lot of things that other judges did not do. One is that I had them interact with lawyers. Many judges do not like that. The reason I wanted the clerks to do it was I wanted them to be equipped when they left my clerkship to be able to stand on their own two feet.

It was my premise that you do not learn how to practice law in law school. Law school is theoretical and academic. You get very little practical instruction in law school. So I looked at the clerkship as being a half-way house between the theoretical, the academy, and the practice. I wanted to give them a soft landing when they left me and went into the practice.

I required that the three of us did things together. I required that they be in court with me. Many judges seldom allowed their clerks to go to court.

They had to go to court with me and even though we had assignments – odd and even cases – I wanted to get both viewpoints when I decided the cases, even from the clerk that did not have the assignment.

Mr. Bennett: So each of your clerks was expected to have at least some familiarity with all of the cases brought to you for decision.

Judge Sporkin: Absolutely. And both were to provide their input. Another thing was that after a case was heard, I would then go back and we would talk it over. I would make a decision and then I would often ask for a draft or for research. Then I would have the draft on my desk within a short time.

I also disciplined myself that I had what I called a 24-hour rule, which was that any draft that came to me from a clerk would be reviewed and commented on within 24 hours. That practice came to me from my management days at the CIA and the SEC, because that was the only way you could manage. Otherwise people would be sitting around waiting and losing valuable time.

Mr. Bennett: As far as your clerks were concerned, did they give you any input on what kind of experience they would like that caused you over the years to change?

Judge Sporkin: This was not a debating society. They had to know that there was one person who would make the decision. They had to know what their role was. If they did not like it, they should not have applied as a clerk. But I do not think I had anybody disappointed with the experience. They could not have been

disappointed, because they were actively engaged, they were doing important work, they were getting good writing experience and they were getting good interactive experience.

I had one case I remember where my law clerk named John Polise was involved in a major criminal case. It required a lot of administrative attention requiring jury questionnaires, and a lot of work of that kind. This fellow was extremely gifted. I just turned over the whole matter to him and he arranged for the questionnaires and all of the administrative work that was required of this massive case that lasted for weeks and weeks. We had creative people like that.

Mr. Bennett: Did most of these law clerks go on to careers in the practice of law? Did some go into the academic world?

Judge Sporkin: Yes. I had at least two who went into the academic world — one is a full professor and the other is a tenured associate or assistant professor at a good law school. I have had at least three that are assistant U.S. attorneys. I had a number of my clerks, at least four, who have gone to the SEC on my recommendation and have done extremely well. I have had one who is in a business, and one who is a top general counsel of a major company. Another has a major job at the Treasury Department. They have all been very successful.

Mr. Bennett: Did you make any special efforts while they were serving with you to encourage them to seek further public service?

Judge Sporkin: I often told them that I thought that they would have a great career at the SEC. I mentioned that I had at least four clerks, and maybe more, take this suggestion and go to the SEC.

I had another clerk who is an elected official in New York. He has done very well. He is a councilman. Some have gone to the Hill.

Mr. Bennett: Just going on a bit about how life was as a judge, I did notice that you gave a number of speeches while you were on the bench. What was your attitude about public speaking while you were serving on the bench?

Judge Sporkin: I mostly talked about issues that were not likely to come before me. Most of the time I gave speeches was because of my prior role as Director of Enforcement at the SEC. Because I had served in that role, I recused myself from all SEC cases. I also recused myself from CIA cases. These recusals did bother me some, because those would be areas I knew something about. But I thought that out of an abundance of caution, and to avoid any perception of unfairness, I should not get involved in those cases.

Mr. Bennett: During that period of time while you were on the bench, Judge Sporkin, you must have received many invitations to speak. Did you think it was part of an extension of your previous public service to continue to play a public role in discussing SEC and other issues?

Judge Sporkin: I thought I had something to say. I loved those areas and I wanted to keep abreast of them.

Of course these issues flowed back, because look at the *Keating* case that is cited I do not know how many times when I asked the question: where were the lawyers and where were the accountants?[7] That was the old gatekeeper approach. And in the recent Sarbanes Oxley legislation, the statute is largely a gatekeeper statute. So I feel proud that the gatekeeper concept, which I sort of invented, is now part of the landscape of the federal securities laws.

Mr. Bennett: Perhaps we should now talk about some of the cases that you had previously indicated to me that you considered significant and worthy of discussion for purposes of this oral history. We have selected five such cases from among the many decisions you rendered. We probably cannot get through more than one or two today. Those five cases include: The *Lincoln Savings & Loan* case that you mentioned; the *Microsoft* case in which you participated; and the *Prinz* case that you also mentioned. A fourth case to discuss is *McVeigh v. Cohen*, which is the Don't Ask, Don't Tell, case you also mentioned. And then a fifth case, *United States v. Webb*, is one of a number of cases in which you were involved in trying to determine the proper role of a judge in sentencing criminal defendants.[8]

Shall we start with the *Lincoln Savings & Loan* case?

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[7] *Lincoln Savings & Loan Ass'n v. Wall*, 743 F. Supp. at 920, includes the discussion of "Where were these professionals [accountants and lawyers] . . . when these clearly improper transactions were being consummated?"

[8] *United States v. Webb*, 966 F. Supp. 16 (D.D.C. 1997) (discussing downward departure from Sentencing Guidelines for defendant Alvin Webb), *rev'd*, 134 F.3d 403 (D.C. Cir. 1998), 1998 WL 93052 (D.D.C. Feb. 20, 1998) (recusal decision by Judge Sporkin).

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Judge Sporkin: Yes, that was an interesting case. The case came before me in the posture where Keating was trying to get back his ownership of Lincoln Savings. Keating owned a company called Continental, which owned Lincoln Savings. The Office of Thrift Supervision had taken the savings and loan away from Keating and Continental, and Keating was utilizing his right under the Fifth Amendment of the Constitution to get back the property.

When the case started out, Keating sought to have me disqualified because, while I was at the SEC, many years before, we had to take disciplinary action against one of Keating's entities. I did not think that it had anything to do with this case and therefore I denied the motion and presided over the case.

The case involved Continental taking over Lincoln Savings & Loan in an era in which there was a tremendous crisis affecting savings and loans. It appeared that savings and loans were failing all over the country. They were failing because they were very limited as to what a savings and loan could do. They were not like commercial banks. For example, a savings and loan at the time could only make indirect investments. They could not make direct investments. For example, a savings and loan could make an indirect investment by loaning somebody money to buy a house but it could not make a direct investment by buying a parcel of land itself. Banks could do some of those things. Congress saw that there was going to be billions of dollars of defaults in the savings and loan business, which under the federal deposit

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insurance scheme would have involved a lot of money. So Congress decided to avoid the day of reckoning by passing legislation that would provide savings and loans with broader authority with the thought it might encourage people to come in and bail out these underwater savings and loans.

It was that legislation that prompted Keating, through Continental, to take over Lincoln Savings & Loan. Lincoln Savings & Loan was a small California savings and loan that had a net worth of about $39 million. With borrowed money, Keating went to the owners and bought them out for $51 million. The owners thought they had died and gone to heaven, because they had a failing savings and loan and they would be able to get a profit of $12 million.

All this is in the record and found to be true. Keating wanted to take over the savings and loan in order to have access to the billion dollars in assets at the savings and loan which came from depositors with federally insured accounts. He took Lincoln over by Continental buying 100% of the savings and loan.

The Office of Thrift Supervision through its San Francisco office had jurisdiction. They were aware that they had to watch Keating because of prior run-ins with the law. So when Keating would ask for certain waivers of the law, they would look at it very carefully.

The first thing that Keating tried to do was make some upstream dividends. The Office of Thrift Supervision said, no, they were not going to allow it. Then Keating concocted a plan whereby there would be what was

known as a tax-sharing agreement between Lincoln and Continental. The way this would work, according to Keating, was that Continental would file a consolidated tax return, by which they would bring together the profits and losses of both companies and file a single return.

Keating's lawyers came up with this idea, because Continental had about $200 million in tax loss carryforwards. The plan was that large sums for taxes would be upstreamed from the savings and loan to the parent with the understanding that the parent would keep the money, since there would be no tax due to the U.S. Treasury because of the tax-loss carryforward that the parent company had.

This proposal was presented to the Office of Thrift Supervision, and it said that, yes, it sounds okay and therefore it approved the agreement.

Keating and Continental now had in place the plan. However, the plan would only work if the savings and loan had income. So the next part of the plan was for the savings and loan to create income.

Under the tax-sharing agreement, each quarter the savings and loan would prepare a profit-and-loss statement that would be calculated under what was known as GAAP, or generally accepted accounting principles. At the end of each quarter, whatever that profit was the amount of the tax on such profit would be upstreamed to the parent company under the tax-sharing agreement.

For example, at the end of a quarter, if there was a $10 million profit at Lincoln Savings & Loan and the tax rate at that time was 40%, 40% of the $10 million would go to Continental. Continental could keep this amount until

it used up its $200 million tax-loss carryforward.

But when we started out a few minutes ago, I explained that savings and loans were losing money. How then did Continental and Lincoln make the savings and loan a viable, profitable company? Continental would come up with a number of orchestrated transactions. I will give you one as an example. There was a piece of property that Lincoln bought in Phoenix, Arizona, for $3 million. Remember that savings and loans were now permitted to invest directly in assets at that time, so Lincoln went out and bought this property. Keating then entered into an arrangement with some fellow who they picked off the streets of Phoenix and brought him into the boardroom. They arranged for this gentleman to buy this $3 million property for $14 million through a company called Wescon, which had a net worth of only $31,000 and which was acting as a "straw" for the individual. The plan was that the difference between the $3 million and the $14 million would be a profit to the savings and loan, so that something like 40 percent of that profit, or more than $4 million, would be upstreamed to the parent company under the tax sharing agreement.

The deal in this instance was that Wescon and the individual would buy the property for $14 million, but on a non-recourse basis. The individual or Wescon would receive – I forget – it may have been a fee of $25,000 to do this transaction. But there were some problems with this transaction. In order for the savings and loan to be able to declare as a profit under GAAP, 25 percent of the purchase price had to come from a source other than the owner or seller of the property. So this individual or Wescon, with a $31,000 net worth, had to

come up with $3.5 million for GAAP to allow the profit to be claimed by Lincoln. So Keating then worked out a deal with a local utility in Phoenix unrelated to the individual involved. The utility needed approximately $20 million. Keating said that the savings and loan would give the utility what it wanted and would give the utility $3.5 million additional with the understanding that the utility would loan that money to Wescon. It was that $3.5 million that was used to satisfy GAAP requirements, because it came from a source other than the seller.

That was the kind of transaction that was utilized to allow the savings and loan to upstream funds to Continental.

When those issues came to me, I saw through this business and said: look, even though there was an intervening party, namely the utility, the money still emanated from the seller and therefore the profit recorded on the transaction did not satisfy GAAP. Even though there was testimony by several accounting professionals that this transaction met GAAP standards, I said that GAAP requires reality.[9] Those kinds of transactions led me to uphold the Office of Thrift Supervision and to permit them to take the savings and loan away from Continental.

Another interesting aspect of the Keating story is that, before the case

[9] "Accountants must be particularly skeptical where a transaction has little or no economic substance. This is so despite the fact that the transaction might technically meet GAAP standards. In a paper prepared by Touche Ross & Company in 1975 the following poignant statement appears: 'The goals of accounting are to measure, record and communicate economic reality. In the long run, these goals are necessities – both for accounting and for society. Can behavior be economically rational if not grounded on economic reality.'" *Lincoln Savings and Loan Ass'n v. Wall*, 743 F. Supp. 901, 913 n. 17 (D.D.C. 1990).

came before me, the Office of Thrift Supervision in its regional office in San Francisco had done an examination of the savings and loan and came in with a report to the home office – to a good fellow named Danny Wall – that OTS wanted take away the savings and loan from Keating. But the report was based solely on technical violations – that the signatures were not there and certain other things. There was no substantive examination, none, in that first report.

When that first report got to Washington, Keating enlisted many friends that he had acquired through campaign contributions and otherwise who sided with him and stepped in with the savings and loan to get this recommendation reversed. As you know, there is a group called the Keating Five, which was Senator Cranston, Senator Riegle, Senator McCain, Senator DeConcini and Senator Glenn. These were the five. They interceded with the Office of Thrift Supervision, saying: how come you can take the savings and loan away from Keating when all that savings and loan does is make money? Remember that Lincoln had all these funny transactions in which it was making money. Of course the Office of Thrift Supervision had not examined those transactions substantively. They only looked at technical issues. So when the Keating Five interceded with Danny Wall, Danny stepped back and said, okay, and he was forced to withdraw the recommendation. He said he would withdraw the recommendation and send somebody in to do a substantive review to deal with the safety and soundness of the institution and start a new examination with new examiners. This second examination then found all these transactions that showed there were serious safety and soundness issues. Based

on that record, they took away the savings and loan from Keating. That was it in a nutshell.

Mr. Bennett: I understand you have to leave for a meeting. We will resume with this case, including a discussion of a few additional interesting aspects of this case we have not yet touched on.

ORAL HISTORY OF
JUDGE STANLEY SPORKIN
NOVEMBER 4, 2004

This is the fifth 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 4, 2004. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin, which have been made in the form of a written donative instrument.

Mr. Bennett: When we finished the last session, we were talking about the Keating case, which you described, and I thought there was an additional aspect of the case I should perhaps ask you about. One feature of the case was that you actually called Charles Keating as the court's witness when neither side had called him. I wonder why you did that and what led you to that.

Judge Sporkin: Well, there is the authority under the rules for a judge to be able to call a witness – on the judge's own discretion. I guess the point is that I took my position extremely seriously. There are many of my brethren on the bench who treat being a judge as merely an arbiter or referee and really do not get enmeshed or involved in the case itself. I believe that any position in life that you take has to be dedicated. It has got to be that you really are involved, and you cannot sit idly by. You say what is the role of a judge? The role of a judge is to make wise decisions, to find facts and to try to come up with the right decision.

In that case, where I was sitting without a jury and I was trying to make findings of fact, the lawyers were very reticent to set forth all the facts in the case. That bothered me. They did not want to call Keating as a witness. Neither side wanted to call him as a witness. I used the comment at one point in

describing the decision to call him: you cannot have Hamlet without Hamlet. And here was Hamlet. Here was the key person in the case, and nobody would call him.

And so I did make the decision to call Keating as the court's witness so that we could have a complete, full record. Not a lopsided record or half of a record, a full record. I believe that is the court's prerogative and should be what courts do.

When I did call Keating as a witness, of course the problem I ran into was what was I going to do with him. He was my witness. I had to then make the decision that I would treat him as if this were a case and a party would call him as a witness. I decided to do two things. One, I would treat him as my witness, or how his own lawyer would treat him and have Keating present all things in his favor. Then I would treat him as the adversary would treat him and cross-examine him. I called him and I told him exactly what I was going to do. I said, Mr. Keating, here is what I am going to do. I am going to ask you some very simple questions and I want to get your best statement and I am going to give you a chance to really set forth exactly what happened. And then of course I am going to test your answers. And that is what I did, and it worked out pretty well.

Mr. Bennett: Did that have an impact that you can recall on the decision you made?

Judge Sporkin: It sure did. One of the things I learned as a judge is that every case has what I call a key to the case. And when you find the key, you unlock that case.

What was his testimony? Asked why he did what he did, his answer was astounding to me. He said that whatever I did was done with the advice of counsel and the advice of my accountants and that I surrounded myself with scores of lawyers and with ample accounting consultants and auditors. He said that I did not do anything without vetting everything through the accountants and lawyers.

The complicity of lawyers and accountants caused me to write probably the most famous words of my career, which were: where were the lawyers and accountants – these professionals who could have stopped these improper and inappropriate activities from occurring? Why did they not do something?

And that became the key to the case. The professionals were not doing their jobs.

If you look at that case, you will find that theme was later picked up by a fellow named Harris Weinstein, who was then counsel to the Office of Thrift Supervision, and he proceeded to go against professionals of the other troubled savings and loans to recoup monies from those professionals. And the agency recouped hundreds of millions of dollars.

That was the key. Yes, that occurred only because of Keating. That was his testimony. How else could we have found that out?

Mr. Bennett: Let us turn to the second case that was among the five cases that we identified at our last session. This was the *Microsoft* case. Can you tell us just briefly what the *Microsoft* case was about when you were involved in it.

Judge Sporkin: The *Microsoft* case came up as the result of a proposed consent decree that was presented to me by the Department of Justice, Antitrust Division, and Microsoft.

I looked at the decree. I knew consent decrees, almost having invented them when I was at the SEC. This was one of the softest decrees I had ever seen. When I looked at it, the decree struck me that this was sort of a face-saving compromise that the Government had worked out so that it could close a sticky case that had been around for many years. It looked as if the idea was to sort of put a little lipstick on the pig and then get rid of the case.

What I figured out myself was that this case had first been before the Trade Commission, then went to the Department of Justice. It was a new Administration. The case had been sent over from the Trade Commission because of a 2-2 split before that agency, which meant that nothing would happen there. At the Antitrust Division someone probably said, look, we have to get rid of this turkey. And it was probably decided to come up with a compromise that both sides could live with. And, indeed, Microsoft was almost emboldened by the decision because it knew that it would be business as usual.

I found that the decree did not have any enforcement teeth to it. As I recall, the decree was almost outmoded the day that it was signed. I likened it to something that only was operative during snow days in Washington. It was very weak. Not only was it weak, I concluded that it could not be enforced in

court, which later proved to be correct. Later on, when the Government tried to enforce the decree, it was ruled that the decree was unenforceable.[10]

Mr. Bennett: Your decision as reported gave a number of different grounds for refusing to approve the decree as in the public interest, including: not enough information had been provided you to make the necessary findings; the decree was too narrow; the decree was silent on certain anticompetitive practices and therefore an inadequate remedy; and you were not satisfied that the enforcement compliance provisions were adequate.[11] But then after you rendered that decision, both sides appealed to the Court of Appeals, both the Government and Microsoft.

Judge Sporkin: I didn't have a chance.

Mr. Bennett: Essentially what was done is the Court of Appeals seems to have taken the position that you had addressed issues that were not spelled out in the complaint and that you should not have done so. That seemed to be the fundamental position of the Court of Appeals.[12]

[10] An effort by the Department of Justice to enforce the 1995 decree by a contempt action was unsuccessful. *See United States v. Microsoft Corporation*, 147 F.2d 935 (D.C. Cir. 1998) (sometimes referred to as *Microsoft II* in the Court of Appeals).

[11] *See United States v. Microsoft Corporation*, 159 F.R.D. 318, 338 (D.D.C. 1995). *See also United States v. Microsoft Corporation*, 1995 WL 121107 (D.D.C. March 14, 1995) (additional observations of the district court).

[12] *See United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995) (sometimes referred to as *Microsoft I* in the Court of Appeals).

Judge Sporkin: There is no question in my mind that a judge who is going to have to approve something and put his signature on a decree has a broad right to consider certain issues. This hearing occurred in September. During the prior summer I was spending time at my beach house in Margate, New Jersey. By the way, I used to do some of the important work I had there because, for example, the Keating opinion was written on the beach during one of my summers at Margate. In this case, while I was getting prepared to consider the decree in the *Microsoft* case in September, my son-in-law was visiting me with his family in Margate and had gone to the library and brought back a book about Microsoft. I forget the name of it.

Mr. Bennett: *Hard Drive*.

Judge Sporkin: Yes, *Hard Drive*. I read it to prepare myself for the hearing. In that book the authors raise the issue of a concept called vaporware. What is vaporware? It is where a company announces a product to freeze the market and to prevent competitors from coming on with their product, even though the company does not have the product. It seemed to me that in our system of jurisprudence, that cannot be a legal activity. A company that has monopoly power to be able to announce a product that it does not have to the marketplace – and lie to the marketplace – in order to freeze out a competitor, it seems to me would be contrary to the antitrust laws. Indeed, I think I may have said in my opinion that it also would be contrary to the securities laws because it would be a misstatement in the marketplace.

Mr. Bennett: You considered that those sets of issues were fairly raised by the complaint in the case?

Judge Sporkin: I thought I should have an answer. In other words, I was asking for information. Tell me folks, do you engage in that practice?

The Government took the position, when I asked the Government about the practice, that the practice was legal. And I think that position is reflected in my opinion.

When I raised the issue at a subsequent hearing, counsel for an amicus came forward and said he would like to be heard. I think his name was Gary Reback, if I have his name right. He said, Your Honor, I would like to present certain evidence to you. He introduced in the record two documents. If there ever was a smoking gun document, these were smoking gun documents.

The interesting part is that, prior to that time, I asked that question of the Government and of counsel for Microsoft. Counsel for Microsoft said they did not engage in vaporware. That was a response to a general ballpark question whether Microsoft engaged in vaporware. I did not have these documents at that time. At that point Microsoft said that it did not engage in that practice and the Government took the position that, even if Microsoft had engaged in the practice, the practice did not violate the law.

Reback then came in with these documents – a self-evaluation by an employee of Microsoft who was writing a memo to Gates in which the memo set forth the reason why he was entitled to a bonus for the year. In it he

recounted to Mr. Gates that: don't you remember on such and such a date I got you to preannounce product X to freeze out company ABC? There were two documents in contiguous years in which that same scenario took place. But they covered different companies and different products, as I recall.

Then I had the documents and then I again asked Microsoft just answer a very simple question. Are these documents of Microsoft? Because I did not know whether they might have been forged documents. The answer was yes. And that to me was the key to say, look, what is going on here? What I needed was more information. Based upon that, and the points that you summarized from my opinion, I could not approve the settlement.

Mr. Bennett: The Court of Appeals reversed your decision and instead of remanding it, the Court of Appeals actually directed that the decree be approved. They said that on such things it is okay for the district court to do such things as to clarify ambiguities of the decree and so on, but that, when the government is challenged for failing to bring as an extensive action as might be, a district judge should be careful to limit its role to determine only whether the decree appears to make a mockery of judicial power.[13] Subsequently, there was legislation enacted saying in effect that the original intent of Congress was that courts in approving antitrust decrees should not take such a narrow role as the Court of Appeals described and spelling out what Congress considered the proper standard for decision in such cases. That legislation became effective in

[13] *See Microsoft I*, 56 F.3d at 392.

June 2004.[14] We should ask you whether that legislation gives you some sense of vindication as to the standard you applied in the *Microsoft* case?

Judge Sporkin: There is no question that it does. I knew at the time what the Tunney Act was designed to do because it arose out of a case that I was involved in at the SEC. It involved a company called ITT and its attempt to take over Hartford Insurance Company. There was a big scandal during the Nixon years on that case. There was a thought that some money had been paid to the Republican Party to put on a convention in San Diego and that was the reason the merger parties got approval of the merger between ITT and Hartford.

The remedy was to pass legislation to give courts a broad authority in approving antitrust cases. That is clearly the basis of the Tunney Act, and I knew it. And of course the district courts had that power. I just think again the Court of Appeals, as they had often done in other cases, had taken a very narrow view, and it had absolutely misstated the intent of Congress. I see that Congress has now come forward and said that the original intent was exactly the way I said it was.

[14] Section 221 of H.R. 1086, 108th Cong., 2d Sess., enacted into law on June 22, 2004, amended the Antitrust Procedures and Penalties (Tunney) Act, 15 U.S.C. § 16(e), to spell out the standards to be applied by a court in making the public interest determinations required for judicial approval of an antitrust consent decree. Section 221(a)(2) states that the purpose of such amendments "is to effectuate the original congressional intent in enacting the Tunney Act . . . ." Section 221(a)(1)(B) sets forth a congressional finding that it would misconstrue the meaning and congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments "solely to determine whether entry of those consent judgments would make a 'mockery of the judicial function.'"

Mr. Bennett: One of the other things that the Court of Appeals did in a separate section of its opinion was to go on to say that under circumstances that the Court of Appeals laid out in its opinion it would be inappropriate for you to continue with the case after the remand. What was your reaction to that?

Judge Sporkin: I was not very happy about it. The Court of Appeals had again done something that was inappropriate in my view, because what they pinned it on was the fact that I had read this book called *Hard Drive*. It just does not make any sense. Of course judges are entitled to read the daily papers. They read a lot. This is not the case of a jury reading something that is not in evidence. A judge can read outside materials. I recall that going back to the *Brown v. Board of Education*. Not only did the Supreme Court read documents that were not in the record, they read books. They read a lot about segregation. How else is a judge going to bring to bear in a case reasons for doing certain things?

Later on in the *Microsoft* case, the Court of Appeals itself had arranged to have its own consultant to help them and assist them in a case. And that consultant would not have been cross-examined by anybody. It would have been strictly *ex parte*. Of course, in the end, the Court decided not to do it. But there is an irony here that is beyond belief.

One of the problems in the *Microsoft* case was that both the Government and Microsoft appealed against me. Nobody was there for me. I could not give them an answer or response. Perhaps that had something to do with outcome of the case.

Later on, I was vindicated in another way, because when I had said

that the decree was not an enforceable agreement, it proved to be not enforceable. And, as you know, Judge Jackson's opinion in a later phase of the Government's dispute with Microsoft, which was affirmed in large part, found that there was a violation of the antitrust laws.[15]

Mr. Bennett: It does seem that you accepted the decision of the Court of Appeals with equanimity, because I saw some public comments that you made reported in the press about the difficulties in getting a subsequent district court judge to participate in light of what had happened to you in that earlier case. You said it should not be a problem and that any judge here is capable of doing it, which does not seem to reflect any great distress over the decision.

Judge Sporkin: These are scorched-earth events and later on Microsoft got Jackson removed.[16] That is what was happening in these cases. Look, it happens. The only good side of it is that I did not have to spend years of my life working on the case. I was in and out. I had given my views of the case, and it was over.

My decision in the case reflected the concept of every case having a key to it. I believe also that I had the ability to be able to quickly size up a case and come to a decision. If you look at my record you will see this reflected in my decisions. I would say that maybe 90-95% of the time I had gotten the right issue and in that way I did not have to sit down and worry about cases for years as some folks did. I would quickly come to a decision.

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[15] *See United States v. Microsoft Corporation*, 253 F.3d 34 (D.C. Cir. 2001) (*en banc*) (sometimes referred to as *Microsoft III* in the Court of Appeals).

[16] *See Microsoft III*, 253 F.3d 34 at 116-17.

When you examine my record, you should also find that, after the passing of Judges Gesell and Richey, I always had the lowest record of open cases. Indeed, I tried to be 100% current and succeeded in doing so because I could size up quickly and dispose of cases, many from the bench. I think that I may already have mentioned that one of the comments I received from a lawyer in a case when I was ready to rule was: take some time, Judge, I know you like to rule quickly, take a little more time. I think I did take a week in that case.

Right or wrong, many of the concepts that I developed in my judicial days may be a product of my earlier career. I think it is important for other judges to consider these ideas, because I do think that they may well have continuing application and may well help courts streamline their case load and help them to dispose of matters. Maybe at some point we will have some sessions like this among the other judges to debate my concepts.[17] Maybe they will find some good and some bad aspects to my concepts.

Mr. Bennett: Let us talk now about the *Princz* case. I think you mentioned that, when one of your law clerks first looked at this case, it seemed to her like a case of a person with a long-standing grievance but perhaps not a solid legal case. She thought

[17] In addition to the views on judicial efficiency expressed by Judge Sporkin in the present series of interviews, Judge Sporkin has delivered several speeches addressing judicial efficiency and related matters. Among them is Judge Sporkin's speech entitled "Reforming the Federal Judiciary," the Tenth Annual Alfred P. Murrah Lecture at the Southern Methodist University School of Law, on November 9, 1990. Judge Sporkin returned to the same subject in an address on October 21, 1993, to the Annual Fall Meeting of the ABA Section on Litigation, entitled "Streamlining the Litigation Process." Both addresses are included in the materials accompanying this oral history.

that the case might be disposed of summarily. How did this case develop after that?

Judge Sporkin: I think I mentioned at our last session that people used to say: how did you get all these big cases? Well, they do not start out being big.

What do you do with a case that was 50 years old, as I recall when I got it. Of course, when you see an old case, the initial thought is that this is a person who has a grievance that is really out of time.

One of my techniques of being a judge was that I always found that my ears were better than my eyes. I always liked to hear matters. I liked to see people before me. I liked to be able to size them up. A lot of judges do a lot of the work on paper, summary judgments and whatnot. The vast majority of my work was done in court, and even when it looked as if there was not much merit to a case, I would listen to the people. In this case, when I listened to Princz's lawyer and he described the travails of this man and his family during the Holocaust, it said to me as a judge, well, maybe there is something here. Let us research the law – let us just see. Let us give this fellow the benefit of that. Why are we judges? We are judges because we are human beings and we are trying to do humane things. We are not robots. We are not on an assembly line.

I analyzed the case and wrote an opinion. I thought that the claim was not barred by the Foreign Sovereign Immunities Act and that there was jurisdiction in the court. If you look at the Court of Appeals decision that reversed me, you can see the reasoning of the Court of Appeals. I do not think it made a lot of sense when the Court of Appeals said that Princz could not

satisfy the requirements of the Foreign Sovereign Immunities Act when Princz was held in slavery and was in effect working in a factory that was building bricks. The majority opinion of the Court of Appeals was that Princz could not show that what was happening had any impact on him and the United States.[18] The theory was that the bricks were not being used in the war effort. If you want to look at a narrow holding of the majority, what do you think was happening in Germany in those days when they were fighting the war with us?

The way that opinion was written was almost like we were talking about the *Microsoft* case. Very narrow. We looked like horses with blinders running down the track. We only want to see specifically the words that the Foreign Sovereign Immunities Act says that the claim must have an impact in the United States. The fact that this man was building bricks, and I think I.G. Farben was the company, did have an impact. Part of the work was done for the Messerschmidt aircraft factory in Germany. Of course it was ridiculous to be looking that narrowly at that kind of claim. But even on this narrow issue, the fact is that I.G. Farben was a German company, owned by the German Government in a war-time setting, building products that were being used against the United States.

But that is the way the Court of Appeals was narrowly examining cases. That is what gives me a great deal of problems with the way that we are picking some of our judges who are not willing to do justice, not willing to see

[18] *See Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1172-73 (D.C. Cir. 1994), *rev'g*, *Princz v. Federal Republic of Germany*, 813 F. Supp. 22 (D.D.C. 1992).

what was the purpose and intent of the law, as opposed to looking at it in a very narrow way to see how they could get out of doing anything about a case. There was a good dissent in that case, as you may recall, by former Chief Judge Pat Wald who sided with me in that case.

Mr. Bennett: Judge Wald's dissenting opinion essentially articulated a position similar to your position in the district court. The dissenting opinion took the view that, if there is a violation of an international norm of *jus cogens* – which included enslavement and genocide – then the defendant foreign state implicitly waives its right to assert sovereign immunity as a defense. That was her position.

Judge Sporkin: Later, Congress amended the statute again.[19] And now you see a lot of cases being brought against other countries. For instance the Iranian hostages. That legislation was passed in order to take care of cases like this where a person clearly was entitled to have justice done, as when the Nazi Government had slaughtered Princz's mother and father, his two brothers and his sister. Dr. Mengele had removed the womb of his sister. The facts are as brazen as you can find. And these are American citizens who are not able to come into an American court and not able to get relief in an American court. Where is justice?

[19] Amendments to the Foreign Sovereign Immunity Act, 28 U.S.C. § 1605(a)(7), enacted by Congress in 1996, allow American nationals under certain circumstances to sue for damages against a foreign state for torture, extrajudicial killings, aircraft sabotage, hostage-taking or the provision of material support or resources for such an act. Related provisions in a 1996 legislative enactment known as Civil Liability for Acts of State-Sponsored Terrorism, 110 Stat. 3009-3172, note following 28 U.S.C. § 1605, establishes liability of certain persons to American nationals in certain circumstances for such acts.

Mr. Bennett: Subsequent to the decision of the Court of Appeals, there was a remand of the case in your court. What happened after that?

Judge Sporkin: That case against the Government of Germany was dismissed. What happened was that Princz's lawyers amended the complaint to name the companies in Germany that enslaved him. They sued Bayer Aspirin and a couple of other German companies. I guess they spun off from the old I.G. Farben, which is no longer around.

Princz's lawyers sued those people, at which point the German Government came in. The German Government was furious because the Court of Appeals had dismissed the case. I had to tell the counsel for Germany that you are right. You won. The victory is yours and you are not in this case anymore. This is not against the German Government. This case is against four individual companies. You have no standing in this case anymore.

I denied a motion to dismiss, at which point counsel for Germany sought mandamus against my ruling in the Court of Appeals. I had to hire a lawyer because I would normally be represented by the United States Government but the Government was conflicted because the State Department was unable to determine who it wanted to support in this case. The State Department did not want to offend the German Government.

So I hired Harvey Pitt of Fried Frank who is an old friend of mine. Of course he got the mandamus dismissed.[20] At the point the case came back to

[20] *In re Federal Republic of Germany*, 1995 WL 118035 (D.C. Cir. Feb. 23, 1995).

me. We had a status call. The lawyers came in. I asked to see them in chambers. I said, look, why do you want to litigate this case? Won't you consider compromising or settling it? They said that they needed time. They were very fine lawyers. They went out, they had time and in a couple of months they settled the case. Mr. Princz was then a janitor working in New Jersey in a synagogue. He was given some money, obviously not made whole. He at least spent the rest of his life not in poverty.[21]

Mr. Bennett: Was this the first of the Holocaust cases later settled on a broader basis?

Judge Sporkin: Absolutely. This was it. This was the seminal case.

Mr. Bennett: {After a short break} Just before we took a short break, Judge Sporkin, we were talking about the *Princz* case as the first, at least the first decided, Holocaust case. There was a subsequent history of settlements with various

[21] As a result of the *Princz* case, the Federal Republic of Germany reached an agreement (commonly known as the "Princz Agreement") with the United States on September 19, 1995, to compensate certain United States nationals who were survivors of Nazi incarceration or enslavement in two stages. Under the first stage, there was a payment of $2.1 million to Hugo Princz and ten other American survivors of Nazi concentration camps. Under stage two, the United States Foreign Claims Settlement Commission ("FCSC") was authorized by Congress to consider and report on claims of other United States nationals who might be entitled to compensation under the Princz Agreement. Following a report of the FCSC, an additional 235 additional American survivors of Nazi incarceration or enslavement received compensation under the Princz Agreement. The Princz Agreement and related events are described in Vol. I, Annex D,
pp. D-6 – D-9, and Vol. II, Annex E, pp. E-56 – E-58, to the Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, dated September 11, 2000, in *Holocaust Victims Assets Litigation (Swiss Banks)*, No. CV-96-4849, available at *http://www.swissbankclaims.com* (under "chronology").

defendants for relief with respect to victims of the Holocaust or their heirs. What was the relationship to the best of your knowledge between your case and those later actions?

Judge Sporkin: I believe the *Princz* case was the seminal case. I have every reason to believe that the legislation was as a result of the *Princz* case. His lawyer, who was a super lawyer, really fought like the dickens for Princz and then for others. By the way, he was a little known lawyer. I had never seen him before. He had his own practice. Everybody who came into my court room had equal standing. It did not matter whether it was a big firm or a little firm or by themselves. But this lawyer was a super lawyer.

Mr. Bennett: Judge Sporkin, we just looked something up the report of your decision in the *Princz* case. Can you tell us what the name of the lawyer was?

Judge Sporkin: The lawyer was Steve Perlis, who was a single practitioner who was as fine a lawyer as ever appeared before me. He was smart, and he really did a job for his client.

Mr. Bennett: Thanks, Judge Sporkin. We know that you have to go to another meeting right now. We'll resume next time.

ORAL HISTORY OF
JUDGE STANLEY SPORKIN
DECEMBER 14, 2004

This is the sixth 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 December 14, 2004. The tape and any transcripts made from the tape are confidential and governed by the wishes of Judge Sporkin, which have been made in the form of a written donative instrument.

Mr. Bennett: Judge Sporkin, at previous sessions, we talked about the *Keating* case, the *Microsoft* case and the *Princz* case. We also decided that we would cover several other cases as illustrations of significant decisions you have rendered during your time on the bench. The next case is known as *McVeigh v. Cohen*,[22] which was a case under the Don't Ask, Don't Tell, Don't Pursue, policy of the Armed Forces, adopted during the Clinton Administration. I wonder if you could comment on that case.

Judge Sporkin: The case obviously had some important issues in it. What happened was that the Government went beyond its authority when it went after this officer because of his sexual orientation. This case, like so many others, is fact-driven. The facts, when you apply the law, clearly dictated the decision that I reached. The Government had announced its Don't Ask, Don't Tell policy. By using deceit in trying to find out whether this individual was gay, the Government clearly did not comport with the spirit behind the Don't Ask, Don't Tell policy. It was that simple. The facts showed how in an underhanded way Government personnel tried to find out who a person named "boysrch" was. It showed an action that was

[22] *McVeigh v. Cohen*, 983 F. Supp. 215, 996 F. Supp. 59 (D.D.C. 1998).

unfair and clearly something that was not contemplated by the policy. Therefore, I ruled for the plaintiff in that case.

Mr. Bennett: Why did we consider that this was one of the more significant cases worthy of discussion as part of this group that we set aside for that purpose?

Judge Sporkin: I guess only because I think it has had an impact. It is one of the leading cases in the military on the homosexual issue. I do not think I realized at the time that it would have an impact but it is just like so many other cases that you do not realize when one comes up that it is going to be considered a landmark case. Apparently this got a lot of response from a number of different quarters – a fact that I think the Government acknowledged by not appealing the case – that the Government had overstepped its bounds. And the fact that the Government was willing to live with the ruling in the case made it a precedential case.

Mr. Bennett: We also included on our list several cases dealing with the Sentencing Guidelines. I saw just the other day an article in *The Wall Street Journal* talking about drug cases and the fact, according to the *Journal* article of December 2 of this year, that more than half of the nation's federal prisoners are behind bars because of drug violations.[23] The article also addresses the difficulty that judges have had in following the Guidelines because the Guidelines involve not just how large a weight of drugs might be in the possession of the defendant but also what the defendant intended to do and what the potential was for further developments. So

[23] "In Drug Sentences, Guesswork Often Plays Heavy Role," *The Wall Street Journal*, December 2, 2004, p. A-1.

The Wall Street Journal article is somewhat expressing the view that it is very hard truly to achieve uniformity under the Sentencing Guidelines. And in this article the reporters actually quote you and mention several of your early cases.

Judge Sporkin: I was among those judges in the system who thought that these Guidelines were over the top, that they were doing great injustice and harm to many in society and that indeed, in some cases, they understated the extent of the violative conduct. For example, I remember that I had a bank robber before me. He did several bank robberies and I was limited to sentencing that gentleman to seven years in prison. What really disturbed me was that somehow a person who does two bank robberies does not have to spend any additional time in prison than if he had done one. That bothered me a lot.

The drug cases, of course, were one of the real stains on our society. I think that, when history rewrites this era, it will be seen that we deprived a lot of people of many years of their liberty unjustifiably.

I remember that we had a vote one time among our judges. I think there were fourteen judges voting. I think that thirteen out of the fourteen believed that the Guidelines were a wrong way of dispensing justice. So I was just one of many who believed that. What is now happening is that the Guidelines are being eviscerated by the Supreme Court in sort of a backdoor assault. That really impacted the Guidelines tremendously when juries now have to decide these extenuating factors.[24] I would have hoped that the Supreme Court would

[24] *See Blakely v. Washington*, 124 S.Ct. 2531 (2004), ruling that Sentencing Guidelines in the State of Washington, which were similar to federal Sentencing Guidelines, were unconstitutional.

have decided the unfairness of these Guidelines right up front. I thought that the Guidelines violated due process as well as constituting cruel and unusual punishment.

We were taking people who were simply drug addicts and putting them in jail for many, many years.

The *Webb* case was one such case.[25] Here was a street person. He had no home. He was a drug addict. He would get his drugs simply by transferring the drugs from a dealer to a purchaser. The police, by making multiple purchases from this individual, were able to seek a sentence of I think seven or eight years under the Guidelines. It was just terribly unfair.

That was a case that I felt was so unfair that I had hearing upon hearing to how best to deal with this person. He was a Vietnam veteran who clearly needed drug treatment, not imprisonment for eight years. So what I did was somehow worked it so that the sentence would have been approximately four years. The Government appealed the sentence. It went to the Court of Appeals, and the Court of Appeals slammed me for the four-year sentence, claiming that I had wrecked havoc on the judicial system, because, among other things, it required the Court of Appeals to have to write an opinion.[26] This insensitivity really does not do the judicial system any good. It forced me to have to write an opinion in which I did respond to the Court of Appeals, telling it that I did not

[25] *United States v. Webb*, 966 F. Supp. 16 (D.D.C. 1997).

[26] *United States v. Webb*, 134 F.3d 403, 408-09 (D.C. Cir. 1998), rev'g 966 F. Supp. 16 (D.D.C. 1997).

appreciate the way they tried to smear me.[27] After all, all I was doing was my job. I think that one of the greatest lines I ever wrote came in that case, in which I answered the Court of Appeals statement that, I erred in finding that a sentence for too long a term might invoke due process concerns. The Court of Appeals had found that there was no due process issue at all.

I responded by taking off on that famous case in which the Supreme Court threw out a punitive damage claim that had been based upon the fact that an individual had bought a BMW with a botched paint job. The Supreme Court said the facts would not justify the amount of punitive damage awarded in that case.[28] The case was decided on substantive due process. My quote was that if the Constitution of the United States can shed a tear for a botched BMW paint job, it certainly should be able to do something for an individual who was going to have to give up eight years of his liberty for some street sales of drugs.[29]

Under the Guidelines, we were just sentencing people to ungodly amounts of time for nothing more than either addiction or having very minor roles in drug trafficking. Of course if we found a trafficker I would throw the book at them. But many of these cases did not involve traffickers. We had men who would get their girlfriends to carry drugs for them, where the women would get sentenced and their male partners would go free because they did not have the

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[27] *United States v. Webb*, 1998 WL 93052 (D.D.C. Feb. 20, 1998).

[28] *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

[29] "If the Constitution of this nation can shed a tear for one accused of botching a BMW paint job, certainly where a liberty interest is at stake — and a defendant faces an unconscionably long sentence for drug-addictive conduct — the Constitution should have no less a role to play." *United States v. Webb*, 1998 WL 93052 at *7.

drugs on them. These things I found unconscionable, unsettling, and I thought were wrong. There are many little things I found that were bothersome about the way we were applying both mandatory minimums and the Sentencing Guidelines to deal with this drug problem.

Mr. Bennett: Before the *Webb* case you mentioned, there were other unreported drug cases that became fairly well known because of unusual steps that you had taken in several cases. For example, I think there was at least one case in which you were troubled by the amount of the particular drug that the defendant was alleged to have had in his possession, and you asked the prosecutor to bring the drugs into court and weigh them. Is that the kind of issue that you found yourself having to confront with these drug cases?

Judge Sporkin: Those were not really the main problem. Those cases were just my own application of common sense. As I was getting ready to sentence someone, I saw the report that showed the amount of drugs would be right above the threshold for a mandatory minimum sentence. I had two cases like that. One involved the case where the drugs were about 5.01 grams. I said to myself, suppose the chemist was wrong – and he measured wrong. And here I am going to have to sentence this person to over five years in prison. So I asked that the drugs be weighed, and of course when drugs came in and were weighed, they came out under 5 grams, at which point the federal prosecutor asked me to take judicial notice that cocaine evaporates. I declined to do that, saying that I cannot take judicial notice of something that my eyes tell me is different.

The second case is one where the measurement came in at something like 50.1 grams. And there, when the drugs came back to be weighed, the weight was actually 46 or 47 grams, which indicated to me that even if evaporation were an issue, this case was not a case involving evaporation. This was something more than that. It bothered me that the Government might be taking advantage of some defendants.

Mr. Bennett: The Sentencing Guidelines were put into effect probably about 1987. I have seen speeches that you made back in those early years of the Guidelines indicating that other federal judges were so dissatisfied with the role that was imposed on them by the Guidelines that some of them even resigned from the bench. A particular case was Judge J. Lawrence Irving in San Diego. He resigned a few years after the Guidelines went into effect. Did you have similar philosophical problems with serving as a judge imposing sentences under the Guidelines?

Judge Sporkin: You have to understand that the toughest thing a judge has to do is take a person's liberty away from him. That is why I would spend untold hours figuring out what was right and what was wrong in sentencing cases. One of the real problems we had with the Sentencing Guidelines was that a district court judge – who sees the individual face-to-face sentences that individual – can then be reversed by a three-judge panel that never sees that person. I think that could be a constitutional issue. I believe that a person whose liberty is being taken away should have the right to appear before the sentencing judge and have the right to see the sentencing judge and to hear from the sentencing judge. That is not done under

the Sentencing Guidelines. I do not know of anyone who has raised that issue. Although I believe that it is an issue that counsel for affected defendants should pursue.

There are other types of sentencing cases that I had. One was the *Dyce* case, which is one I know you raised.[30] That was a case in which the person who was picked up with drugs was pregnant. I think that, by the time I sentenced her, she had had the baby. I just did not feel comfortable in taking away the baby from this woman for the multiple-year sentence that she had to serve under the Guidelines. I tried to arrange a sentence which would defer the imprisonment to a point in time after the baby was able to be weaned from the mother. So I was trying to get a period of time – a year or two – before she was placed in a correctional facility.[31] I was disturbed when the Court of Appeals came down and reversed me and said that you cannot treat women any differently than men.[32] She did the crime, she has to do the time, and it is immaterial that she is a mother and gave birth to a kid. We do not take those things into consideration.

That of course bothered me. What happened to humanity? Isn't this a humane issue? Should we not take those things into consideration? What really disturbed me, more than the fact that I was slapped down by the Court of Appeals, was the fact that there were many in the women's movement who were critical of

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[30] *United States v. Dyce*, 874 F. Supp. 1 (D.D.C. 1994), *vacated and remanded*, 91 F.3d 1462 (D.C. Cir. 1966), 975 F. Supp. 17 (D.D.C. 1997) (order and opinion on remand).

[31] The sentence was for 60 months of probation – the first 24-month period of probation in a "Young Mothers' Program" in New York, where she would reside with her infant, followed by 12 months of probation in a community correction facility or halfway house. 874 F. Supp. 1 (D.D.C. 1994).

[32] 91 F.3d 1462.

my decision. Feminists thought that I was dead wrong. They agreed with the Court of Appeals that women should not be treated differently. Biologically they are different. There are issues that obviously pertain to women, not to men. So that left me a little dumbfounded.

Mr. Bennett: Of course in that case you did take into account extraordinary family circumstances, as you were allowed to do under the Guidelines. But then the Court of Appeals decided that the extraordinary family circumstances were narrower in scope than what you originally concluded yourself. Then after denial of rehearing *en banc* in the Court of Appeals,[33] the Court remanded the case to you for possible resentencing. And you ended up coming up with the same sentence based not just on family circumstances, but also on some other factors such as the post-conviction rehabilitation of the defendant.

Judge Sporkin: I did not remember that, but what happened was that became the sentence then?

Mr. Bennett: As I read the case, you ended up giving the same sentence after the Court of Appeals had acted. But you did so on somewhat broader grounds, including both extraordinary family circumstances and post-conviction rehabilitation.[34] Of course by then several years had passed from the original sentencing, and you could take additional factors into account. That one case at least came back to you and you were able to take these broader issues into account as well.

[33] *See* 91 F.3d 1462.

[34] 975 F. Supp. 17 (D.D.C. 1997).

Judge Sporkin: Being a judge, especially in the sentencing area, really requires the most incredible amount of patience and feeling. I remember a young lady that had come before me. I think she had five kids, many still in diapers. She was to be sentenced to jail. I looked at the record. Her mother was there and at the time of sentencing. Her mother said, in a plea that was so poignant that you could not dismiss it, "look these kids are in diapers. I'm her mother and I cannot take care of these kids. She is a good mother and she should be with these kids. They love her." So I think we were able, working with a probation officer to sentence her whereby she was sentenced to one of these homes for women without partners so that she could serve the sentence there and attend to her children. Again this was something that really paid off. She told me she was going to go back to school; she was going to get a degree; she was going to do a lot of other things. And I remember that for a number of years after that she would come back to me every few months and report the progress she was making. She made tremendous progress. She was able to get her degree. She was able to get a good job. She was able to continue to take care of these kids.

Those are very satisfying moments. They make you feel that you are accomplishing something. Those are very important moments. I know that some judges treat that kind of stuff as an irritant and just want to get the sentencing over and let somebody else worry about it. I am not that kind of person. I would carry these things with me for long periods of time.

Mr. Bennett: To a large extent we have sort of seen your judicial philosophy, if these are the right words, reflected in your discussion of these cases. Let me go a bit beyond

that, Judge Sporkin, and mention to you an address that you gave at the occasion of the portrait dedication ceremony for Judge Charles Richey, in which you described some of the views of Judge Richey and his approach to the law.[35] Do some of those views that you described for Judge Richey apply to you as well?

Judge Sporkin: Absolutely. We were very close in every way. I do not think we ever had a dispute on how to come out in a case. The interesting part is that we were both Republicans. Nobody could say that we were some wild-eyed persons from out of the mainstream. And yet we would see and call cases pretty much the same way. I used a concept in that speech, the concept that many want judges to adhere to a philosophy which I call McGooism. Mr. McGoo was the fellow that you will recall could not see too well and would walk not looking where he was going and would always fall. I always felt that the philosophy that is espoused by many reflects that they really want judges to be McGooists, and be like Mr. McGoo and apply that law and allow it take them over cliffs and what else and never look to see what is the end result.

I am not saying that a bad end result is enough to change a decision. I do not think that would be right. What I am saying is that a judge should know what are the consequences of his or her action are likely to be. And then see what can be done to soften or deal with that problem. Judges should not be robots. They must realize what the impact of what they are doing is going to have on society.

[35] Remarks of Judge Stanley Sporkin at the Portrait Dedication Ceremony in Honor of the Late Honorable Charles R. Richey, June 13, 1997. These Remarks are included as part of the materials submitted in connection with the transcripts of the Oral History of Judge Stanley Sporkin.

Mr. Bennett: In that speech concerning Judge Richey, you said, "he looked at the law, looked at the end result, and tried to reconcile the two so that justice could be done, all the while never compromising his duty to enforce the law as created by Congress." And in the speech you also said, ". . . seldom would he be heard to say, 'I did an unjust act because the law made me do it.'" Is that essentially your philosophy too?

Judge Sporkin: That is absolutely right. You have got to look and see where the equities lie and then see whether the law would justify the person that should win wins. You obviously cannot manufacture law, but you certainly can apply it in the best way you can to do justice.

We have a tremendous amount of law on the books. One of the interesting things, when you go to law school, is that you have textbooks which are really nothing but case books. And what the professors try to do is to give you two cases, side by side, based upon pretty much the same facts, but the decisions are different. That is what I remember in law school used to drive us nuts because all we wanted as young lawyers was: what was the law?

What the professors were trying to teach us, and I think they succeeded, is there is no such thing as: this is the law. It really is the application of the facts to the legal principles that are involved. When you really look to see what is it that we want our judges to be, it seems to me that when our President appoints a judge to a court, the appointee should be someone who has not only the legal qualifications to be a good judge but also the ability to deal with the law and

apply the law with good common sense, with the interests of the parties in mind, and to do justice. What people sometimes fail to realize is that our federal judges are not only law judges but also equity judges or chancellors. If we remember our history, the Chancellor was a person who would see that justice is done. We had found out that, by just using the law judges, there sometimes is great injustice. So the system had to adapt, and had to provide for a Chancellor. And so we lose sight of that fact when we talk about strict constructions, because under our system of strict construction, it is also the Chancellor who is supposed to apply the law in a way that does justice.

Mr. Bennett: In your speech about Judge Richey, you also mention in a footnote, Judge Sporkin, that Judge Richey found particularly offensive judges being labeled liberals, conservatives, activists or extremists. You also say that Judge Richey defied those labels. Would you say that that footnote applies to you as well?

Judge Sporkin: Absolutely. There is nothing that makes me cringe more than someone says he or she is an activist judge, a conservative judge, or a liberal judge. There is only really one mold for a judge, and that is someone who does justice. And that is what judging is all about.

Mr. Bennett: You retired from the bench after many years of service on the bench and also previous Government service at the SEC and the CIA and actually as a law clerk as well, even before that. What was your reason for deciding to retire from the

bench rather than to go on senior status or some other status that might have been available to you?

Judge Sporkin: I had spent 14 years on the bench. I never practiced law except for one year in the 1960s. I thought that maybe this was a time to do something else. There were some financial considerations because the Government had a rule that would prevent me from obtaining my pension from the civil service until I had retired from the bench. That was not a major consideration but it was a consideration.

I tried one year in taking senior status. Two of my former colleagues, Judges Gesell and Richey, shied away from senior status because they thought they were giving up some of the protections that Article III provided for judges. I sort of agreed with that philosophy, and I did not care to be a senior judge. First of all, I was not interested in reducing my caseload by 50 percent. I wanted to be active and I wanted perhaps to try something else. So for all of those considerations, I decided that I would step down and become a lawyer and practice law.

Mr. Bennett: And since that time you have been here at Weil Gotshal?

Judge Sporkin: That is correct. It has been an interesting experience. I very much miss the bench. Perhaps the rule that they have over in Superior Court, which allows a judge to sort of retire and go into the private sector and then come back, if he does it within 18 months, might be a pretty good idea. Maybe just a sabbatical is necessary to recharge and then come back.

I have no real regrets. The practice of law has given me the ability to

deal with a lot of different things. I have done a number of public interest tasks. I have done studies for the SEC, the National Association of Securities Dealers, the New York Stock Exchange and even a small one for the New York City Police Department. These have been rewarding experiences for me. It is not the Court and yet I have found ways to find things interesting and to energize myself in private practice.

Mr. Bennett: What do you miss in private practice that you found rewarding as a judge?

Judge Sporkin: One of the problems with private practice is that you are seeing the law being made, whereas as a judge you are able to eat the meal after the law has been made. You are not seeing what goes into making that law. I guess it is almost like going into a restaurant and not seeing the way they are preparing a meal in the kitchen.

In private firms, you also see a lot of young people running these firms, perhaps the very people that you found in court were sometimes not really up to it. I guess that it is lack of experience because the intellect is there. I can see how to do something in about 20 seconds. Some lawyers may spend maybe a month or longer trying to come to the same conclusion. In private practice, there sometimes is the frustration of seeing people sort of having to work their way through when the answer is easy. It is almost like when you raise children. You know what the answer is but you want them to work it out themselves. The problem I have with that in private practice is that somebody is paying for that, and it just does not make a lot of sense to have people pay for the education of

lawyers.

But it is a good system, and the amazing thing is to see in this firm a bunch of young lawyers running an extremely big operation. I am impressed with the way they can manage and can run such an operation.

Mr. Bennett: Do you ever plan to retire in the conventional sense, that is, to enjoy yourself and go to the beach? Write a book perhaps?

Judge Sporkin: Not yet. As Bob Morgenthau, District Attorney of New York City, said recently he is too old to retire. That observation might make some sense. I want to do something. I feel that as long as I can contribute, I want to be able to contribute. When the point comes when I can no longer contribute, then obviously I will step down and do something else. The real problem of course is that life is like a football game when time is running out. We'll fight until the last moment.

Mr. Bennett: Do you have any advice, Judge Sporkin, for any active or senior judge who might be thinking about retiring from the bench?

Judge Sporkin: This is not one size fits all. The real point is: do you want a job that is all you are going to be doing your whole life. One of the considerations that I took into account was seeing some of my older colleagues literally die on the bench. The Richeys and the Harold Greens. That was not a good sight.

It seems to me that you want to go out, you want people to remember you when you were robust and you were sort of knocking the ball out of the park. The last thing you want people to remember about you is almost being carried on

to the bench. That is not good.

Everybody has to make their own decision. A dear friend, Judge Milton Pollack, in New York, who just recently died, was active until he was either 96 or 97. My father was in his 90s when he stepped down. It really is up to the individual.

Mr. Bennett: Judge Sporkin, we are just going to go back a moment and talk a bit about the SEC days. We skipped that period in the chronological history because you have given an interview as part of the SEC Oral History Project. You were interviewed by Irving Pollack, a friend of yours and long-time associate. We are going to refer in this oral history to the place on the internet where those interviews can be found.[36] I just wanted to ask essentially one or two things about that time. One relates to Irv Pollack.

You mentioned in one of our earlier sessions that you had three great mentors, Bill Casey, Irv Pollack and your father, Judge Maurice Sporkin. We discussed the role that Bill Casey had played in your career and also your father's role and influence in your life. We only touched on Irv Pollack's role. I wonder if you would like to add something about that.

[36] The Interview of Stanley Sporkin conducted by Irving Pollack on September 23, 2003, appears on the website of the SEC Historical Society (*http://www.sechistorical.org)*. That website also includes an Addendum by Stanley Sporkin to his interview, dated March 24, 2004. In addition, the website of the SEC Historical Society includes a panel discussion on September 25, 2002, entitled "The Roundtable on Enforcement," in which Judge Sporkin participated, as well as a second panel discussion on October 4, 2001, entitled "The Roundtable of the 1963 SEC Special Study," in which Judge Sporkin also participated.

Judge Sporkin: Irv was the greatest boss a person could ever have. He was, during most of my 20 years at the Commission, my boss. He taught me so much.

First of all, he was, and still is, an extraordinarily brilliant individual. Smart. His ethical principles were second to none. You knew when you dealt with Irv that there was only one way to do it, and that was the right way. You had to consider that in combination with the fact that the right way was also consistent with being a good human being. Some people who pontificate sort of turn you off because they come under the label of "do gooder." He did not need to talk about doing the right thing, because he was born into it. He automatically did the right thing. That is how good he was.

The other thing Irv taught me was the concept of fairness. You have got to be fair with people. I learned that when I was with the SEC. One of the great benefits of being in government was that you could do the right thing. There are many examples of this. If someone you found had been wronged or was innocent, it made me feel just as good proving that person's innocence as it was in proving that another individual had violated the law. That was the great thing about my 20 years with the SEC – to be able to do the right thing for the right reasons.

When I lecture now to the people over there at the SEC, that is the point I want to get across to them. They are servants of the people. They are Government servants and they have a duty and responsibility to serve the public as fairly and honestly as possible.

Mr. Bennett: You still cast a long shadow at the SEC. We know that the SEC has the Stanley Sporkin Award that the SEC grants annually to a significant public servant that year. We know also that you have made many speeches even during the time that you were on the bench about SEC-related subjects. In one of those speeches, way back in 1991, you said, Judge Sporkin, "I still miss those days at the Commission." Do you still feel the same way?

Judge Sporkin: Oh, yes. I miss my days on the bench. I miss my days at the CIA. I miss my days at the Commission. And I miss my days as a law clerk. I have no regrets. Just as the song says, I did it my way. Everybody practicing law should have had the opportunities that I have had, because they would have had such a tremendous experience. With respect to myself, I was able to have my cake and eat it too. These were tremendous experiences. If I had to go and write a script of how I wanted to spend my life, I could not have written it any better than the way it happened, and I say that as candidly as I possibly can. This has been one great ride. Going from Yale Law School, to clerkship, to the SEC, to the CIA, to the Court and finally wrapping it up – well, maybe not finally wrapping it up – practicing law. I do not know if I will have another career after this. But maybe I'll start working on it.[37]

[37] Subsequent to the conclusion of the interview of December 14, 2004, Judge Sporkin became Ombudsman for BP America, effective January 1, 2007, and withdrew as a partner in the firm Weil, Gotshal & Manges LLP to accept that position. As Ombudsman, Judge Sporkin is a person to whom employees of BP America may voice complaints or concerns relating to environmental, safety or other issues affecting the oil company anywhere in the United States. In addition to Judge Sporkin's role as Ombudsman for BP America, Judge Sporkin continues the practice of law as a sole practitioner in Washington, D.C., specializing in mediation, arbitration and consultation on securities issues.

Mr. Bennett: Maybe we should wrap up the oral history with that note. Let me say on behalf of the D.C. Circuit Historical Society, Judge Sporkin, thank you very much for your important remembrances and observations on things during your distinguished career on the bench. It has been a pleasure for me too to have the opportunity to ask you a few questions.

Judge Sporkin: Alex, this has been a wonderful opportunity for me. Everybody used to say to me, why don't you write a book. You have been so patient with me and so understanding, that I think we might have the book right here. And I do appreciate your taking the time. This has been a very enjoyable experience.

Mr. Bennett: It has been my pleasure, Judge Sporkin. Thank you.

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Honorable Stanley Sporkin

Born February 7, 1932, in Philadelphia, PA
Died March 23, 2020, in Rockville, MD

Federal Judicial Service:
Judge, U.S. District Court for the District of Columbia
Nominated by Ronald Reagan on April 5, 1985, to a seat vacated by June L. Green. Confirmed by the Senate on December 16, 1985 and received commission on December 17, 1985. Assumed senior status on February 12, 1999. Service terminated on January 15, 2000, due to retirement.

Education:
Pennsylvania State University, A.B., 1953
Yale Law School, LL.B., 1957

Professional Career:
Law clerk, Hon. Caleb M. Wright, U.S. District Court, District of Delaware, 1957-1960
Law clerk, Hon. Paul Leahy, U.S. District Court, District of Delaware, 1960
Private practice, Washington, D.C., 1960-1961, 2000-
U.S. Securities and Exchange Commission, 1961-1981
- Staff attorney, Special Studies of the Securities Markets, 1961-1963
- Division of Trading and Markets, 1963
- Chief, Branch of Enforcement, 1963-1966
- Chief enforcement attorney, Office of Enforcement, 1966-1967
- Assistant director of enforcement, 1967-1968
- Associate director of enforcement, 1968-1972
- Deputy director, Division of Enforcement, 1972-1974
- Director, Division of Enforcement, 1974-1981

General counsel, Central Intelligence Agency, 1981-1986

Other Nominations/Recess Appointments:
Nominated to U.S. District Court for the District of Columbia, June 28, 1984; no Senate vote