

Securities and Exchange Commission Historical Society
Interview with David Ginsburg
Conducted on January 17, 2002
With Jack Katz and Irving Pollack

DG: In the Christmas break of the third year law school students generally looked for jobs. One of my teachers at Harvard Law School was Professor Felix Frankfurter; we were rather close. I told him I was job hunting, and planning to go to Cincinnati where I had an appointment. He simply said, "Well come see me afterwards." In Cincinnati I was hired at Dinsmore Sholl Sawyer & Dinsmore. Even at this remove I remember my meeting there.

When I returned and reported to Felix that I had a job, he congratulated me and said "Why don't you take one year off and go to Washington." That sounded good to me, because F.D.R. was then active, speaking often, and stirring the country. I called Judge Sholl who said, "No problem; we need someone with a Washington background," and he gave me the year off. I finished the year at the law school, and, in mid-summer of '35, went to Washington with a friend, David Hexter. David and I were very close friends; we had been together both at West Virginia University and at Harvard Law School; he was ahead of me by two years. Now he worked at the newly established SEC. He had been invited to an engagement party in Washington and said that I was welcome to come along; principals at the engagement party were Abe Fortas and Carol who later became his wife. At the party I met a number of friends of Fortas and Hexter and, little by little, later came to know Abe's group. That was in the mid-summer. By then I

had already made up my mind that Washington was where I wanted to live and work – and had already called Judge Sholl to explain my change of mind. He understood and wished me luck.

I took the bar exam in West Virginia and then early in September, or the end of August I came to Washington and there reunited with Joe Rauh, a classmate and friend in law school. We remained friends throughout our lives. Joe and I had both been sent by Frankfurter to the SEC. We talked about it, and we both felt that the SEC was an outstanding and important agency; just born, quickly growing and we both felt that it would be interesting to be with it from its early beginnings. Joseph Kennedy had been at the head of a predecessor agency before the SEC was created – and he was just about to leave Washington. He had worked with the '33 act – and the beginnings of the '34 Act at the Federal Trade Commission. The FTC was now engaged in work that emerged from some seventy-five volumes of hearings – an immense series – on public utility holding companies. Those hearings led to the '35 Act.

Q: Who had headed up that study at the FTC?

DG: I don't know; I never met anyone at that time at the Federal Trade Commission, but we did know about the hearings and collateral work. So Joe and I began work at the SEC. Joe's wife had a baby that first month, and that took time from all of

us. At the SEC, I was assigned to the general counsel's office. John L. Burns, I believe, headed the office.

Q: General counsel.

DG: And I was assigned to work with a man named – because of his name I remember him so well – Isaac Newton Phelps Stokes III, an immensely able, bright fellow who supervised the preparation of opinions. And who himself could write beautifully. The '33 Act had become law; the SEC had been created under the '34 Act legislation. I think the '35 Holding Company Act was then being considered in the Senate. We expected the bill to become law. After the bill was enacted the New York Bar began to demand opinions about this sentence or that in the new legislation. Not many facts, but asking, nevertheless, opinions often without providing specific cases. Most of those we politely returned. But as facts emerged, as cases developed, we were flooded with inquiries not only from New York, but from Chicago and elsewhere throughout the country. We were very busy.

For me Ike Stokes was an outstanding craftsman in English. He prepared carefully written and wonderfully clear opinion letters, and I'm sure that's why he held that job. He was for me a marvelous tutor who instilled in me a lifelong interest in the use of language. I've taught writing to young lawyers in my own

office for years and I'm still doing so. It's a debt that I owe Ike and the SEC from that beginning.

Q: You said "opinion letters." What were these opinion letters? Formal interpretations?

DG: Yes, primarily interpretation but we insisted that questions be related to specific facts. Some lawyers in private practice were asking carefully phrased questions that could assist them in achieving undesirable collateral objectives.

Q: You said the legislation was then pending in the Senate. Did you participate in any of the legislative efforts, or are you aware by anecdotes or otherwise, who are the people who were active in getting that legislation through the Congress?

DG: Yes. Tom Corcoran and Ben Cohen were totally engaged in getting the legislation through Congress. I first met Justice Black, Senator Black then, while serving as a messenger for Tom Corcoran, carrying a draft statement and information for the Senator. Very early, John Burns told me that from time to time I'd be assigned to such work with Tom Corcoran and Ben Cohen, who to me seemed to be independent White House operators, not part of the SEC yet, somehow, working with the White House. In fact the bulk of my time between '35, when I first came here, through '38 was spent with them in their offices.

Much of that time was required by the litigation testing the constitutional validity of the '35 Act – which had passed the Senate by a very narrow margin.

So I continued work at the Commission -- then and now a jewel agency, until I was sent to Ben and Tom's offices located in the Interior Building. Ben proved to be the wisest man I've ever known – the best lawyer and a most understanding man. Tom Corcoran, too, was a marvelously interesting, convivial, pleasant Irishman who had a superb intellect. Together these were the best lawyers I've ever known. Ben and Tom together served the nation in extraordinary ways, loyally and totally.

Q: Do you perhaps recollect any stories that you picked up of their relationship with the White House in pushing legislation? Because they had work on both the '33 and '34 Act before they got to the '35 Act.

DG: I came at the end of the consideration of the '35 Act, so that my knowledge of their work on the early SEC legislation is limited. I have almost no recollections of their earlier efforts.

Q: Do you recall the strategy that the Commission used in determining what case to take up to the Supreme Court on the constitutionality?

DG: That brings a story to mind that may be of interest to you. Registration was the first area of the '35 to be challenged. The companies refused to register. We

defended on the ground that registration imposed no losses, costs or other excessive burdens. John W. Davis of Davis Polk in New York represented a dentist in Baltimore who in the *Burco* case held what we were told was \$100 of stock.

Ben had been a successful lawyer in New York city but only as a lawyer's lawyer. When lawyers confronted troublesome problems, they'd sometimes consult Ben. He was known to be bright to the point of genius. He had received his law degree from Chicago, earned an LLM degree at Harvard, then clerked with Judge Mack in New York and later practiced there. He was a close friend of Professor Frankfurter at Harvard.

Q: You were talking about the *Burco* case.

DG: *Burco*, yes. When the *Burco* case began, neither Tom nor Ben, so far as I know had ever entered a courtroom. They may have done so, but there was no indication of it. They now had an important case coming up and papers were rolling in. They needed someone to try the case in court. They quickly recruited a lawyer in private practice in Washington. He had been recommended by Professor Frankfurter. It was he who tried the case on a motion to dismiss the complaints on grounds of no issue. And won it. This was preliminary to the beginning of litigation that lasted about two years. The lawyer in private practice was Dean Acheson from Covington & Burling.

Q: Washington?

DG: Yes. And that was the first time I met him. He did a first rate job. The judge supported us and everything went well. Now you've got to bring me back to what you want me to pursue.

Q: The strategy after that case in defeating the efforts to declare the statute unconstitutional.

DG: That was the beginning of litigation that lasted until '38. During that period I spent most of my time with Ben and Tom. The Justice Department was of course deeply involved as the case approached the Supreme Court. We dealt with Paul Freund of the Solicitor General's office – he and I were housemates – and had a crew working with Electric Bond and Share in New York city trying to agree with the company on a stipulation of facts.

Q: Do you recall who the lead person was that was handling that strategy in the litigation?

DG: I know from working on the Supreme Court briefs that most of the legal analysis was Ben's. Bob Jackson was then the Solicitor General; Paul Freund was, I think, assigned to work with us. Incidentally, the case was no longer *Burco* but involved

one of the very large public utility holding companies. We were trying to test the full scope of the statute, particularly the need for registration.

Q: Do you recall, David, who argued the case in the Supreme Court for the government?

DG: Oh yes. Unforgettable. Bob Jackson, as Solicitor General, and Ben divided the argument. In the court I sat with them. Ben, who had been preparing endlessly for the argument, was there first and alone. Bob was late. He didn't say a word – simply arrived and sat down. Ben had been up since five o'clock rehearsing. We were there in formal clothes; Bob showed up about two minutes before the Court came in. We were immensely relieved that he managed to get there. And he made a fine argument. He spoke first, presenting the facts; Ben followed with the law. It all ended well, as you know. But that was only after extensive litigation in the District Court, in the Court of Appeals of the Second Circuit in New York, and then finally in the Supreme Court. We had chosen the *Electric Bond and Share Co.* as the test case.

Q: Was there some special reason that that was chosen?

DG: It was big, diversified, presented virtually all of the issues that we wanted to raise in the initial phase of litigation.

Q: Did the challengers have any basis for attacking the constitutionality, in your view?

DG: They thought so. However, I think anyone familiar with the facts presented to the Court might have a different view.

Q: What was the view in the Commission and the government? Were you concerned that this raised very novel issues?

DG: None of us, so far as I know, had any doubts. It presented the critical issues that many of us had concentrated on in law school -- the need for a concrete factual issue. Registration didn't strike us as damage. Facts were stipulated and pulled together by a team of five or six people working in New York. *Electric Bond and Share* at that time raised – or would give rise to – almost all of the important issues embedded in the statute, including ultimately the “death sentence” for third tier utility holding companies.

Q: Do you happen to recall which issues the challenges were particularly focusing on and attacking as raising constitutional issues that merited the Supreme Court to declare it unconstitutional?

DG: Certainly the third tier “death sentence” and, of course, they thought registration; but mostly it's too far away for me to recall without refreshing my memory.

Q: Okay. Do you know whether President Roosevelt at all during this period showed any interest in the litigation or in talking to...

DG: I have no knowledge about that.

Q: Did you ever go to the White House with them?

DG: Yes, but not with Ben or Tom. From time to time I was assigned to help Judge Sam Rosenman, at the time FDR's primary speechwriter. My modest role with Rosenman was checking and research.

Q: Oh yes. He was the counsel to the president.

DG: Counsel to the president, but not resident in Washington. He lived in New York, often visited Washington and generally stayed in the White House. I helped mostly with research for speeches. I think he was the major speech assistant for the president. There were many others, of course, who contributed, but my guess is that the president looked mostly to him.

Q: How did you, at the SEC, become a participant in that, since it was really a White House function?

DG: Of course it was. The SEC then, as now (and not only the SEC, but other agencies and departments of government) lend people to the White House as needed. The staff of the White House at that time was extremely limited. There was very little staff. What is now an annex, that enormous building on 17th and Pennsylvania Avenue, had some years before been occupied by the State Department and before that, I think, by the Military Departments as well. Before no members of the White House had occupied it; now it's occupied entirely by the White House.

Q: Did you ever have any personal conversations with the president?

DG: Not personal. One-on-one conversations certainly not but I occasionally accompanied Sam when he was called to talk with the President and sometimes joined in the conversation.

Q: Did you have an active participation in the speeches that were being prepared by –

DG: Mostly research and fact checking with occasional and limited interventions or suggestions.

Q: When you were there with Rosenman, did the president have participation with him?

DG: Yes, many exchanges. Often the president came in with notes – what he wanted to say and why – and he would outline his thoughts for Sam who would comment or offer suggestions. There might then be a brief discussion between them regarding length, release dates, checking with interested government officials etc.

Q: Did any of these relate to the support of the securities legislation?

DG: I don't recall that the president made any reference to the SEC but there may have been some. The three major pieces of legislation were much in the news.

Q: With Cohen and Corcoran, what was their relationship as individuals to each other?

DG: Warm, close, intimate, absolutely loyal to each other; each deeply respected and enjoyed the other.

Q: Were they compatible? Warm, friendly?

DG: Intimate, closer than brothers, each treated the other with the utmost affection and respect. Tom was perhaps a more skillful writer than Ben, but Ben was more analytical and original. Tom contributed to basic ideas as well and

certainly was the better politician but Ben shaped what emerged and almost always was the dominant intellectual force within the team. I remember when *Time* magazine carried their pictures as Men of the Year. Tom was portrayed more as political hatchet man. When the President had an unpleasant action to take on the Hill or within the Administration, Tom delivered the blow and used the hatchet. I believe that was unfair – he did much more, substantively as well.

Q: Were there any particular people in the Congress who were supportive of the SEC's programs, that you remember?

DG: I don't recall. I'm sure there were.

Q: After the constitutionality of the act was confirmed...

DG: The '35 Act.

Q: The '35 Act. There was a question of implementation of the provisions of that act. My recollection is that there was a substantial move under Section 11E, the Voluntary Reorganization Provision...

DG: That's correct.

Q: ... to do it. Do you have any recollection of how that worked and how the Commission was successful in pushing the companies to reorganize voluntarily?

DG: Too long ago; after the 1938 decision, I came back to the SEC as an assistant to the Chairman, Bill Douglas. That lasted for a while; I worked closely with him primarily on opinions. Later I worked with the Public Utility Division under Joe Weiner and Abe Fortas but sixty plus years is more than my fading memory can overcome.

Q: Was Douglas then the Chairman at that point?

DG: Yes, but Douglas came on the Commission before he was Chairman, one year, I think.

Q: Yes.

DG: And he had been in charge of the Protective Committee study.

Q: Right. That's correct.

DG: And he was made Chairman after Jim Landis withdrew. This may have been late '38; I don't remember the date.

Q: Working for Douglas.

DG: Yes I worked with Douglas and for a while with Leon Henderson after he became a member of the Commission.

Q: Yes.

DG: I was an administrative assistant; I don't remember the exact title.

Q: How was Douglas to work for?

DG: Complex and somewhat distant. He generally didn't explain precisely what he wanted. He spoke freely with me and all that, but he rarely explained carefully what he wanted done. That's an exaggeration, but it wasn't often that I knew exactly what it was that he wanted accomplished or how. I'd provide fairly rough drafts of memos or opinions – what I understood he had in mind – outcomes -- and he'd go over the draft, tell me how he wanted it shaped or reshaped, then I'd revise.

Q: Was he easy to work with, though?

DG: Yes. Patient. He was a teacher. He had taught for years, both at Columbia and Yale; he had brought Abe Fortas, a former student of his with him from Yale. He

also had a very good relationship with Commissioner Jerome Frank, who came to the Commission after Douglas became Chairman. Jerry had also taught at Yale Law School. Out of the offices, as host, he was warm, good-humored, often funny.

Q: Do you recall the subject matters that you were dealing with in writing these memos for Douglas?

DG: Again, too long ago for me to be exact. Nearly 65 years ago! Certainly most dealt with questions of law raised in cases before the Commission.

Q: The study that Douglas did, was that the forerunner for the bankruptcy Chapter 10?

DG: Less of bankruptcy and much more of the abuses of Protective Committees – yet he did provide some bases for rethinking aspects of the bankruptcy law.

Q: When he became chairman, did you still work with him?

DG: Yes, for a while, until Leon Henderson came on the commission. Leon was new. He had been in the NRA and later served as economic advisor to the National Democratic Committee; he came to the Commission as an economist, but with very little background about the SEC. I was assigned to help orient him to the

work of the Commission. I liked him. He was quick and thoughtful, good humored and patient. We got along well.

Q: What was the relationship among the commissioners and Douglas at the time he became chairman?

DG: One has to take the commissioners separately – with Leon?

Q: Leon and the others.

DG: In general, I thought it was excellent. I attended some meetings. So far as I can remember there were no controversies. There were of course differences of opinion about some cases. I thought Leon called the shots as well as the others.

Q: What were the big issues that they were considering, do you remember?

DG: Well, I can tell you a story that illustrates some of the problems that did come up. We were dealing, I think, with the *Consumers Power Company* case with the offering and sale of bonds, the cozy relationships between some issuers and their preferred brokerage houses. Compensation, fees and so on were rarely exposed. Bond purchasers, as a result, paid unreasonably high prices. The SEC, all members of the Commission, thought that there should be a bidding process to avoid favoritism and corruption.

I think it was Jerome Frank – your reference earlier to him brought this to mind: Jerry had drafted a long opinion calling for competitive bidding in the sale of bonds. Douglas asked me to help shorten it.

I must have spent several days on that, and got the draft down to perhaps twenty pages. I recall my final meeting with Jerry. I came in with a revision of his opinion; he read it, clapped his hands and said, “Boy, that’s great. We’ll put it in as a summary at the end of the opinion.” [Laughter]. I don’t recall now what finally was published but the two of them worked it out.

Q: When you were at a Commission meeting, was there a very open discussion of the issues?

DG: Yes. Free, open and uninhibited.

Q: Were there any times when the White House might have sent over something that they were interested in that the Commission might have taken up?

DG: Too long ago to remember. Never, to my knowledge.

Q: Do you remember any political influence that some may have attempted to exert, including the public utility companies?

DG: If there was, I was not privy to it. Certainly lobbyists and lawyers were at work on the Hill.

Q: You mentioned Jerry Frank, you mentioned Landis. Did you have much to do with Landis?

DG: I knew Landis from Law School; when he became dean at the Harvard Law School, I saw more of him. Landis always struck me as a very controlled, steady and restrained person. I didn't know him as a Chairman as well as other Commissioners.

Q: Did you have much to do with Abe Fortas?

DG: Abe was a long-time personal friend throughout my life in Washington.

Q: Did you work with him at all on things?

DG: Yes, when he headed the Public Utility Division.

Q: Public utility.

DG: Public Utility Division. Abe was Joe Weiner's number two. When Weiner moved to the War Production Board Abe became Joe's successor.

Q: Was Roger Foster there at that time?

DG: Roger was there. Bright, seemingly a little shy and retired, but able, intelligent and a hard worker. I liked him very much.

Q: Was Louis Loss there at that time?

DG: Louis arrived I think about that time.

Q: How about Milt Freeman?

DG: Milt Freeman, then and until he died, was a warm and close friend – and an immensely talented and tenacious lawyer. Then and since there have been many outstanding lawyers at the SEC.

Q: Yes. Did you have much to do with him in the Commission.

DG: We were friends, went out together; we didn't work closely but we did discuss many of our problems; however, I don't recall that I ever changed his view on any subject throughout his life.

Q: How about Milton Cohen?

DG: Milton Cohen. We remained friends until he left us – he in Chicago (after the SEC) Joe Rauh and I in Washington.

Q: Was Milton then in the public utility division or was he somewhere else, do you recall?

DG: I don't recall.

Q: Was Milton Kroll there?

DG: Milton Kroll I knew long before I came to work at the SEC.

Q: From West Virginia?

DG: West Virginia University. When he came to Morgantown, West Virginia, I was in my senior year, and living in a fraternity house. We recruited him for the fraternity.

Q: Did he get to the SEC through you, or not?

DG: I don't recall. I knew Milton very well; our wives lived together during WWII and his son is now working on the Hill.

Q: Yes, I know. We gave you some questions before we met, and you made some notes. It would be helpful now if you just concentrated on the thoughts that you recorded in preparation for your interview. Hold for a second, David.

Q: Okay, I think we're back on tape now.

DG: I remember thinking, when I first came to the SEC, how well I could live on the compensation then being paid; we were paid well. I was paid \$100 a month, \$1,200 a year, when I first came in. It moved up, although never wildly.

Q: Were you able, on that, to live alone, or did you share apartment space with others?

DG: One, I didn't want to live alone; two, several of us shared a house.

Q: Who was your roommate?

DG: We shared a house at 1718 Q Street and each of us had a room; one or two shared a room.

Q: Were they SEC people?

DG: From the Solicitor General's office; Treasury; from the SEC, Steve Osterweis in, I think, Research; Federal Reserve Board – and others.

Q: Porter?

DG: No, not Paul Porter, Paul Freund who taught constitutional law at Harvard for years was then in the SG's office. He and I worked together on the '35 Act briefs for the Supreme Court.

Q: Did these people that you roomed with have any contact with you at the SEC and your work?

DG: Only Paul Freund and only he on the '35 Act briefs. No, with others I had no official contact. SEC was not only independent, but much in the public eye. And we remembered the *Whitney* case.

Q: Did you practice in the *Whitney* case at all?

DG: No. Douglas himself handled the case, largely with Abe Fortas.

Q: Abe Fortas?

DG: Abe Fortas. They got some help from the General counsel's staff, but actually work on the case? Not at all.

Q: How big an office were you in, in those days? How many people did you have in the general counsel's office?

DG: I don't know. My guess is close to 2000 in the Commission overall; we occupied most of a building at 18th and Pennsylvania Avenue, now gone.

Q: What was the camaraderie of the Commission as a whole? You mentioned it was the jewel agency in Washington. At the agency itself, what was the camaraderie?

DG: An independent agency takes its tone, in my view, from the commissioners. Jim Landis was thoroughly business-like, practical, far from academic – specific, precise. Careful. George Matthews, short, stubby, bright, able, experienced in public utilities. J.D. Ross, a public power expert who spoke less than the others -- but contributed as much. Bill Douglas, firm, foresighted, ready for a fight if necessary but tenacious, quietly hopeful for capitulation (and encouraged it) from the other side. Finally, Judge Healy from somewhere in New England; tall, gray – my own hair now – quite wonderful man, superb character, clean, straight, direct and effective. And good-humored. I remember one time when some

of us were having lunch together. He was with us and toward the end he read us a paper that he had just written. It had to do with drivers who when behind you in traffic, blow their horns to have you move ahead – just before the light changes. He had us almost rolling on the floor with laughter. Somehow one wouldn't expect this from him. He had recorded his views, carefully working them out, about the kind of people who engaged in this impoliteness, their characters, how they were like to be at home, and how – ultimately – to deal with them.

We liked the members of the Commission whom we got to know. Most of us who arrived in the early days used first names, they and we. There was a bond and mutual respect. It worked out well.

Q: Can I interrupt you for a moment? Being at the Commission now, I think it's probably a very different place than it was in its inception. The question I have is, the relationship between the commissioners and the staff on a day-to-day basis, did the commissioner get actively involved in the day –to-day work of the staff?

DG: I'd say no; they saw our work product and acted – or reacted. Another story comes to mind. Once when I was at the Commission for a fairly long period without a break, Jerry Frank came into my office, sat down, and said, "Listen to this." He opened a book he had with him – a new biography about Roosevelt, the first Roosevelt.

Q: Teddy Roosevelt?

DG: Yes, Teddy. The paragraph was eloquent, effective, superbly written. The author has since (and recently) written a second concluding volume about T.R.'s life.

T.R. was a hero of Jerry Frank's. To me he said, "Isn't that wonderful! See if you can't work it into my next opinion." I was delighted so I asked to borrow it for the quotation (and, besides, I wanted to read the book). Instead, he ripped out the page and gave it to me. The notion of ripping a page from a new volume was almost painful – indeed, shocking. Yet Jerry was always that kind of emotional spontaneous, warm and responsive man. I cherish his memory; we used to live in the same apartment house.

Q: The first name and the collegiality that you mention continued in the Commission all through my career as well.

DG: That I hadn't known.

Q: Yes. That was always a way that – you could walk into anybody's office, a junior, and they would listen to you just like you were the most expert person in the world, and give you such deference, never try to put you down.

DG: No. All true before.

Q: A very collegial atmosphere. But go ahead.

Q: During that period, people on the Commission were extraordinarily talented, dynamic and strong-willed. It must have been awfully difficult to get people like Landis and Douglas and Frank to sort of work together. They must have disagreed, didn't they?

DG: They were all wise enough to realize that they had to work together. There were so many outsiders against the Five of them. They had to stick together. The Commission was much needed. What had happened on the securities exchanges, what had happened in the securities markets – a disaster had occurred and was worsening. People were being destroyed: some who had suffered committed suicide. The country was frightened, sober and subdued – and in some ways the Commission reflected that atmosphere. Some of the incidents I still recall may be amusing, but those who worked there at that time knew that the product of their work was needed.

Q: I gather there was a feeling that the agency had a tremendous challenge to bring the country into some sort of stabilization or some sort of growth in terms of economy and the capital markets and that sort of stuff.

DG: That's certainly true. It's not that responsibility weighed on us but down deep we all knew that what we were doing was important and that it had to get done as fast as possible. When we finally had secured the '35 Act and the litigation was over, my own involvement with the Commission began to be limited. Toward the end

of that period, I was working both with Henderson and with Douglas. Brandeis had resigned from the Court, I think, in January of '39. Dreadful things were happening in Europe. To replace Brandeis on the Supreme Court Ben and Tom worked endlessly for Douglas. Most of the nine old men were still there; only one, I think, perhaps two had been replaced.

I felt early on that Douglas would make it. I remember being sent with some material to Senator Borah, a westerner. It was essential that the West be represented on the Court and Bill had to be seen as a westerner – although he had been born in Minnesota, moved West with his parents as a child and ended in his teens in Yakima, Washington. Yet he'd spent most of his adult life in New York and Connecticut. So Ben and Tom persuaded Borah to consider the matter. Borah, a quintessential westerner, finally spoke out in the Senate about WOD's close ties to the west, his interests in the west, his commitment to the west, his love of the west. Borah christened him a westerner, at least for purposes of the Supreme Court nomination.

Q: When you went with Douglas on the Court, were you the only clerk that he had?

DG: Each member of the Court, including the Chief [Justice] had only one clerk.

Q: Do you recall any matters that came up there that were related to the SEC that you had some...

DG: No—but I remember (and suffered) each of Douglas’ opinions that he produced that year. He wrote every word himself. Occasionally, I’d try to edit or he’d call me for a memo; the fact that we had known each other was a big help. At the beginning he knew very little about the mundane, day to day operations of the Court and, at the beginning, I’d search out answers for him including the location of the robing room.

Q: I understood from some stuff that I read that he used to sit at the – when they were having an oral argument, he’d be writing the opinion right there on...

DG: I know he took notes and recorded ideas; that story, if true, began to circulate long after I left. But he, unlike the Chief – worked very hard on his opinions. One day he sent me with some papers to Chief Justice Hughes. I think it was an opinion about which he had some questions carefully enclosed in an envelope. I knew Hughes’ secretary who suggested, that I “go into his office and sit in the back until the Chief Justice was finished.” I did go in and sat in the back of the room near the door while this immensely impressive man was dictating into a machine what I believe was a first draft of an opinion. I couldn’t hear anything clearly but he seemed to focus first on facts, then law and then combine the two for a conclusion. When he finished he called me to his desk, I spoke briefly and then left. He struck me as the model of a Supreme Court Justice intellectually and the perfect figure of a Chief Justice.

Felix was on the Court, when Bill Douglas arrived. They seemed to get along very well at the beginning but problems developed toward the end of the year that it's best not to talk about. Most differences, there, I think, arose from clashing personalities, not legal issues. The Court of course had more serious problems at the time, but the two men always seemed to manage these.

For that first summer, after he reached the court in April, Douglas had borrowed a summer home from the then Secretary of Commerce – I've forgotten his name – on a little island in the St. Lawrence Seaway. I went there after he was settled and worked with him on petitions for *certiorari*; that took almost all of our time.

There are different arrangements today but then every justice felt obligated to review every petition. I read petitions all day every day, all summer. Towards the end of the summer, the Justice told me that Thurman Arnold and his wife were coming to visit. After they arrived, one night, at the end of the month, sitting on the ground around a fire -- Thurman, his wife, Bill and I – Bill's first wife, Mildred, came running to us out of the house shouting, "Germany has attacked Poland – war!" We were shocked and, for a couple of hours remained outside speculating what it would mean, how long it could last, where it would go, whether we would enter the war against Hitler.

The next day I began thinking about what I should do. Douglas had asked me to stay on for the new court year. I felt it likely that we'd be in the war before long.

It seemed impossible that we'd permit the Germans to take over the rest of Europe. There was as yet no indication that Europe could stop him. They seemed to be walking over Poland. The next morning, after Thurman and his wife had left, Bill and I spoke about the fall. It was then that I said to him, if he could make the necessary arrangements without too much trouble I'd like to get involved in the rearmament effort that I felt was inevitable. His reaction: "Let me think about it and I'll let you know later today." He made some telephone calls and released me. I drove back to Washington.

There I spoke first with Leon Henderson. He was serving on a joint commission of the Senate and the House with some other members appointed by the president.

After the '36 election, many ugly charges had been made against FDR, particularly by wealthy individuals and many larger corporations. The Administration had launched this commission to reexamine the impact of the antitrust laws on big business – and politics. Was the concentration of industry dangerous and excessive? All seemed to be assaulting FDR with a single voice.

Leon had the idea that the Administration might be able to persuade the chairman of the Commission, Senator O'Mahoney to consider converting the Committee from an antitrust examination into the preparations needed for rearmament.

That's what in fact happened.

Q: You made some notes. Have you given all the information that you made in your notes? Why don't you take a minute to look at them, see what you can add.

DG: Not long after that, I began working with a fellow named Leo Cherne, and the man who much later headed the CIA for President Reagan. What was his name?

Q: Bill Casey.

DG: Bill Casey. Bill Casey and Leo Cherne.

Q: You worked with him back then?

DG: Yes, on the legislation needed for rearmament. Bill, Leo, myself came up with a draft bill, that was sent to the president. A couple days after he got it, he decided that he was going to revive a Committee Organization that had been used in World War I. We had known nothing about it. Our work may have had some use but we were totally surprised.

Q: Was this all done in secret, or did people know you were working on this?

DG: No, it was simply quiet. I mean only that there was no thought of secrecy or publicity about it. FDR's look back at WWI precedents, when he was with the Navy in Washington, required the Administration to set up an organization that

separately represented labor, consumers, raw materials production, manufacturing, avoidance of inflation and economic stability, and so on: the National Defense Advisory Commission. FDR appointed Leon Henderson to head the economic stabilization anti-inflation work, and Leon asked me to join him as counsel. The entire group operated with funds provided by the Office of Emergency Management.

Q: Do you have anything else in your notes that you want to...

DG: I remember Milton Katz; Alan Stroock, the second general counsel; David Saperstein; Harold Neff and Baldwin Baine. I also remember, with affection, Walter Loucheim, Gerhard Gesell, Chick Kaufman, Martin Riger, others – all of whom I wish were in government today. Landis resigned in September '37. These are all names and personalities that still come to mind. I'm not certain about what and how they all did. But I do remember them, how hard and effectively they all worked and how they got along – with almost total collegiality and in service of the public interest.

Q: People have said that that was a tremendous change for the Commission, because Landis' views of regulation were very different than Douglas', that Douglas had much more of an activist hands-on kind of philosophy.

DG: Douglas had been shocked by and had headed the *Whitney* investigation. He had seen it firsthand, and learned a lot from the *Whitney* case that permitted – and perhaps required -- a tough hands-on stance. Remember he had taught in this area both at Columbia and, for years, at Yale. He wasn't a novice even before the *Whitney* case. He was expert – familiar with the law and what in fact had happened under it.

Q: Did you have much relationship with Douglas after you left him over the years? Did you talk to him on occasion or frequently, or not?

DG: Frequently. I was part of the group of lawyers that defended him when an attempt was made to impeach him while he was on the Court. I saw him as often as possible throughout our lives and during his illness.

Q: During that period, were there any SEC matters that resurfaced that you may have talked about with him?

DG: None that I recall. He was focused on the Court and its work. On vacation he wrote books.

Q: Okay. Do you have any other questions? Well, that's fine David. You did a good job.

DG: I wish I could have given you more, but memory fails as the body sags.

Q: You've given us enough here.

Q: Yes, this is terrific. We've gone on for an hour and a half now.

DG: Great. Thank you very much; I'll go back now to the practice of law.