

PANEL: THE SEC'S PERSPECTIVE[†]

PROFESSOR JOHN C. COFFEE, JR.¹: We once again have an all-star panel. I am amazed that we can get this powerful of a panel together. We have, to my right, two directors of the [Security Exchange Commission (“SEC”)]’s Division of Enforcement, both retired, or at least out of that side of the battle. And they bring other perspectives too, because Stanley Sporkin² moved on to other roles, like being a judge and general counsel of the Central Intelligence Agency (“CIA”) and other small, modest tasks. Richard Walker³ has moved from being director of [SEC] enforcement to being a general counsel for the investment banking group of Deutsche Bank, and we are going to talk about the problems of general counsels in large, integrated financial firms: what they need to do and how proactive they need to be today. To my left, we have Judge Denise Cote⁴ who, in addition [to her current role], has been a prosecutor and has become very familiar with SEC enforcement actions during her career on the bench. Dan Hawke⁵ is both head of the SEC Market Abuse Unit and also the regional administrator for the city of Philadelphia, a city of brotherly love where no one would ever violate the law. Steve Crimmins⁶ is going to occupy the role as our defense counsel. We are going to be using some hypotheticals that are meant to have something vaguely in common with a now-pending criminal case involving hedge fund employees of Diamondback Capital and Level Global.⁷ This is the newer world of insider trading, involving not just people passing secret messages to each other, but the world of more institutionalized expert network firms, where the mechanism is more visible, but the same information appears to be very nonpublic.

[†] Excerpts taken from panel discussion at the Columbia Law School Symposium: The Past, Present, and Future of Insider Trading: A 50th Anniversary Re-Examination of *Cady, Roberts* and the Revolution It Began (Nov. 16, 2012). The editors of the *Columbia Business Law Review* have added explanatory footnotes where deemed appropriate.

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⁵ Chief, Market Abuse Unit, SEC Division of Enforcement; director, SEC Philadelphia Regional Office.

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⁷ In November 2010, the Federal Bureau of Investigation (“FBI”) raided the offices of hedge funds Diamondback Capital Management and Level Global Investors as a part of a broader criminal investigation into the use of so-called expert networks in the securities industry. See *XL Specialty Ins. Co. v. Level Global Investors, L.P.*, 874 F. Supp. 2d 263, 266 (S.D.N.Y. 2012) (summarizing key facts in preliminary injunction proceeding regarding liability insurer’s advancement of defense costs). Within a year, federal prosecutors charged seven directors, officers, and employees with trading while knowingly in possession of material nonpublic information. Of those seven individuals, five pleaded guilty, while the two remaining defendants were convicted by a jury of fraud and conspiracy in December 2012. Peter Lattman & William Alden, *2 Former Hedge Fund Managers Found Guilty in Insider Trading Case*, N.Y. TIMES DEALBOOK (Dec. 17, 2012, 5:21 PM), <http://dealbook.nytimes.com/2012/12/17/2-former-hedge-fund-managers-found-guilty-in-insider-trading-case/>.