JAMES CUNNINGHAM SARGENT

December 18, 1974.

Commissioner A.A. Sommer, Jr.
Securities and Exchange Commission
500 North Capitol Hill
Washington, D.C. 20549

Dear Al,

Please excuse my delay in answering your letter dated November 11, 1974 addressed to me.

In your letter to me you inform me that Alan Levenson and you are once again planning to stage an "SEC Speaks in 1975" forum in conjunction with the Practicing Law Institute, in Washington, D.C., on February 28 and March 1, 1975.

I have thought long and hard about the contents of your letter and its attachment and have postponed my answer because of a desire to speak objectively and rationally and without making charges which you might well bristle over and which you may consider so unfair as not to warrant the real concern which I think you should have about this matter to which I here address myself. Believe me, I am not desirous of antagonizing you or the Commission or its Staff. Anything I may say here, or may have done in the past by way of actions or statements are or were done because of my abiding faith that the Commission and its Staff should at all times, in whatever it does or says, be beyond reproach.

Let me now turn to your letter. Back in June of 1972 in San Francisco, Alan Levenson, you and I initially discussed programming the first "SEC Speaks" forum with PLI's Mary Mule. We all then decided that you, as the then ABA Securities Section Chairman, should chair the Program so as to give the Program a flavour of independence rather than simply a platform from which the SEC Staff could reemphasize positions which it was taking or would take. Last year, at the time of the "SEC Speaks" forum for 1974, I suggested to you that you seriously consider inviting Ken Biallkin, who had succeeded you as the ABA Securities Section Chairman, to act as Co-Chairman of the Program with you. Alan and you apparently decided otherwise: in any case, I mention that fact because at the time of the SEC Speaks 1974 Program, I did hear a significant amount of criticism that the Program had relegated itself to a closed SEC platform at which the SEC Staff was able unilaterally to espouse its positions without any effective collaboration with the industry it regulated or with that industry's attorneys and accountants.

You may not like to hear of such criticism, but it is there. Unfortunately, even though the Program each year has been structured along lines of independence by including ex-Commissioners as objective gadflies, if you will, during SEC Staff presentations, the difficulty in

this format is that many of the past Commissioners and past Chairmen have tended not to be willing to speak out or have sat on their hands during the Staff presentations. Perhaps that is inevitable, but that is a weakness which to date ha not been cured. I think you should recognize that no matter how objective and sound you may think you are in your judgments, opinions and positions, and no matter how thoroughly you are convinced that you have not "changed your stripe" from that which you wore when you were a private practitioner, you are now an SEC Commissioner, and others viewing you may have entirely different feelings and appraisals of you than you could possibly now imagine they would have. Remember in your speech last August, on the occasion of the ABA Hawaii Convention, you in effect gave recognition to this fact of life and obvious incongruity when you quoted the Pogo line where he said: "We have met the enemy – and it is us".

My own personal view is that in not asking a person as well known in the industry as Kenneth Bialkin to act as Co-Chairman is and continues to be a mistake and tends to reflect adversely upon the fundamental purposes sought to be accomplished by the Program itself. However, I accept your determination without rancour and without animosity towards you since I view your decision or your view on this point as one which happens to disagree with mine and that's that: so let me now get back to another more compelling problem raised by your letter and its attachment.

You suggest that in the SEC Speaks in 1975 Program there is to be "a panel of former SEC Chairmen to give everyone (including Commissioners and Staff!) their insights into the direction the Commission should pursue in the fifth decade". You go on to state that "one of the most enjoyable aspects of participation is the opportunity to see old friends, and renew old acquaintances, particularly at the dinner on Saturday night, to which you and your spouse are most enthusiastically invited".

One of the points you made in your Hawaii speech was that the Commission over the years had "avoided the curse of many agencies". In the context in which you mentioned this curse, you referred to the SEC's not becoming a captive of the industry it regulates, which seems to have been the plight of other agencies, and yet it seems to me that there are other curses that an agency such as the SEC must attempt to avoid and which in the past it has been quite successful in avoiding. One of these other curses is the failure to instill confidence in the industry being regulated. The SEC over the years has been able to instill confidence in the industry it regulates, including that industry's attorneys and accountants, that justice meted out by the Commission is at all times even-handed, objective, fair and decent, and is not arrogant, insensitive or self-protective.

I am frankly perplexed by your participating in the arranging of a Program which includes upon its panel one former Chairman who, it seems to me, has totally discredited himself when he testified in the United States case against Messrs. Mitchell and Stans that on five separate occasions he committed perjury. To include that former Chairman, G. Bradford Cook, in a public forum at a time when the Commission is seeking to take vigorous action against members of the Bar who practice before it, seems to me wholly out of sorts with the publicly expressed concern of the Commission that attorneys who practice before it recognize their bifurcated responsibilities, not just to their client but also to the public generally.

You said it so well in your ABA speech in Honolulu that "counsel representing clients in Commission adversary proceedings must be bound by established principles of conduct: perjury must not be suborned, witnesses must not be misled, evidence must not be tampered with, and so on: but that is true always and everywhere, not just in Commission proceedings". Certainly, your remarks would a fortiori include actual perjury admittedly committed by any person, let alone a former Chairman of the Commission. Clearly, his conduct epitomized irresponsibility "that would certainly" justify "action by the Commission". The fact that he admitted committing perjury on five separate occasions was "truly shocking" and cannot be dismissed as "merely simple negligence". I cannot believe that it makes one whit of difference that the Justice Department or other prosecutory body has not seen fit to take enforcement action against Bradford Cook, because he has admitted under oath the commission of a crime on five different occasions, three times before a Grand Jury that investigated the Mitchell-Stans case and twice before Congressional Committees.

I hesitate to speak facetiously at this point in what I consider to be a most serious discussion of a most difficult and profound problem, and I do so only for illustrative purposes. You remember the diddy that used to be told in the evidence course at law schools generally about the two frogs – the big bull frog and the little bull frog that were snoozing in the sun near a 12-foot high fence. When they simultaneously awoke, the little bull frog said to the big bull frog: "I'll bet you can't jump over the top of that fence." The big bull frog said: "Of course I can! I do it all the time!" Said the little bull frog: "I don't believe it. Provide it to me!" to which the big bull frog replied: "I don't have to prove it to you. I'll admit it."

In Bradford Cooks's case, he admitted under oath that on five separate occasions, while also under oath, he had committed the crime of perjury. Furthermore, he admitted that he violated SEC Rules which prohibit an employee of the Commission, including a general counsel or a Chairman, from discussing with a non-government person the specifics of a non-public investigation undertaken and in process within the SEC. Bradford Cook did this at a time when his own interest of getting support from Maurice Stans for a Nixon appointment as an SEC Chairman was foremost in his mind. Such conduct, it seems to me, cannot be forgiven by the Commission simply because there has been no indictment or any other disciplinary action brought against Mr. Cook as of this time.

Word has recently come back to me that you had been asked to uninvited Mr. Cook from the panel and that you had refused. Accordingly, on Saturday afternoon I went to the New York Public Library and took out the microfilms of a New York Times articles for Thursday March 28, 1974, page 1, columns 1 & 2, page 24, columns 4, 5 & 6; for Friday March 29, 1974, page 1, column 1, and page 16, columns 2 & 3; and Saturday March 30, 1974, page 1, columns 5 & 6, and page 14, columns 2, 3 & 4. I read those articles because I wanted to refresh my recollection as to just what Mr. Cook had testified to at the United States v. Mitchell and Stans trial. Frankly, those articles so upset me that I decided to have them photostated and send them to you as attachments to this letter. It seems to me that you somehow have to recognize that by including Bradford Cook on this panel you are suggesting, at least by implication, that the SEC is engaging in some form of approbation of Mr. Cook's conduct and that the SEC is going to try to protect its own; that the SEC can only be objective, can only mete out fair and impartial

justice when one of its own is not involved. That inference, or charge, if you will, whether you like it or not, is one which is having a terribly bad impression on the regulated interests and is annoying attorneys and accountants who are active practitioners before the SEC for and on behalf of clients. I think I know how well Bradford Cook was respected by the SEC Staff and by the Commission itself. I know how hurt they all must feel over his testimony and his perjurous statements: much of that hurt is inevitable and I feel as sorry as anyone else that it happened. But that is not the point!

The SEC has recently taken vigorous enforcement actions against attorneys and accountants who practice before it and against distinguished law firms for conduct of a far less heinous nature than was involved in Bradford Cook's activities. How can the SEC be respected for its judgment, for the even-handedness of the justice it metes out if it can simply just ignore the obvious discredit that has come to one of its former Chairmen by allowing him to appear and participate in a public forum program which Alan and you have organized. It may be most difficult for you to realize what I have said here but I cannot urge you strongly enough that your only course is to uninvited Mr. Cook, so that the objectivity of, the sensivity of, and the eveness of justice at the SEC will not be damaged irreparably.

You must also know that our legal profession was seriously charged with faulty ethical standards and improprieties of conduct by Watergate and by other Executive transgressions. The time is already too late for those of us who make every effort to practise with ethics, with fairness, with appreciation of the duties and responsibilities of our profession both to our clients and to the public interest to speak out and condemn anyone who transgresses these abiding principles. To do less is to diminish the standing and respect of our profession.

In this circumstance I must regretfully say to you that, as much as I would like to engage in the "benefits of input", so long as the program is to include G. Bradford Cook as a participant, I am not willing to participate with the Commission and its Staff on the occasion of the 1975 SEC Speaks Program.

Sincerely yours,

James C. Sargent