ORIGINAL

In the

Supreme Court of the United States

SECURITIES AND EXCAHNAGE COMMISSION,
Petitioner,

VS.

SAMUEL H. SLOAN,
Respondent.

No. 76-1607

Washington, D.C.
March 27, 1978
March 28, 1978

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IN THE SUPREME COURT OF THE UNITED STATES

SECURITIES AND EXCHANGE COMMISSION, Petitioner,	:	
v.	:	No. 76-1607
SAMUEL H. SLOAN, Respondent.	:	

Washington, D. C.

Monday, March 27, 1978

The above-entitled matter came on for argument at 2:28 p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN P. STEVENS, Associate Justice

APPEARANCES:

HARVEY L. PITT, Esq., General Counsel, Securities and Exchange Commission, Washington, D. C. 20549, for the Petitioner.

SAMUEL H. SLOAN, 1761 Eastburn Avenue, Apt. A5, Bronx, New York 10457, for the Respondent.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in Securities and Exchange Commission against Sloan.

Mr. Pitt, you may proceed whenever you are ready.

ORAL ARGUMENT OF HARVEY L. PITT ON BEHALF OF PETITIONER

MR. PITT: Mr. Chief Justice, and may it please the Court: For 33 years the Securities and Exchange Commission has followed the practice of issuing consecutive but separate orders of 10 days duration suspending trading in a security when necessary to provide immediate protection for the investing public against fraud, manipulation, and inadequate corporate disclosures. And the Commission has done so only after making a separate and fresh review of the then current facts in each situation.

The Court of Appeals, however, in this case, has enjoined the Commission from ever again suspending trading in a security for more than 10 consecutive days, despite the Commission's longstanding and consistent administrative practice, express congressional approval of that practice, and reenactment and expansion of the Commission's authority in that regard.

Although the Commission recognizes that it may not exercise its summary suspension power for an indefinite period of time, what we respectfully seek from this Court is

the restoration of the full measure of statutory authority we believe the Congress intended to confer.

QUESTION: Do you think there is any limit at all to the number of times the Commission can consecutively exercise its 10-day suspension authority?

MR. PITT: Yes, I do. I think that that would be tested by whether the Commission has abused its discretion, and it would depend on the circumstances. But surely where the Commission has adequate basis for permitting trading to resume, it would be an abuse of its discretion, and I think that courts can review that issue and direct the Commission to terminate its trading suspension.

QUESTION: What would you think about 36 consecutive suspensions of 10 days each?

MR. PITT: Of course, the Court of Appeals in this case never reached the question of an abuse of discretion, and the facts in the context of this case do not suggest that there was necessarily an abuse of discretion with respect to that matter. That is an issue that could be tested had this case been heard timely, which is one of the issues this Court has asked me to address.

I do think that at some point a trading suspension can constitute an abuse of discretion, and certainly in a case 36 consecutive suspensions might constitute an abuse of discretion.

QUESTION: If the Court had decided it on that basis, would you be here?

MR. PITT: If the Court had held that it was an abuse of discretion? No, your Honor, we would not.

QUESTION: Do you think on the same set of facts a court would be justified in setting aside the 20th consecutive suspension, whereas it wouldn't be as of the second suspension?

MR. PITT: I think that there are degrees of concern that the Commission would have had with respect to suspensions at varying points in time and that a court, if the matter were properly presented to it, could differentiate between the factual circumstances that exist at any time.

Bear in mind I think that the Commission does have a large measure of discretion in this area. Its focus is to protect trading and the public investors who trade in these securities. And in this particular case there was an alleged market manipulation which in fact the Commission ultimately concluded had existed.

QUESTION: But supposing review is sought after the second consecutive 10-day suspension and the Court concludes no abuse of discretion. There are then 18 more successive 10-day suspensions and review is again sought in the court. Would the same court be justified in concluding that there was an abuse of discretion simply by the number of successive suspensions?

MR. PITT: I do not believe that the mere number of suspensions per se would give rise to an abuse of discretion. I think it is hard to fashion that kind of a rule. I think in any given factual context, the continued duration of these suspensions may constitute an abuse of discretion, but I do not think a court could simply say because it consisted of 18 consecutive periods that that was an abuse of discretion.

Take, for example, the situation where there is rampant manipulation ongoing and the Commission is trying to get to the bottom of that manipulation. It is having difficulty nailing down the evidence, finding out whether the manipulation existed. It might take 180 days to put that case together, go into court, obtain an injunction, and prevent the manipulators from wreaking the havoc that they might be perpetrating in the markets.

QUESTION: You can go in and get a preliminary injunction, can't you?

MR. PITT: We can if we have put together a prima facie case indicating the probable likelihood of success on the merits.

QUESTION: But your hypothesis is having failed to do that, you can summarily suspend for 180 days.

MR. PITT: No, my hypothesis --

QUESTION: Without any evidence.

MR. PITT: No. My hypothesis is that the Commission

having sufficient cause to believe that there is a possibility of manipulation and not having enough evidence yet to go into court can suspend trading.

QUESTION: For how long? How long is it required to get enough evidence to make up a prima facie case?

MR. PITT: I think it would be difficult to say that is susceptible of a hard and fast objective standard. I could not say to the Court that it should take the Commission 30 days or 40 days or 50 days. I can say that a court can look at the type of case and determine whether an investigation has bogged down, is not being pursued diligently, or there are explanations as to why a matter is taking as long as it is. And I think that the Commission has an obligation to be sensitive to the fact that a suspension of trading can cause some problems for investors and should be terminated as promptly as possible.

QUESTION: In this case it was well over a year, wasn't it?

MR. PITT: In this case it was 370 days, one year and 10 days.

QUESTION: That had been preceded by another series of suspensions based on different grounds for an even longer period, right?

MR. PITT: Yes, but the one-year suspension involved three separate grounds as it turned out, and the Commission

did review the circumstances each 10 days. We were dealing with people who were fugitives from justice. We were dealing with both foreign and domestic market places and the effects of manipulations in both market places. This was a complicated case which the Commission had to put together.

QUESTION: I take it that your argument includes the argument that whatever might have been true when the statute was first passed, at least now it should be construed the way you suggest it should be, that Congress has actually approved this interpretation by the Commission. It's as though it were now written that the Commission may enter successive suspensions for 10-day periods if it makes the appropriate determination.

MR. PITT: I would say that as well as the fact that I think the original enactment contemplated the construction that we have placed on it for 33 years. And that, I think, can be gleaned from a precise reading of the statute. The statute --

QUESTION: You don't need to make that argument if your first one is --

MR. PITT: No, I do not. But we think both arguments succeed, or should succeed.

QUESTION: I take it both these observations are subject to what you seemed to say before, that it may well be an abuse of discretion to have 36 suspensions of 10 days each.

MR. PITT: That is correct.

QUESTION: That you would not be here if the court had based it on an abuse of discretion.

MR. PITT: That is correct. We would not be here.

QUESTION: Didn't you also say not only had Congress approved your construction, but indeed had expanded --

MR. PITT: Yes, your Honor. In the initial '34 Act, the authority to suspend trading was limited to securities that were listed on an exchange. In 1964 at the specific request of the Commission, the Congress expanded that authority to all securities traded in the over-the-counter markets as well as in listed securities. It was at that time that the Commission presented to the Congress, as it had previously each year in its annual report, its consistent practice of successive but separate suspension orders. And the Senate report expressly approved and accepted the interpretation of the Commission, and the House with the Commission's assistance in drafting the bill expanded our authority to encompass over-the-counter markets.

QUESTION: Do you think the Commission unambiguously and clearly explained to Congress the present policy in 1964?

MR. PITT: Yes, your Honor, I do. I think it stems back not just from the legislative development but from our annual reports as well. Starting in 1946 and each year thereafter we provided and furnished information to the Congress

with respect to our practices with regard to trading suspensions. I think the Congress was aware of this. Indeed in 19 --

QUESTION: Are you suggesting every Congressman reads your annual report?

MR. PITT: I am suggesting that there may be Congressmen who do read it and do not read it. I think for purposes of construing what the congressional intent was when Congress acted upon our legislation, that our express explanation of our policies, which took several forms -- the annual report may be one lesser form of that. We also went to Congress, our oversight committees were apprised of this, and in 1959 and in 1960 we indicated that the policy of successive rollovers where a separate determination was made was one that we had been employing consistently. We got express committee approval of that by one of our oversight committees. In 1964, we --

QUESTION: That doesn't constitute a congressional approval, does it?

MR. PITT: Well, I think that congressional expansion of our authority, coupled with acceptance of that interpretation in the committee reports accompanying the bill is about as good an indication as we can have in the circumstances without --

QUESTION: But an approval by oversight committee

in 1959 certainly doesn't represent an act of Congress.

MR. PITT: No. And that was supplied in 1964.

QUESTION: So you say that an adequate presentation of this policy was made to the 1964 Congress that did --

MR. PITT: I do, but I would not minimize the 1959 approval by the oversight committees because Congress, as this Court is well aware, monitors the activities of the independent regulatory agencies through its oversight committees. They are the ones responsible for monitoring our activities and determining whether our acts are in the first instance appear to be in accordance with congressional intent. It is true that the words of a congressional oversight committee cannot bind the whole Congress. That came in 1964.

QUESTION: Mr. Pitt, are these rollover orders, as you describe them, customarily issued ex parte?

MR. PITT: I think, your Honor, the term "ex parte" would presume a proceeding. And the answer to that is twofold. The Commission staff usually supplies information to the Commission. That is not an adversary context. It is simply the Commission and its staff reviewing information.

We do, however, receive requests from corporate issuers, trustees in bankruptcy, and in fact the courts on occasion, and those are transmitted from the staff to the Commission.

We have adopted --

QUESTION: Does the issuer have any notice and opportunity to be heard?

MR. PITT: An issuer has notice of the fact in most cases that a suspension is about to be issued unless circumstances are of such an emergency nature that we are required to announce it before notifying the issuer.

We do have a specific procedure that permits an issuer or any person who believes that they have information bearing on the wisdom or lack of wisdom of our trading suspension power to furnish the Commission with information as to whether or not a particular trading suspension should be lifted.

QUESTION: Could the issuer virtually on demand have a hearing as to whether or not the continuation of the rollovers is justified?

MR. PITT: I am not certain. If we posit the situation where it is due to the issuer's misconduct that the trading suspension has issued, then section 12(j) of the Securities Exchange Act contemplates that the Commission should at some point commence a proceeding. It is conceivable, although I must confess I have not given thought to this, that an issuer might seek under the Administrative Procedures Act to claim that he can compel agency action unlawfully withheld, which is a 12(j) proceeding to have an adjudication on the merits.

In the absence of an issuer's violation of the Act,

12(j) is inapplicable. Indeed, that is the problem with the reasoning of the Court of Appeals that has led us to this Court. And in that circumstance it seems to me that an issuer might have a cause of action for review of an abuse of discretion. But I do not know that the issuer could compel us to hold an administrative proceeding. But I think in either event the issuer would get the question before a court and have a timely resolution of the suspension of its stock.

QUESTION: I have two questions, Mr. Pitt. I will put them both at once, if I may.

Are there any regulations or anything in this record to tell us what kind of a procedure the Commission follows when it issues a successive order? Is there any kind of a question that this be done by somebody saying, "OK, let's extend another 10 days."

And my second question is, if during the period of suspension the Commission does find it has enough evidence to make out a prima facie case of violation, what is the statutory procedure available to it to go into court and get some kind of an injunction? Is there some other than 12(j)?

MR. PITT: With respect to your first question, there is no written rule that binds the Commission to a process. There is the same consistent approach that the Commission has always followed. And the record does evidence that here. Namely, it is that the staff is required, if it believes that

a trading suspension should be continued, to furnish the Commission with information suggesting why that suspension should be considered.

QUESTION: Could that information be, "What we told you last week is still true"? Do they have to have anything new?

MR. PITT: At some point the Commission as a matter of internal discipline requires something new.

QUESTION: Does it each 10 days require something new?

MR. PITT: Not necessarily. It may be, for example, in this case the staff may be finding out from the Royal Canadian Mounted Police, as was the case here, what the extent of their information was with the manipulation, and it indicated to the Commission that it was going to Newfoundland to take testimony. That took several weeks to arrange. In that context it was certainly understandable that 10 days later the memorandum to the Commission from the staff would indicate the fact that this was still the procedure that was going to be followed and what the developments were in arranging that testimony. But the information would have been the same.

QUESTION: So if the information in effect said, "It will take us about six months to get our case together," then they just have rubber stamps for six months.

MR. PITT: No. I believe -- and, of course, that is

not this case -- I believe if the staff thought it would take them six months to get the information and so apprised the Commission, that that would be the strongest case for arguing that the Commission would be under a responsibility to publish whatever facts it was aware of and terminate the suspension as promptly as possible. But that situation would be the kind of situation that could be dealt with in a case seeking to review the Commission's actions for abuse of discretion.

QUESTION: I am puzzled.

MR. PITT: If I have not responded, I can elaborate.

QUESTION: You haven't responded to the second question. Maybe you don't remember it.

MR. PITT: The second question, as I understood it, was what statutory remedies are available to the Commission if there is issue of misconduct?

QUESTION: No. If it's a situation not covered by 12(j) and there is need for a long first suspension of more than 10 days and there is probable cause to prove all sorts of violations of the statute, what would you do? Would you just use the 10-day power, or would you ever go into court?

MR. PITT: Again, it would depend on the kind of information we had available. If 12(j) is inapplicable, we would use the 10-day power either to assist us in getting into court, for example, with a temporary restraining order, or preliminary injunction, because by that time we would have filed

our complaint, the facts would be public, and investors would be alerted to what our allegations were, and that is our policy. We do not wait for the action to be litigated.

QUESTION: I am just wondering why, if you have the 10-day power you claim, why you would ever run into court for a preliminary injunction.

MR. PITT: Because the preliminary injunction is necessary to stop the people who are violating the law. The fact that we can suspend trading will not protect those people who have been victimized by the violations of law.

The Commission's position --

QUESTION: What, therefore, would be the prayer of the injunction? Would the injunction necessarily stop trading?

MR. PITT: No. In that circumstance, the suspension of trading would be necessary to alert investors to the facts. Once they are informed of the facts, the Commission does not assume a paternalistic position. Investors once they know as much as we know are free to make their own investment decisions so long as there is not a manipulation in the market place. That is something that would be of greater concern.

QUESTION: And therefore the prayer of the injunction would be designed to terminate the alleged manipulation in the market place, wouldn't it?

MR. PITT: That is correct.

QUESTION: The injunction wouldn't necessarily include

a prayer that all trading be suspended, would it?

MR. PITT: The injunction in that circumstance would not address itself to trading at all. And once the complaint was filed, the trading suspension would be lifted.

QUESTION: The purpose of the suspension, then, is to give you time to assemble the information to make public so that thereafter the investing public can make informed decisions.

MR. PITT: That is precisely the purpose of the suspension, although in the case of a market manipulation, it may be to get us into court and take some preliminary action. In the market manipulation context, the fact that there is some information may not prevent investors from being abused. But by and large, your Honor has concisely stated what our need for the suspension powers are.

QUESTION: In this case it took a year to get enough information to issue the appropriate press release.

MR. PITT: In this case there were three separate bases in this series of suspensions, consecutive suspension orders. There was a market manipulation both here and abroad that had to be tracked down; there was a change in management of the company; and there were failure to file current reports, three separate bases that occurred over the course of that one-year period, which is precisely why we believe that the limitation that the Court of Appeals below put on our suspension

power is inconsistent with the statutory intent, both in 1934, again in 1964, and finally in 1975 when the Act was amended again.

Briefly stated, the Court also asked us to address the question of mootness. I hope it is plain that the Commission, of course, prefers a decision on the merits in this case because our summary suspension authority has been a critical element of our enforcement and policing of the securities markets. Nevertheless, because the Court invited us to discuss the question of mootness, we have given careful consideration to whether this case was properly before the Court of Appeals.

In terms of the relevant facts on that issue, I think all that need be stated is that at the time this case was presented to the court below, the petition was filed, nine days later the suspension was terminated. At the time of oral argument, at the time of briefing, and at the time of the Second Circuit's decision, there were no trading suspensions in effect.

The court held, nevertheless, that the case was not moot based on this Court's decision in Southern Pacific Terminal Company v. ICC, suggesting that the matter was capable of repetition yet evading review.

QUESTION: What did the complaint in this case ask for? An injunction or declaratory judgment or money damages or all three, or what?

MR. PITT: Your Honor, it asked precisely the question that gives rise to our dilemma with respect to mootness. There was no district court complaint in this particular action, although one had been tried previously. This was a petition for review pursuant to section 25(a) of the Securities Exchange Act of 1934 which sought review of a discrete set of orders, this one-year set of orders.

QUESTION: Not to the Commission; to the Court of Appeals.

MR. PITT: That's right, to the Court of Appeals. And it is set forth on page 122 of the appendix. It does not challenge in terms all of the Commission's orders with respect to trading suspensions. It challenges one series that lasted, as the Court has indicated, for a year with respect to Canadian Javelin stock.

QUESTION: Why isn't that moot?

MR. PITT: Well, your Honor, it is not clear that it is not moot, and it may well be moot for the following reasons: Insofar --

QUESTION: There is nothing outstanding now, is there?

MR. PITT: Insofar as the petition for review sought judicial review of that precise question as to whether Canadian Javelin stock should have been suspended, or could have been suspended, that order no longer exists and the case

ordinarily would be moot. The analysis, as I understand this Court's decisions, requires us to consider whether it's capable of repetition and yet evading review.

In a sense it is not capable of repetition, at least to the degree of certitude that this Court has required in its prior decisions, because the specific review proceeding was of the suspension of Canadian Javelin stock, and it is by no means clear that this Commission would again suspend trading in Canadian Javelin stock, more certainly for the same reasons.

QUESTION: In Weinstein v. Bradford we said it had to be capable of repetition with respect to the particular parties involved.

MR. PITT: That is correct. And it is our contention, as we set forth both in our petition and in our brief on the merits in this Court that Weinstein v. Bradford is dispositive of this case.

QUESTION: And that therefore it is or is not moot.

MR. PITT: Therefore, it is moot if the petitioner is viewed in his capacity as a shareholder of Canadian Javelin stock, which is the posture he was in in the Court of Appeals.

If, however, the case is viewed with respect to the generic question of the appropriateness of trading suspensions, it is certainly clear that this is an issue that is capable of repetition. We will, if this Court restores our

power, in appropriate circumstances resume 10-day trading suspensions on a consecutive but separate basis.

QUESTION: And use this particular respondent?

MR. PITT: We have done nothing against this particular respondent.

QUESTION: Doesn't Weinstein v. Bradford say that it has to be capable of repetition with respect to each of the parties?

MR. PITT: I believe Weinstein v. Bradford and DeFunis v. Odegaard both support that proposition, your Honor.

QUESTION: But this respondent has filed an affidavit or claims that he owns what, some 400 different securities?

MR. PITT: He has now changed that in his brief on the merits, which we just received, to allege 150 securities, 12 of which have been the subject of consecutive suspensions.

QUESTION: And the Commission suspends, what, 20 or 30 different securities each year?

MR. PITT: Something along that line, yes, consecutively. We suspend more, but only about 20 a year on a consecutive basis.

QUESTION: And has done so every year as a matter of historic fact?

MR. PITT: That is correct.

QUESTION: I'm not a mathematician. I suppose it's

according to how probable one thinks capability of repetition is required, but anybody who owns that many securities and if you are suspending that much trading in separate securities every single year, eventually those lines are going to meet, and that's capable of repetition yet evading review with respect to this party.

MR. PITT: We would concede, and we did set forth a probability formula which suggests one possible analysis. We would concede that it is possible that a stock that the respondent owns may be subject to consecutive suspension. But even if that is true, that does not reach the second phase of the Southern Pacific case, which is whether this matter is a matter that evades review. And for that question it depends on the kind of review that is sought. If the review that is sought is of the statutory authority of the Commission to suspend trading for more than one 10-day period, that is a question which we believe does not evade review even if this Court holds that the lower court's decision should be vacated for mootness. After all, this respondent could have done what the respondents in others of the cases that have been held not to be moot did, namely, institute a district court action seeking declaratory relief and an injunction.

In fact, however, that is precisely what this respondent did in 1974, and what is surprising to us is he made that claim and challenged our trading suspension authority

both as to constitutional basis, successive basis, and abuse of discretion. The district court ruled on the merits and claimed that the allegations were frivolous. The Court of Appeals for the Second Circuit affirmed, and this Court denied certiorari. And our concern is --

QUESTION: He took that as a lesson never to try that route again.

(Laughter.)

MR. PITT: Indeed, he has learned well. So he has now filed a petition. If this Court were to hold, as we think it probably must, that the Second Circuit's decision should be vacated for mootness viewed in the capacity in which the case was presented there, we would be loath to see the same sequence of events that occurred in 1974 commence all over again. In a sense, even the Government needs some protection against repetitive litigation.

In sum --

QUESTION: In sum we should not dispose of this on mootness.

MR. PITT: I am constrained to advise the Court that my reading of the cases suggests that the case was moot at the time the Second Circuit decided it. We would like to see a decision on the merits.

QUESTION: Because of the procedure that he followed --

MR. PITT: That is correct.

QUESTION: -- i.e., asking the Court of Appeals to review certain specific suspension orders.

MR. PITT: It is certain that we will be back in district court again as soon as the decision is vacated.

In sum, the Commission's construction of section 12(k) has been used to maintain fair and orderly capital markets. We believe that the decision below weakens the capacity of the Commission in an unfair manner to monitor the securities markets and urges that this Court reverse the decision of the court below.

MR. CHIEF JUSTICE BURGER: Mr. Sloan.

ORAL ARGUMENT OF SAMUEL H. SLOAN ON BEHALF OF RESPONDENT

MR. CHIEF JUSTICE BURGER: Before you present your argument, when the Court granted you leave to appear in this case, you -- received the usual notice to counsel, did you not?

MR. SLOAN: No, I haven't received anything yet. Since the time -- it was one week ago -- that I was advsied that I would be allowed to argue, I haven't received anything.

MR. CHIEF JUSTICE BURGER: Nothing?

MR. SLOAN: No.

MR. CHIEF JUSTICE BURGER: The March 1st letter you have not received?

MR. SLOAN: No, I haven't.

QUESTION: Are you aware that the rules of the Court require that counsel when they are to argue must register with the Deputy Clerk in Room 22-D at 9 a.m. or shortly after that on the day assigned for argument?

MR. SLOAN: No, I am not aware of that rule.

QUESTION: You better check your mail because you are in violation of that rule. You did not appear here until 2:30 today, and the Court can't organize its business if it doesn't know that arguing counsel is going to be present.

Now you may proceed.

MR. SLOAN: Thank you very much.

Gentlemen, Mr. Chief Justice, and may it please the Court: My name is Sam Sloan. I believe this is a simple case. Section 12(k) of the Securities Exchange Act gives the SEC the authority to suspend trading in a security for a period not exceeding 10 days. Here the SEC has suspended trading in a security for 370 days. Therefore, the SEC is violating the statute, and the Court of Appeals under the circumstances was required to enjoin the SEC from continuing this practice which it has continued over a period of 33 years.

They say the case is moot. But the problem that anyone has in objecting to this procedure of the SEC is the problem I face because, as the SEC has pointed out, I started a case back in 1974 protesting the trading suspensions in Canadian Javelin Ltd., and these suspensions continued and I

lost that case. Then I came back with a petition for review in the Court of Appeals again protesting the trading suspensions of Canadian Javelin Ltd. and I lost that case.

Finally -- the reason I lost the second case was because the SEC said they were going to give me an administrative hearing. I applied to the SEC for an administrative hearing. They waited until they were ready to enter their last trading suspension order, and they did so, and at the same time they denied my request for administrative hearing, thus putting me back into the Court of Appeals for the third time.

Now they say because of their delays and because they ran me around for approximately two years prior to getting me back into the Court of Appeals by making a bunch of suggestions such as the suggestion that they were going to give me an administrative hearing which in fact they did not give me, that the case has become moot upon expiration of the consecutive 10-day -- the last order which was timed to coincide with the denial of my request for a hearing.

I don't believe that a Government agency can be allowed to put a person in this kind of position where they are controlling the case, where they are deciding at what point I can object to their procedure, and they can then manipulate the facts in such a way to say the case is moot before I have ever had an opportunity to present my claims.

Now they say that the action of the SEC can only

be reviewed by a court in an abuse-of-discretion situation. Well, as the Court is well aware, if you file a petition for review in the Court of Appeals -- Now, I tried that procedure in the district court. I lost. The SEC said my exclusive remedy was to file a petition for review in the Court of Appeals. So since they told me what my remedy was, I pursued that remedy. I filed a petition for review in the Court of Appeals, and when I got up there they at that point said this really wasn't my remedy, I should go back to the Commission where they would give me an administrative hearing.

Now, in the situation where they say a court may review a case on a matter of abuse of discretion, the question arises --

MR. CHIEF JUSTICE BURGER: We will resume at 10 o'clock tomorrow morning.

(Whereupon, at 3 p.m., the oral argument in the above-entitled matter was recessed, to reconvene at 10 a.m. on Tuesday, March 28, 1978.)