

THE SOURCE

The Federal Bar Association - Securities Law Section is a proud sponsor of the virtual museum and archive of the history of financial regulation at www.sechistorical.org. While the museum is free and accessible to everyone at all times, the Section will highlight specific material and information within the museum on securities law issues in the coming months, providing current and prospective Section members with unique insight and context.

THE ACTIVIST ERA AT THE DIVISION OF ENFORCEMENT

On January 27, 1972, Chairman William J. Casey created an Advisory Committee on Enforcement Policies and Practices. The committee was tasked with reviewing the SEC's enforcement capability and recommending the "appropriate blend" of regulation, publicity, and action to improve it. The SEC had enforced the federal securities laws since its creation, but efforts were scattered throughout the various divisions and regional offices. Chairman Casey favored, and the committee endorsed, consolidating enforcement responsibility in one division that could oversee activities all over the country. Casey unveiled the new Division of Enforcement, created by merging the Office of Enforcement in the Division of Trading and Markets and the enforcement branches of the Divisions of Corporation Finance and Corporate Regulation, in August as part of a larger reorganization of the SEC. Casey told the *Washington Post*, that the new Division would step in, "after the laws have been violated and with respect to specific violations, it serves sharp notice of the standards expected of the investment community."

Under its first Director, Irving Pollack, the new Division of Enforcement took a conservative approach, but, beginning in 1974, a new Director, Stanley Sporkin, widened its scope considerably. Sporkin, at home watching the Watergate hearings after work, was disturbed by companies admitting to making direct campaign contributions to President Nixon. "I didn't understand how these companies were making these payments even though they knew they were illegal," [Sporkin recalled](#). After digging deeper, Sporkin's staff made what he considered to be a shocking discovery. "Before we knew it we had developed a horrendous situation where we found that out of those slush funds that were being used to give money to political parties, we went into them and we found that those monies were also being used for other and various activities, such as bribing officials in foreign countries to get business....before we knew what we had, we had brought about sixty-seven cases against major corporations." Some of the major public companies that were swept up in the SEC's probe included Lockheed Aircraft Corporation, Ashland Oil, Inc., Gulf Oil Corporation, and General Tire & Rubber. Recognizing that the SEC lacked the manpower to investigate every instance of illegal payments, Sporkin convinced Alan Levenson, Director of the Division of Corporation Finance, to implement a

voluntary disclosure program, which allowed companies to self-investigate and report the extent of their illegal payments to shareholders and the SEC.

Voluntary disclosure was one way to compensate for finite enforcement resources; the access theory was another. “The access strategy was developed on the concept that for a promotion to be effective, [it] required the assistance or help of a professional,” [Sporkin explained](#), “You had to have access to the marketplace, otherwise the promotion would fail. The theory was that we didn’t have the resources to police every crooked promoter. But we could narrow down our looking to a very small group of professionals who provide access to the marketplace.” In practice, the Division was very successful in focusing its efforts on lawyers and auditors, rather than on officers and directors. From 1973 to 1981, the Division brought enforcement actions against accounting firms such as Arthur Anderson & Co. and Price Waterhouse & Co. and against law firms including White & Case and Brown, Wood, Ivey, Mitchell & Petty. As Sporkin saw it, these accounting and law cases validated the access theory and had the effect of encouraging such firms to self-police. “Now in response to this access theory, when the access givers learned what was happening they became defensive and took certain steps. And what did they do? They set up the concept of compliance and each of the major broker-dealers went out and got a compliance officer.”

In 1981, Stanley Sporkin resigned from the SEC to become general counsel to the Central Intelligence Agency, marking an end to the activist era at the Division of Enforcement. Four years earlier, in a speech before the National War College, Sporkin laid out what he considered to be the risks and rewards of his approach. “At the beginning, there were many persons who were critical about our program,” Sporkin noted. “The comment was frequently made that we were hurting American business. Now there is, by and large, a great deal of constructive effort and a movement afoot to put the system back in order. I assure you that the SEC and its Enforcement Division take little pleasure in exposing corrupt business practices by American corporations. In many ways, it is a distasteful task, but the SEC has a job that it must and will do.”

The SEC Historical Society’s free virtual museum and archive includes the following additional resources on the Division of Enforcement and its history:

- [An Oral History Roundtable on Enforcement](#) conducted on September 25, 2002, and featuring panels co-moderated by Irving M. Pollack and Stanley Sporkin
- [A Fireside Chat on the Division of Enforcement](#) between Theresa Gabaldon and Irving M. Pollack on September 23, 2008
- [A Brief History of the SEC’s Enforcement Program, 1934-1981](#), written by Daniel Hawke, former director of the SEC’s Philadelphia Regional Office
- [Roundtable of Current and Former SEC Enforcement Directors](#), held April 3, 2018 featuring Stephanie Avakian, Steven Peikin, Andrew J. Ceresney, Stephen Cutler, Robert Khuzami, Gary Lynch, William McLucas, Stanley Sporkin, Linda Thomsen, Richard Walker and moderated by Harwell Wells.