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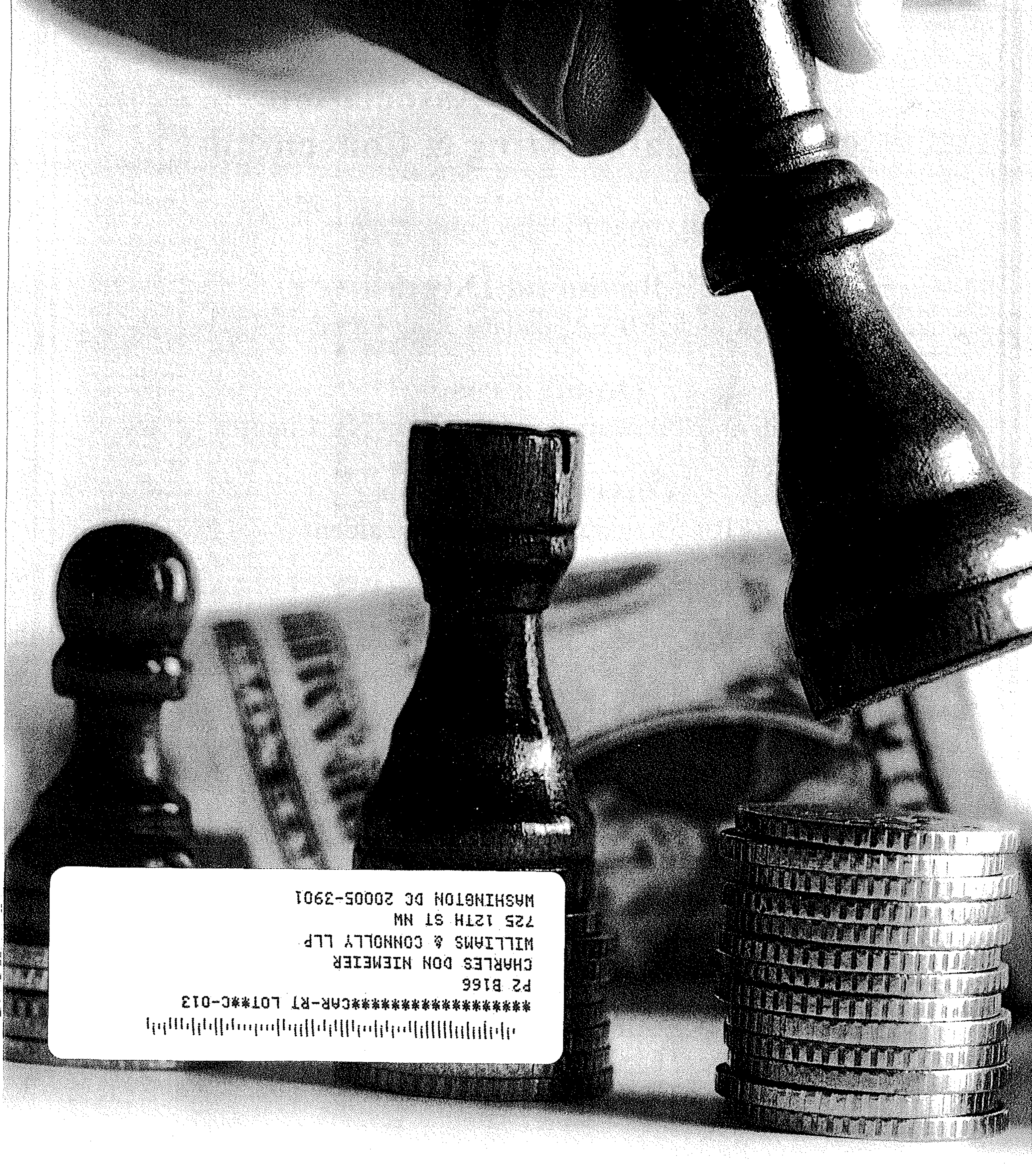

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IN AND ABOVE THE FRAY: THE SEC AND HOSTILE TAKEOVERS

CHARLES D. NIEMEIER

The proxy fight was once the most dramatic of corporate battles. Consider Robert Young, who believed the New York Central railroad could be better run and more highly valued. He spent the first half of 1954 fighting for it. Young established headquarters, recruited lieutenants, waged a public relations campaign, and ultimately persuaded a majority of shareholders to give him their proxy. He won what *The New Yorker* dubbed "The Great Proxy Fight" on June 14. It was an expensive, time-consuming, and painful process (and may have contributed to Young's suicide four years later), but that was how corporate takeovers had to be done.[1]

Or was it? J. Spencer Love found an alternative. Just a month after Young's costly victory, *The Wall Street Journal* reported on a less complicated campaign—a hostile tender offer. Love's firm, Burlington Mills, announced that it would accept tenders (options to sell) for 285,000 shares of competitor Pacific Mills at $50 per share in cash on a first-come, first-served basis. Tender offers were customarily made by a company for its own stock. What made headlines was that Pacific Mills management had not been consulted.[2] On July 13, 1954, less than two days after the announcement, Burlington stopped accepting tender offers—it controlled Pacific Mills. The next day, it went after another "target" the same way. Soon Burlington was the largest textile firm in the United States.[3]

By the mid-1960s, full-blown proxy fights were rare, and a run of hostile tender offers had sparked a legislative backlash. Simply dubbed "takeovers," hostile tender offers had, by the 1980s, escaped the financial pages and become public spectacles for Americans either enthralled or appalled by their excesses. Given all of this, it is important to remember that the transfer of shareholder control is no morality play with clear-cut good and bad guys. It is an essential opportunity for shareholders to exercise their rights and maximize the value of their investments. Hostile tender offers are good when they remove inept management and bad when they allow unscrupulous operators to destroy reputable companies—but things are seldom that simple. During three decades of takeovers, securities regulators struggled to distinguish between shades of gray, got into the fray when necessary, stayed above it when possible, and always tried to ensure that the right balance was struck.

The Search for Neutrality

From 1962 to 1969, during the largest merger wave up to that time, 22 percent of Fortune 500 companies were acquired. Antitrust laws discouraged traditional mergers, but did not apply to the new "conglomerates" created when companies acquired businesses in unrelated industries.[4] The antitrust landscape made these mergers legal, but hostile tenders made them practical. The alternative—a proxy fight—was costly, complicated, and regulated.[5] By mid-decade, battles for corporate control had shifted decisively from the boardroom to the securities markets.

Existing securities laws gave the Securities and Exchange Commission (SEC) clear responsibility for ensuring adequate disclosure in proxy contests. The securities laws also provided for disclosure in "exchange offers" (i.e., when stock in one company is swapped for another) since target-company shareholders were, in effect, both sellers of their current holdings and buyers of newly issued shares of the acquirer's stock and therefore entitled to a prospectus and to disclosure of the purchaser's plans for the company.[6] But a cash tender offer did not trigger any existing disclosure requirements—it was merely an invitation to public stockholders to give another party the option to buy their shares if certain conditions were met. As the Pacific Mills episode demonstrated, that created some inequities. Shareholders were only guaranteed the $50 price if they responded quickly, during a brief window that gave them little time to determine what the offeror's plans were for the company or to consider whether their shares might be worth more later. As SEC Commissioner Philip Loomis later put it, "they are bound and he is not."[7] There appeared to be a need for regulation.

But, in the mid-1960s, some critics were worried more about corporate survival than shareholder rights. Never mind that, given such allies as investment bankers, institutional lenders, customers, and suppliers, management won about two-thirds of takeover battles. Americans seemed distressed that battles took place at all.[8] It was to this sentiment that New Jersey Democratic Sen. Harrison Williams appealed when, in October 1965, he unveiled legislation intended to protect "proud old companies" from corporate raiders, particularly "underworld figures who might be attempting to take over legitimate businesses."[9] The Williams bill required acquirers to mail a statement to the target company and to file with the SEC 20 days in advance of buying 5 percent or more of shares. The filing would have to state the offeror's identity, objective, and future plans. West Virginia Democratic Congressman Harley Staggers introduced a nearly identical bill in the House.[10] By providing 20 days to mobilize before a takeover effort could commence, these bills leaned heavily in favor of management.

The Williams bill was introduced late in the session—the senator expected more work to go into it before it came to a vote, and he expected that work to be done by the SEC, which, he announced, "generally approved of its purposes."[11] That nettled Henry Manne, a scholar of corporate takeovers and founder of the law and economics movement. "When I saw the first version of that act, I could hardly believe it," he recalled. "Every line of it had something that contradicted intelligent economics."[12] He published an article sharply critical of SEC Chairman Manuel Cohen, who had expressed support for the bill.[13] Thus the battle lines were drawn in what turned out to be a long-running fight between the pro-management position of Williams, who believed that takeovers should be controlled for a variety of reasons, including his conception of fairness, and the pro-market position of Manne, who was convinced that any limit on the transfer of corporate control violated the economic freedom of shareholders.

The SEC was more in favor of equilibrium. In revising the Williams bill, the SEC began on the basis of what it knew had worked, patterning the legislation after existing 1934 act proxy provisions.[14] In a move that shifted the advantage away from management, the bill, as revised by the SEC, required only that, within 10 days of acquiring more than 10 percent of a company, the offeror provide a statement identifying the ultimate acquirer, the source of funds, and purpose of the acquisition. This, the SEC determined, provided enough time for shareholders to make informed decisions, but not enough for management to build an ironclad defense. In raising the size threshold at which offerors had to make disclosure filings from 5 percent to 10 percent, the SEC also sought to restore balance lacking in the draft legislation.[15] The SEC revision did impose new restrictions on offerors, curtailing first-come, first-served arrangements by requiring offerors to accept tenders on a pro-rata basis so that those tendering late would have the same percentage of their shares accepted as those tendering early and by allowing shareholders to withdraw their tenders within a seven-day window.[16]

As the bill took shape, Chairman Cohen tried to avoid raising expectations on either side. "We must be careful not to tip the scales to favor either incumbent managements or those who would seek to oust them," he told a senate subcommittee in March 1967.[17] In July 1968, Cohen rejected any notion that "the commission should have power or responsibility to pass on the merits of a particular acquisition or proposal."[18] That month, the Williams Act was passed.

SEC historian Joel Seligman characterized the commission's efforts to help Congress frame a balanced "limited disclosure approach," as following "a path of least resistance." If, at this pivotal point, the SEC had conducted a comprehensive study of hostile cash tender offers, determined the costs and the benefits, and evaluated alternative regulatory approaches, Seligman suggests, 20 years of controversy might have been avoided. But, it seems equally likely that, in a world where citizens—and therefore legislators—tended to see hostile takeovers in terms of right and wrong, rather than efficient reallocation of resources, a satisfactory regulatory regime would have been difficult to shape all at once, regardless of the findings of a study. Shortly after leaving the SEC, Cohen, who had worked so hard to attain balance, expressed some regret. He believed that the SEC should have been allowed, to some extent, to determine the merits of hostile takeovers.[19] Instead, state regulators attempted to do so.

The States and the Courts

For a while, it looked as if the Williams Act had curtailed hostile takeovers: the value of merger and acquisition activity dropped from $43 billion in 1968 to $11.8 billion in 1975. But, beneath the numbers, things were changing. A mid-decade recession had left "respectable old firms" undervalued. Meanwhile, takeover specialists were entering the mainstream. Securities lawyer Martin Lipton attributed this to the Williams Act. "It was possible to then say, look, this is an activity that's regulated by federal law. There's an SEC that regulates this, so there is clearly no real opprobrium to be attached to being involved in this."[20] Lipton considered 1974 to be the "threshold year."

ESB (the former Electric Storage Battery Co.) was a profitable firm, but its share value had lagged. In July 1974, International Nickel Co. (INCO) made a hostile tender offer for all of ESB at $28 per share. What was notable was that INCO was a large, respected corporation, employing the most venerable of investment bankers. For its services, Morgan Stanley earned a sizeable fee, and the fight made the reputations of lawyers like Martin Lipton of Wachtell, Lipton, Rose & Katz and Joe Flom of Skadden, Arps. As other sizeable and reputable firms got into "the takeover game" the value of merger and acquisition activity rose to $82.6 billion in 1981.[21]

Although these hostile takeovers made great theater, it was not clear that they made great sense. INCO could not manage its new acquisition effectively and ended up selling it off in pieces. In other cases, it was the bidder that ended up being taken apart. With the premium that offerors had to pay averaging about 50 percent above market price, a heavy post-offer debt load was often a problem. "This is a particularly appropriate time for the commission to examine many of these areas," announced SEC Chairman Ray Garrett Jr. in 1974. "The depressed state of the markets, historically low price-earnings ratios, and general economic conditions, have created an environment conducive to an increasing number of cash tender offers," he said.[22] In 1976, and again in 1979, the SEC staff recommended revisions to the statute. Notably, following precedent established regarding fraud, the SEC steadfastly refused to define exactly what constituted a "tender offer." Commissioner John Evans explained that "the tender offer field is occupied by participants of perhaps unparalleled financial and legal sophistication" and no description could anticipate expected innovation.[23]

Of most concern to regulators and practitioners alike was that a decade of case law had yet to establish a coherent legal standard for enforcing the Williams Act. Legal scholars noted that sophisticated litigators had drawn upon existing concepts of fiduciary duty, the business judgment rule, and corporate democracy in attempts to defend or discredit defensive measures. SEC staffers understood that the statute itself allowed for divergent interpretations, one based on intent to relieve pressure on offerees and another stressing insistence on full disclosure. The SEC had already sponsored some minor adjustments to the Williams Act, backing 1970 legislation reducing the ownership threshold at which acquirers had to file statements from 10 percent to 5 percent. In 1979 the staff considered backing passage of a pure "sale-of-control" statute applying to all parties and providing the law with "a much cleaner and clearer rationale." However, given the composition of the SEC in the late 1970s, particularly the strong federalist bent of Commissioner Roberta Karmel, the staff opted not to proceed.[24] And Commissioner Karmel was in one sense correct: corporation law was traditionally the province of the states, and, as a result, so was takeover law—for a time.

State and federal securities regulations were vastly different during this period. Federal laws revolved around disclosure—they sought to ensure that investors got enough information to make informed decisions, but directly intervened in the substance of securities transactions only in cases of outright fraud. Most state regulatory regimes, in contrast, were based on "merit." Regulators were accustomed to assessing specific offerings and approving or rejecting them based on perceived public interest. After 1968, the states began regulating hostile takeovers in the same manner. And, state legislatures usually found that maintaining incumbent management, particularly of corporations with their headquarters or significant operations in their state, was in the public interest. But, as an American Bar Association journal put it, "this protectionist tilt is inconsistent with the purposes of the Williams Act."[25] These state antitakeover laws also tended to overreach, regulating companies doing only a small amount of business in the state. By 1976, 21 such laws were in effect, and SEC Chairman Roderick Hills was concerned. He told a gathering of state securities regulators that the matter was a "pressing challenge to our cooperative spirit," reminded them that the "federal view" was neutrality, and urged them to adopt an "an overall uniform standard," preferably in line with the Williams Act.[26]

State regulators took a different view. As Wisconsin State Securities Commissioner Bruce Bartell put it, "The argument from the states' standpoint was: well, yes, the SEC regulates securities offerings also, but the states have reserved a right to regulate in that area, and to impose merit standards in that area; and why shouldn't they be able to do so in the area of corporate takeovers as well?"[27] Nevertheless, in 1981 the North American Securities Administrators Association (NASAA) proposed a uniform takeover act that restricted regulation to companies incorporated in the state, did not distinguish between hostile and friendly tenders, and focused on disclosure rather than merit.[28]

By then the pro-incumbent-management bent was under attack, not only from the SEC, but also from the federal courts. The first challenge came in the 1975 *Rondeau v. Mosinee Paper Corp.* decision when the Supreme Court held that Securities Exchange Act § 13(d), enacted by the Williams Act, does not give targets the right to sue acquirers who are tardy in disclosing that they have crossed the 5 percent ownership threshold. Two years later, in *Piper v. Chris-Craft Industries*, the Court declared that the purpose of the Williams Act was to protect investors, not targets.[29]

In 1979, the stage was set for the definitive decision on the state antitakeover statutes, and it all had to do with fasteners. MITE Corp., organized in Delaware but doing business in Connecticut, had built up a sizeable business on the strength of its "Gripco" nut fasteners used in automobiles.[30] The Chicago Rivet & Machine Co. was incorporated in Illinois but did most of its business in Pennsylvania. Its top products were "automatic riveters" and fasteners used in the aviation and automotive industries. MITE already owned about 2.7 percent of Chicago Rivet when it made a tender offer for the rest at $28 per share. And there things stopped. Illinois law required notification of intent to both the state and the target company 20 days before an offer could become effective. During that period, MITE was prevented from contacting shareholders. Further, Illinois Secretary of State James Edgar was empowered to launch protracted hearings and to reject the tender offer entirely. The Illinois act worked as intended. MITE withdrew its bid, and Chicago Rivet remained independent. But it proved to be a Pyrrhic victory for state regulators.

MITE protested that the Illinois statute was unconstitutional, and, in 1982, the case was heard by the Supreme Court.[31] The Court found that the Illinois takeover act violated the Constitution's Commerce Clause by imposing a burden on interstate commerce that was not justified by any legitimate local interest. *Edgar v. MITE* spelled the end of what became known as the "first generation" of state takeover laws.

The SEC Equivocates

As the states and the courts faced off, the SEC sought to preserve the Williams Act's "delicate balance" by filing amicus briefs challenging the state antitakeover laws. But, in the early 1980s, market developments subjected the SEC to a great deal of pressure to become more actively involved in the takeover wars raging on Wall Street. For Chairman John Shad, unlike for Cohen, there would be no "path of least resistance."

From 1981 to 1988, merger and acquisition values almost tripled, hitting $226 billion, and books on buccaneering corporate raiders made the best seller lists. Free market economists offered ample justification for hostile takeovers, but the average citizen still saw them as morality plays.

None of the characters came out looking virtuous when, in 1982, Bendix Corp. launched a $1.5 billion hostile takeover of Martin-Marietta. In a month-long saga, Martin-Marietta, first reeling under Bendix's assault, regrouped and tried to turn the tables. It took on $1 billion in debt and sought to acquire its would-be acquirer. In the end, Martin-Marietta survived, and Bendix was bought by Allied Corp.[32] State regulators dubbed the entire episode "an exercise in ego gratification." There were excesses to be sure. Takeover mania had given rise, not only to Martin-Marietta's "Pac-Man defense," but also to "greenmail," "golden parachutes," and "poison pills"—all designed to avert, prey upon, or escape corporate takeovers, usually at significant cost to shareholders. Business leaders were scared, corporate raiders were indignant, Congress was restless, and the states were fed up. "The SEC appears unwilling or unable to take the lead in addressing these problems," NASAA scornfully declared in early 1983.[33]

In principle, the SEC remained determined to stay out of the battles for corporate control and to let market forces work, even as they spawned a growing array of strangely named tactics. But the commission had always been ambivalent about the takeover mania, and Chairman Shad personified that ambivalence. He had spent his career as an investment banker, his friends were leaders of "proud old companies," and he was sympathetic to takeover targets. At the same time, he was a great believer in the markets and opposed to unnecessary regulation. In sorting out these conflicting forces, Shad enlisted the help of a free market advocate. In 1982, neoclassical economics arrived at the SEC in the person of Charles C. Cox, a Chicago-trained Ph.D., hand-picked by Shad to be SEC chief economist. Cox was appointed as a commissioner the next year.

The Martin-Marietta/Bendix saga ensured that neither pragmatism nor principle could keep the SEC above the fray, but the chairman stepped carefully. "John Shad I think did what many chairmen have done over the years when there's a tough political challenge and debate," recalled David Martin, special counsel in the SEC Division of Corporation Finance. "You appoint an advisory committee and you bring in a bunch of outsiders to study it and give you a report."[34] This impressive group of 18 included super lawyers Flom and Lipton, Goldman Sachs official Robert Rubin, and former Supreme Court Justice Arthur Goldberg. Lesser known, but still influential, was professor Greg Jarrell, a protégé of Cox, from the University of Chicago.[35]

There were six full committee meetings, many subcommittee sessions, but not a great deal of new investigation—the conclusions were drawn mainly from the experience of the participants. Lipton, who worked largely for corporate incumbents, believed the committee's positions were pro-offeror and anti-target. Flom, who counseled corporate raiders, thought otherwise.[36] Justice Goldberg charged that the committee's work made "no significant reference to protection of the public interest."[37] Professor Jarrell thought the committee should have rejected takeover regulation in any form.[38] In July 1983, the SEC Committee on Tender Offers released a 69-page report confirming that the SEC should stay the course. In the preface, chairman and venture capitalist Dean LeBaron wrote that "the committee respects the free market forces in the operation of the U.S. securities markets. Academic evidence is widespread that the takeover process is at least not demonstrably harmful to shareholders and some evidence points to its systematic benefits. We would be reluctant to restrict a process which seems to work reasonably well with the possibility that we might incur some unintended harm."[39]

The report produced predictable protests. State regulators unanimously branded it as "almost solely 'market-oriented,' with little or no consideration of broader issues such as the effect of hostile tender offers on productivity, suppliers, workers, and communities."[40] The National Association of Attorneys General informed Shad that it would demand new legislation.[41] Congress was eager to begin drafting.

Out of a host of report recommendations, Linda Quinn, the associate director of the Division of Corporation Finance, picked a few that the SEC's three Republicans could support.[42] They did so on March 13, 1984. Two weeks later, Shad explained the recommendations to Colorado Democratic Congressman Tim Wirth's House Subcommittee on Telecommunications, Consumer Protection, and Finance.[43] The proposed Tender Offer Reform Act of 1984 would have shortened the filing deadline after acquisition of 5 percent of a company's stock from 10 days to 24 hours. It would also have restricted defensive moves like greenmail and golden parachutes.[44] But, with a divided SEC and Congress, nothing came of it. "There were legitimate complaints on both sides," said Martin in retrospect. "But, as is so often in the case with laws and regulations and public policy, it's getting the right balance, it's not getting the right answer, and the right balance was set."[45]

And then, suddenly, in the summer of 1984, Shad decided that it was not. After consulting with Lipton and former Commissioner A.A. Sommer, Shad produced a speech entitled "The Leveraging of America." The address, delivered to New York financial writers in early June, seemed to move the SEC out of the pragmatic, pro-market camp and into the incumbent management ranks. "The theory that contested takeovers discipline incompetent managements is of limited veracity," Shad insisted. At best, he claimed, takeovers caused management to prioritize short-term thinking over long-term planning. At worst, takeovers needlessly drove companies to the brink of bankruptcy. The speech made news, and congressional Democrats took heart.[46] But the SEC's new push for legislation to curb hostile offers soon lost momentum.

Legislation Averted

When the Tender Offer Advisory Committee disbanded, Cox helped install Jarrell as the SEC's new chief economist. After the "leveraging" speech, Jarrell made it his mission to return Shad—and the SEC—if not to the Chicago school of economics, then at least back to a position of neutrality. He began producing a series of studies, all intended to prove that takeovers were good for investors, good for management, and good for the economy. All were inevitably leaked to the press. When *Barron's* actually named him as a source, Jarrell told Shad "it's much easier to beg for forgiveness than ask for permission." At one point, the Office of the Chief Economist even came out in opposition to the Division of Enforcement by maintaining that stock run-ups before takeover announcements were the result of "trading in anticipation" rather than insider trading.[47]

Shad tolerated Jarrell's campaign, perhaps because his preference for market forces overcame his pro-management instincts, or perhaps because he had no desire to get on the wrong side of the White House. The Reagan administration had created its own task force, and three months after Shad's "leveraging" speech, it announced that hostile takeovers disciplined management, rewarded shareholders with the true value of their assets, and efficiently reallocated capital.

The November election, which returned Reagan to office and maintained a divided Congress, seemed to confirm that takeover reform would not be well received.[48]

The Office of the Chief Economist continued to focus on the benefits of takeovers until Jarrell resigned three years later.[49] By then his position as a bulwark against hostile tender regulation had been taken up by Commissioner Joseph Grundfest, who came to the SEC from the staff of the Reagan administration's Council of Economic Advisors. In that post, he had penned a report critical of the SEC position on takeover regulation.[50]

By early 1987, it appeared that another attempt at legislation restricting hostile tenders might be in the offing. The previous November, Ivan Boesky had settled with the SEC over insider trading, nearly all of it linked to corporate takeovers. The same month, voters handed the Senate to the Democratic Party, and the Banking Committee began hearings in January. "The issue of whether or not takeovers in the aggregate are good for the economy is not a subject of controversy," Senate staffers wrote.[51] When Wisconsin Democrat William Proxmire and Utah Republican Jake Garn introduced legislation limiting the activities of corporate raiders without curtailing management defenses, Grundfest remarked, "Unfortunately, recently introduced antitakeover legislation falls prey to easy but illogical arguments that seek to prevent insider trading by stopping takeovers."[52] He joined Shad and Cox in opposing the bill, and it never got out of committee. A member of the Senate Banking Committee later claimed that "if the agency would have come down hard and fast in favor of the legislation, it would have made a difference. The legislation would have passed."[53]

That fall the House made its own attempt with a bill sponsored by Michigan Democrat John Dingell and Massachusetts Democrat Ed Markey.[54] By then Shad had moved on. Successor SEC Chairman David Ruder opposed the Dingell-Markey bill and noted that "the commission has now twice expressed its view that the bills presently being considered by Congress should not be adopted because they may alter the even balance of Williams Act regulation." He noted that, despite the decade's media frenzy and legislative aspirations, "this goal of neutrality as a means of protecting target shareholders remains as sensible today as it was when the Williams Act first became law."[55]

Takeovers, Ruder stated, were "internal corporate affairs which should be regulated under state law," and, in the end, it was the states—which had been bypassed by the Williams Act, overruled in the *MITE* decision, and consistently opposed by the SEC—that did the most to contain hostile takeovers.[56] In the spring of 1987, while legislators were running into SEC resistance, the Supreme Court heard *CTS Corp. v. Dynamics Corp. of America*. The case tested the Indiana Control Share Acquisitions Act, one of the narrow "second-generation" state antitakeover laws. Although the SEC maintained that the statute violated the Commerce Clause and was pre-empted by the Williams Act, the Rehnquist court differed.[57] By the end of the year, more than a dozen states, including Delaware, had adopted similar statutes.[58]

By the 1990s, the combination of second-generation state antitakeover laws and the defensive measures allowed to continue under the SEC's neutral stewardship had worked together to end the age of hostile tender offers. Having moved back to the academy, Jarrell commented on the outcome to which he had contributed. "State antitakeover laws and the poison pill have dramatically reduced the scope for hostile tender offers," he wrote in 1992. "Both defensive barriers can be overcome only by getting the target board of directors to approve the takeover."[59] As part of the now-required two-front wars, hostile tender offers remained and proxy fights returned, although neither has since reached the level of notoriety they had once attained separately. ⊙

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Endnotes

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[2] *Burlington Mills Didn't Consult Pacific on Stock Offer, Director Says*, WALL STREET J., July 19, 1954.

[3] *Offers $20 a Share; Clinches Control of Pacific Mills*, WASH. POST, July 15, 1954, 37. Burlington Mills did not invent the hostile tender offer, but it was one of the first major practitioners.

[4] JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET: A HISTORY OF THE SECURITIES AND EXCHANGE COMMISSION AND MODERN CORPORATE FINANCE 418 (2003).

[5] Harvey L. Pitt, *Standing to Sue Under the Williams Act after Chris-Craft: A Leaky Ship on Troubled Waters*, BUS. LAW. 117-192 (Nov. 1978). *See* page 126.

[6] 1966_0628_CohenCorpSecT. Documents from the SEC Historical Society virtual museum and archive of the history of financial regulation are indicated by their filenames only. SECURITIES AND EXCHANGE COMMISSION HISTORICAL SOCIETY, http://www.sechistorical.org (last visited July 16, 2018).

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[11] Shanahan, *supra* note 9.

[12] Henry Manne, Interview by James Stocker, Aug. 6, 2012, 35. All oral histories can be found in the SEC Historical Society's virtual museum and archive of the history of financial regulation.

[13] Henry G. Manne, *Cash Tender Offers for Shares—A Reply to Chairman Cohen*, DUKE L. J. 231-53 (1967).

[14] Pitt, *supra* note 5, at 128.

[15] This was returned to 5 percent in a set of minor 1970 amendments.

[16] 1966_0628_CohenCorpSecT.

[17] Eileen Shanahan, *SEC Seeking Stock "Warfare Rules," Saul Criticizes Agency on Commissions,* N.Y. TIMES, Mar. 22, 1967, at 61, 65.

[18] SELIGMAN, *supra* note 4, at 432.

[19] *Id.* at 432-33. He believed that disclosure alone was not adequate, that the SEC should be able to scrutinize financial statements and debt-to-equity ratios of offerors.

[20] Martin Lipton, Interview by Robert K.D. Colby, June 6, 2013, 4

[hereinafter Lipton Oral History].
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[52]Joseph A. Grundfest, SEC Comm'r, Speech at National Bureau of Economic Research Panel Discussion on The Economic Effects of Mergers and Acquisitions: Politics and Takeovers: A Brief Washington Perspective (Feb. 19-22, 1987), https://www.sec.gov/news/speech/1987/021987grundfest.pdf.
[53]Khademian, *supra* note 47, at 186.
[54]Stephen Labaton, *For the States, a Starring Role in the Takeover Game*, N.Y. Times (May 3, 1987).
[55]David S. Ruder, SEC Comm'r, Speech Before the American Corporate Counsel Association: Recent Events Relating to Markets for Purchase and Sale of Corporate Shares (Nov. 13, 1987), https://www.sec.gov/news/speech/1987/111387ruder.pdf.
[56]*Id.*
[57]Paul Gonson, Interview by James Stocker, Feb. 23, 2011, 39.
[58]Ruder, *supra* note 55.
[59]Gregg A. Jarrell, *Takeovers and Leveraged Buyouts*, *in* The Concise Encyclopedia of Economics, http://www.econlib.org/library/Enc1/TakeoversandLeveragedBuyouts.html (last visited July 16, 2018).

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peting considerations between governmental restrictions to guard against epidemics and pandemics and the preservation of individual rights, as well as the use of technology to ensure the continuance of participatory governance.

Safety of Administrative Judges

The FBA supports the efforts by the Social Security Administration and the Executive Office of Immigration Review to take appropriate steps to ensure the security of their administrative law judges and immigration judges, as well as all others who participate in their proceedings.

Veteran Disability Claims Adjudication

The FBA supports legislative and administrative improvements to the veterans disability claims process in the Department of Defense and Department of Veterans Affairs to ensure equitable and expeditious determinations.

Attorney Fee-Based Representation of Veterans

The FBA supports proposals to expand the availability of fee-based representation of veterans in the disability claims process and to oppose any efforts to repeal the authority of attorney representation to veterans in the furtherance of such claims.

Frivolous Litigation

The FBA opposes legislative proposals to eliminate judicial discretion in the imposition of sanctions for frivolous litigation, including proposals to revise Rule 11 of the Federal Rules of Civil Procedure by imposing mandatory sanctions and preventing a party from withdrawing challenged pleadings on a voluntary basis within a reasonable time. ⊙