Securities and Exchange Commission Historical Society
Interview with Paul Maco
Conducted on April 25, 2014 by William Thomas

WT: This is an interview with Paul Maco for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is April 25th, 2014, and we're in Washington, D.C.

So, thanks very much for speaking with us today. We usually begin with just a little personal background, where you're from, where you went to school, what you studied, that sort of thing.

PM: I am from the Allentown-Bethlehem area of Pennsylvania, moved away from there when I was thirteen to Exit 4 of the New Jersey Turnpike, returned to go to Lehigh University in 1970 through '74. I was a government major, involved in university governance, politics; I was the student representative to the board of trustees my senior year. I worked in the steel mill in the summertime to pay part of my way through school, when Bethlehem Steel still hired people for the summer, and then I went to NYU Law School. I was there from '74 to '77. In my third year, I took part in the SEC Student Observer Program, which is essentially what they called the internship program. I did that the fall of '76, the spring of '77.

WT: How did you get involved with that?

PM: It was an option that was available at NYU. I had the good fortune the summer before to work for a boutique firm named Janklow & Traum. Janklow is a fellow named Morty Janklow, who was just beginning to become one of the country's most prominent literary representatives. One of the interesting things I got to do that summer was work on John Ehrlichman's book tour and negotiating and talking with the Bureau of Prisons about when he could report. And similarly for Eldridge Cleaver's book that Janklow was representing him on.

Janklow had an interesting group of characters and went on to have, undoubtedly, a very exciting career. His partner, Jerry Traum, was a securities lawyer, a very bright man who I did a lot of work with and really was a terrific mentor. He suggested that this program was there, and he said, "Well, you ought to see the other side of things." I worked on an IPO with him that summer and he said, "You should take advantage of this and work on the other side of things."

Interning at the SEC, being a young lawyer at the SEC, is probably one of the greatest experiences you can have because of just the way the staffing situation works out. You find yourself working in the middle of things that you really don't have any idea where they're going to go, but sometimes they go fairly far. I happened to be there and did some preliminary work on the E. L. Aaron case, which went all the way to the Supreme Court, and eventually was going to play a significant role in municipal securities. Because, when it did hit the Supreme Court, among other things that it underscored was that the Securities and Exchange Commission was able to use Section 17(a)(2) and 17(a)(3) of the ‘33 Act on a negligence basis.

This was right around the time that standard of culpability was really beginning to receive an awful lot of attention. The Hochfelder case came down during that period in time, under 10(b)(5) of the ‘34 Act. But I had some exposure to, and did a little bit of work – they were kind enough, I think, to put my name on the bottom of some of the pleadings for E. L. Aaron. I did not at that point work on something that was occupying a good bit of time in the office, and that was the investigation into the City of New York.

However, they had indicated that I would get a job offer, which I said I would accept, but they couldn’t make an offer until the hiring freeze that had been put in place that summer by President Carter was lifted. I had the good fortune a few weeks before the bar exam to hear that that was being lifted, and so after spending two days taking the bar exam, spending a couple days going out to Jones Beach with some of my friends, I showed up at the SEC on a Monday, waited for about three hours to be sworn in, and then went to work.

I went to work with a woman whose name I’ll soon remember and a group of others on the staff report. We were really just beginning to work around the clock in producing this document. That’s my copy from the time, that’s a staff report on transactions in the securities of the City of New York.

WT: August of ‘77?

PM: August of ‘77. It came out in the middle of a very heated primary for office of mayor. Abe Beame had been the mayor. There were eleven candidates running in the primary, among them, Bella Abzug, I think Liz Holtzman may have been running as well, and a fellow named Ed Koch was running. As everyone knew, the investigation was going on, and there was a lot of concern about what that was going to turn out.

I ended up working on two different sections doing a rewrite – just doing the sight checking, proof checking, verifying that the underlying documents actually stood for what they said – doing kind of a rewrite for readability of a good bit of it with a fellow named Don Malawsky. Don was either the assistant or the associate regional administrator at the time, and pretty much we all soldiered through. It was quite an event.

In order to get the final push through, Stanley Sporkin came up from Washington with seven of these very futuristic looking machines called Exxon word processors that looked like something out of *Star Trek*, and they were airlifted up from Washington and dropped in a part of the eleventh floor of 26 Federal Plaza, which was the SEC’s office in New York at that time. We literally were going round the clock, grabbing a couple hours of sleep here and there, until we produced it in final form. It was sent down to Washington, it appeared in the *New York Times*, and a bunch of us all went out for a long breakfast in the West Village.

That was my first encounter with municipal securities. I had one or two others during that time. There were a number of investigations that still were nonpublic, but into the issuance of various municipal securities that I worked on in the office at that time. As I said, it was really a fantastic job. It's the best place that anyone could ever work, and you'll probably hear that from a lot of people. I worked with a fellow named Jason Gettinger who was taking over, and basically we worked on the proposed findings of fact and conclusions of law in the administrative proceeding against Raymond Dirks.

WT: What was that case about?

PM: That was insider trading, and that also went to the Supreme Court and really became one of the cornerstone cases in insider trading law. In the paper today, or in this past week, there was an argument recently up in the Second Circuit dealing with insider trading cases and the degree to which understanding that the information's being conveyed under a cloak of confidentiality needs to be understood by the recipient. But Dirks really set the template from which modern insider trading cases flow. And again, it was just a fascinating part of the experience. I started working on the papers for the appeal to the Commission – it was transferred down to Washington in that time when a fellow named Ralph Ferrara was the General Counsel.

I also worked on a matter that for me was an awful lot of fun. What happens – of course people come and go at the SEC. There had been a very interesting case that had started up involving a fellow named Eddie Gilbert. Eddie Gilbert had previously gained notoriety for the looting of E. L. Bruce Company, and, as the story goes, he had taken some of the money, went over to Harry Winston's, bought a pile of diamonds, and took them over to his wife in their Fifth Avenue apartment and said, "Here, these are for you. I'm leaving with my new girlfriend from Brazil, some flight attendant that I met."

He went off to Brazil for a while until a young assistant U.S. attorney persuaded him to come back to New York and face the music, which he did, and then he ended up in the matter that I inherited. Basically, it is a proceeding that had started in federal district court, but it got clogged in a parallel proceedings problem, because the U.S. Attorney's office for the Southern District started investigating as well and it was pretty clear that Gilbert was going to take the Fifth. It was before Judge Lasker. And, basically, everybody involved in it had left the Commission and was off in private practice, but it happened to be in the branch that I was in, managed by a wonderful fellow named George Schieren, who later went on to be in-house general counsel at Merrill Lynch.

George was an excellent mentor, and Judge Lasker had said, "Either move this along or drop it." I started taking testimony. Because the people involved – I was a young kid and I took testimony against some of the leading lawyers in the white collar bar in New York – Gary Naftalis, Paul Grand, just to name a few, about seven or eight different people – and so for a young kid this was a real experience. We got it all ready to go to trial, and everyone settled the night before, and the papers were prepared for the issuances of injunctions with neither admit nor deny, and then everything was packed up and sent over the Southern District where they took it over and prosecuted the case. I think Eddie went back and got a couple years back in jail. This is Eddie Gilbert. And, yes, that book there seems like it was commissioned by somebody in his family.

WT: *Boy Wonder of Wall Street*, by Richard Whittingham

PM: Yes. And it’s a slightly different story than the story that the testimony and the court papers would have offered. But nonetheless he was a character and it just shows the kind of things that you can run across at the Commission. That’s relevant, because when that closed down I basically had a clean desk. I mean, getting ready for trial and that – it was a market manipulation case, and back then we had trade tickets and you’d have to put each ticket into evidence. And, I mean, it would have been quite a tedious process just to go through it, and we were spared that because everybody settled.

I had literally nothing to do, but it happened at that time that a fellow who was the managing partner at one of the premier bond counsel firms in the country, Hawkins Delafield & Wood, a fellow named Donald Robinson – a wonderful man who had been, I think he might have been the first chairman of the Municipal Securities Rulemaking Board, and probably right around the time that they hired Kit Taylor. But Don was convinced, and there was legislation going through Congress at that time sponsored by Senator Riegle and Senator Williams –

WT: This is in ‘79 now?

PM: This is in May of ’79, and Riegle and Williams were pushing legislation through that clearly would have given the SEC authority over municipal bonds. It only had antifraud authority, and had that clarified right around the time that they were doing this report, when in 1975 the definition of person was cleared up a little bit in the ‘34 Act to make it clear that not only in the ‘33, but in the ‘34 Act, the SEC had authority to go after any person, including an issuer, of municipal securities.

Don was convinced that this was going to go through and the landscape for bond counsel and lawyers in municipal finance was going to change, so he set about hiring four staff lawyers.

WT: Sorry, just to clarify, the proposed legislation would have superseded the Tower Amendment then?

PM: Yes, it would have superseded the Tower Amendment at that time. And what’s critical about that was that you actually had two very visible champions of this in Congress, in the Senate, really pushing this. That’s always sort of a good snapshot in all of the discussions that have occurred since that time with respect to basically regulating municipal bonds in a manner more like that of corporate securities. It didn’t happen, but Don did hire four people from the SEC’s New York office, a fellow named Thomas Egan, Michael Moriarty, Howard Berkman, and me. I had had some thoughts at the time of seeing if I could be seconded to the U.S. attorney's office. That really seemed to be something appealing, but this was interesting, too.

WT: Had you had any thoughts when you were working on this SEC report on New York that this was an area that you were particularly interested in?

PM: I found it interesting because I had been a government political science major in college, and my background really clicked a bit with not only the governance issues that come into play – and particularly because they're complex because we have fifty states, each of which has its own particular system set up under its own constitution – but also the local politics involved. In terms of looking at the difficulties in managing urban America and how to overcome some of the problems, the New York City financial crisis was an incredible case study and it really is relevant today.

Some of the problems they have still resonate today as well. Their accounting was just horrible. They had underfunded pension problems. They had a point where they were issuing tax anticipation notes, basically notes that would be paid out of property taxes to be collected from various properties around the city of New York. One of the problems that the city didn't know until it was really pushed into – a lot of those taxes were expected to come from properties that the city itself had owned, because they had taken possession of them for nonpayment of taxes, and so there was kind of built into that; the revenue source isn't there for this. And pensions are a problem to this day.

What that did galvanize was the then Municipal Finance Officers Association, with other organizations, really pushing for national standards. GASB, it's become, and that was one of the things that emerged out of this sort of cauldron at the time, and also served as a palliative in Congress to fend off the initiatives by Williams and Riegle for regulations. Local governments came, and said, "Look, we'll go to standard financial reporting under GASB." And that was kind of the political trade that was made at the time. And one of the last things I did actually at the Commission was go with Jason Gettinger, again, and review the first financial statement for the city of New York that was done under GASB principles and signed off by an audit firm. So that was kind of a historic moment in my experience.

I went off to Hawkins Delafield & Wood and became a bond lawyer. That was, again, a really interesting experience. I got to work both with industrial authorities in New York State as well as issuers around the country, including Oklahoma where I ran across a fellow who would later be prominent in municipal matters named Bob Cochran. The SEC would later, when I rejoined them, be in the middle of pursuing an enforcement action against Robert Cochran, and simultaneously with an action by the U.S. attorney for, among other things, bid rigging the investment of proceeds of the bonds in connection with, I believe it was a couple of hospital deals in Oklahoma.

But I was introduced, again, to Don Robinson and a fellow named Bob Rosenberg, and right down the hall from me was a young partner by the name of Robert Fippinger. And Fippinger is really a fantastic man who's made a tremendous contribution to public finance, because he is the author of this treatise, which is in its third edition now, and that's really the only work available for both the Commission and private practitioners in terms of providing a comprehensive overview of the securities laws that govern municipal bonds. Bob was right down the hall, a quiet, wonderful guy, very thoughtful, really great to learn from. I spent basically two years at Hawkins until I had the opportunity to go to Debevoise & Plimpton.

WT: I should say the Fippinger volume is the *The Securities Law of Public Finance*. That's the title of it?

PM: Yes. And it's the third edition. It's a two-volume set now. And we have to take a break, if it's okay.

WT: Okay, we're back.

PM: All right, I'm trying to remember where we were. I think moving to Debevoise and Plimpton. That was a period in time when – that time, and just before that at Hawkins, was really a formative time in the municipal market, because in 1979-81 the prime rate at one point hit, I think, like 18 percent. There were some bonds issued at that time that had astronomical coupons associated with them. This is really a period of the beginning of financial engineering in the debt markets.

A couple things were going on. Independently, the SEC had cleared the way for the creation of money market funds, and so lurking in the background there was a fellow named Bob Kutak at Kutak Rock. He was one of a number of people, but I think a significant party, working with some folks at E. F. Hutton, who had basically developed the floating rate puttable option bond which would carry a daily or a weekly rate. And the holder, on seven days' notice, could tender it back to a trustee or remarketing agent who would remarket it, and the principal amount would stay outstanding. I mean, the borrower would have the benefit of the bond principal for long term to build a building or highway or whatever they needed it for. But, in terms of the marketplace, that's something that could be purchased by a money market fund. And that suddenly offered in that timeframe a low-interest way in a high-interest-rate environment for financings to occur.

That was preceded, however, by a much more necessary and sort of fundamental development, and that was the addition of a put. I remember on some of the early deals for hospitals, where you'd have a 20-year bond or a 10-year bond, and the coupon on that would be 18 percent or something like that. But you could bring that down, the yield curve, if you had at the five-year point put a tender to Citibank, which of course came into the market in a big way on this. And they said, "Okay, you could put that bond to us at par, with that rate, five years from now," and that brought the rate back down. The yield curve made it much more affordable. There had to be some bankruptcy analysis worked through with the rating agencies, and a bankruptcy case called *Twist Cap* that needed to be worked around that affected the structuring of how that put would work and how funds would be applied.

But that really was the dawn of the type of financial engineering that later led to all sorts of complex floating arrangements, counter arrangements through swaps and derivative securities. So it was a really fascinating time in the municipal bond market at that point, and market participation and volume grew substantially, driven by the interest rate crisis in the pre-Volcker years. For me, Debevoise was an incredible period of very rigorous training. I think, personally as a lawyer, I got more out of my years there in terms of training and maturity.

WT: This was still mainly bond counsel work?

PM: I was doing project finance loans, I was doing all of the sort of traditional – I was doing bond work, but also the traditional type of financing work that Debevoise would do, and began doing complex transactions called leverage leases that had nothing to do with municipal bonds, so it was for me an excellent experience. And, during that time, I worked quite a bit with what was then First Boston Corporation and did office buildings all over the state of Ohio, and did a lease financing through Ohio State for a series of prisons, starting with the notorious Chillicothe maximum security prison, which was leased by the Prison Bureau to the Ohio Building Authority, and through the lease structure and biennial appropriations the debt service was paid. So it was a period of great financial growth.

I moved then to Boston, Massachusetts, and joined Mintz Levin Cohn Ferris Glovsky and Popeo, where I did both corporate and municipal financing work, and had also arrived at a very interesting time. The project finance work that I had done at Debevoise really prepared me to work with the newly emerging high-yield funds, and Boston of course is an investment company center with Fidelity and others being based there. And Fidelity, Putnam, Mass. Financial Services, Colonial, a whole series of funds looked to Mintz Levin from time to time to provide advice with respect to municipal bonds.

As these bond funds were starting up, one of my colleagues, a woman named Ann-Ellen Hornidge, who really developed great relationships with some of the funds, and a fellow named Greg Sandomirsky, who I worked with, then turned a lot of the work over to me. I worked with a number of the funds, Ann-Ellen worked with several of the others, as the high-yield tax-exempt fund was developing. And we really focused on taking project finance into those, since a lot of them were for things like hotels and other – they effectively were the lender of last resort for a lot of projects and they were often economic development projects, and the questions were: can they build it, and will they come? So feasibility studies mattered a lot, and they were highly speculative, they were unrated, and quite often went through at least a workout or two before they got up and functioning and paying a level of debt service they could actually manage to cover. But that, too, was a formative time in that type of practice.

I was working there, I made partner, had always stayed involved in the securities aspect of work, and I had started a project at Debevoise with the American Bar Association and the National Association of Bond Lawyers that culminated in this publication, *Disclosure Roles of Counsel*. And this was put together, again, by the American Bar Association and the National Association of Bond Lawyers, and there are a couple people involved in this. Robert Doty was one of the lead people. I think he's Jim Doty's brother, if I'm correct. Stan Keller at Palmer & Dodge – Stan, of course, had played a prominent role in the American Bar Association business law section on federal securities and chaired that section for a while, a brilliant, wonderful man, and he and I did a lot of work on a couple of the chapters in here, particularly relating to sort of a comparison to the corporate securities world, and looked to, in there, Rule 176.

Stan and I wrote a chapter to that, which pointed to an area of the corporate law where under Rule 176 there are facts and circumstances, there are different factors that can come into play in an underwriting that affect the responsibility of the underwriters. The motivation for this book was work that the SEC was doing at the time. John Dingell had sent one of his famous Dingell-grams following the Washington Public Power Supply System default saying, "What are you guys doing about this?" And, of course, they did a study and out of that study came the first version of Rule 15c2-12 which requires an underwriter to receive a draft of an official statement that's deemed final before it underwrites bonds, and by contract receives sufficient copies of the final official statement to provide to investors. At that time the marketplace it was very hard if you were an individual investor to actually get a copy of an official statement. A couple thousand were printed, and they went out largely to salespeople, to big institutional buyers, and in the retail market were nearly impossible to get.

I started this at Debevoise, and we finished that about six months before the SEC did its proposing release on 15c2-12 in which it included a section on the responsibilities of municipal underwriters. And the core of that is the formation of a reasonable basis for belief in the accuracy of the information, reasonable basis depending upon a number of various factors, looking an awful lot like Rule 176. So our idea, our notion obviously struck fertile ground and that sort of flexible approach was taken by the Commission in that ruling.

Backtracking just a little bit, it was an interesting time at Debevoise as well because Washington Public Power Supply System had defaulted. The lead public finance partner at Debevoise was a fellow named Robert Gibbons who had come over to Debevoise from Wood and Dawson. Robert Gibbons was one of the premier public power bond lawyers in the United States, very highly thought of, very careful, brilliant lawyer who did a lot of these huge, $100 million and more – back then big money – public power projects.

One of the significant things I got to work on with Bob was, one of the WPPSS participants was the Snohomish Public Utility District out in Washington, in Everett, across the lake from Seattle, and they were going to market with a big financing and of course they needed a disclosure section on potential liability that would accrue to them from the WPPSS default, and so a discussion of the litigation and everything. The

WPPSS section of that disclosure I recall being something like eighty pages or thereabout, and of course this was really novel territory. A lot of it really needed to be both very informative, as accurate as lawyers could make it at the time – you know, really a tremendous exercise. So again, it was an evolutionary point in terms of the market regulation, because just as the New York City moratorium really drew the SEC's interest in the municipal bonds, so WPPSS put their focus on not general obligation bonds but more project-supported and structured types of complex financings that also are dominant in the municipal market. So it's kind of the growth of the SEC as well during that period, and it resulted, through Dingell's "What are you going to do about this?" in 15c2-12.

WT: Let me ask you a little bit about in the period preceding 15c2-12. Exactly what standards, if any existed surrounding disclosure, what the impetus to disclosure was without any real regulatory force behind it?

PM: It depended on what part of the country you worked with and for whom you worked. There were a number of leading bond firms in New York; they were Mudge Rose, Guthrie Alexander, Hawkins Delafield & Wood, and Brown & Wood, and then this very small firm, Wood & Dawson that had a premier practice. They just did huge ticket things. They were into public power, they did airports, and of course they happened to be the bond counsel on the Washington Public Power Supply System. The focus at firms like Mudge and at Hawkins, of course, was on the antifraud provisions of federal securities laws. And as a young associate, again, with Don Robinson leading the firm, coming back from his time at the MSRB, there was a focus on the MSRB rules relating to broker-dealer underwriter activity as well.

Interestingly, there was a young woman a door or two down from me named Diane Klinke, who later went on to become general counsel of the Municipal Securities Rulemaking Board – so I mean this was really kind of a small world down there on Wall Street in the late ‘70s. The effort, again, at Hawkins and certainly at Debevoise was on thorough due diligence. At the time, there was also an explosion in bond counsel work. There’s a book called the Red Book, that book used to be this thick, that lists nationally recognized bond counsel. And the list of nationally recognized bond counsel in 1979 was nowhere near what it would become within the next ten years.

Several things were involved in that. Before a tax law change in 1980, there were a variety of different bonds used to finance housing, single family housing, multifamily housing, and there were local housing finance agencies coming up all over the country. I mean, it’s something that had been well developed in the east, in New England states, in New York. Similarly, New York City’s Hospital Authority and the New York State Dormitory Authority, which did hospitals and universities, really began, as similar entities began to grow around the country. Local housing authorities began to grow in order to basically use taxes and proceeds to make mortgages available for middle class and less wealthy individuals.

So we had this explosion of work, and a lot of firms really growing up to enter the field. There was no central source for training, and right around that time an organization called the National Association of Bond Lawyers started. Dean Pope was one of the early leaders in that group. And that was basically bond lawyers from various parts of the country who started to gather once a year in Chicago to try to educate each other and pursue high standards. Some of the larger firms, like Hawkins and Mudge Rose and Brown & Wood, really weren't that interested in participating in that and held back for a while. But there were others, particularly the tax lawyers at those firms, who came and became active participants, and it just really grew. And NABL, as it's referred to, really became kind of the central force in making high quality standards and practice examples accessible to the larger community.

And I started working with NABL I think for my first seminar in 1981, and have probably participated as a panelist in the Bond Attorneys' Workshop in just about every year since then. I was on the NABL board in 1989 to '92. Dean Pope and a fellow named Joe Johnson from Alabama were senior people at NABL, and asked me to start to chair a committee that wrote the NABL's comment letter on Rule 15c2-12, and I was delighted to take that up. I thought that it made sense for the public finance community to really band together and try to speak with a common voice on how the industry worked, so I contacted Jeff Green from GFOA, Jack Gardner from the state and local section of the American Bar Association, Robert Doty, the folks at what was then The Bond Market Association – his name will come to me, but we basically formed a working group.

We got together at a restaurant in Chicago during the Bond Attorneys' Workshop, a restaurant called Jackie's, and we spent the better part of the evening hammering out the protocol of the working group that we would have, and coordinating sharing drafts of the letters and that sort of thing as we prepared to give the market view to the SEC on how the municipal bond market worked. And of course a key function of that was the perception and implementation of that perception in the actual practice of lawyers active in the field, either as bond counsel or underwriter's counsel, and what we did in terms of federal securities law. And that had manifested itself first in that book, but then in the comment letters that followed, that book then had two subsequent iterations.

WT: Just for the recording, we're talking about the 1987 *Disclosure Roles of Counsel in State and Local Government Securities Offerings*, that book.

PM: That edition was then followed by a version that came out in 1974, and that version, which I'll spot in a minute, I was a co-reporter on that. This one, I authored a couple of the chapters. I was a co-reporter on that one, but then needed to sort of back off towards the end because I had just been offered a job at the Securities and Exchange Commission.

WT: Oh, 1994. I think you said 1974 a minute ago

PM: Oh, I'm sorry. No, I meant 1994. I'm sorry about that. In 1974 I was still in Bethlehem, Pennsylvania, at Lehigh. I'll come across that in a minute. Here we go. This was the next edition, and Jack Gardner, who I mentioned earlier, took the lead in getting that prepared and through the NABL board. And, of course, we had used much more definitive language in our drafting, and the NABL board was very concerned about anything emerging that could potentially set standards for bond lawyers, so our definitive phrasing was substantially watered down by the board in what came out to be the final version.

At the same time, Jeff Green and Robert Doty were pushing out another edition of the Government Finance Officers Association disclosure guidelines, and the last version of that came out in 1991. Earlier versions had come out years before that and a lot of the people, Dean Pope, Jeff Green, Robert Doty, were involved in the GFOA exercise as well. So critical to this, really, was this kind of coalition that had come together, I'd like to say that night in Jackie's, that in one way, shape, or form stuck together working into the future. A lot of the different groups became comfortable consulting with each other in talking with the SEC about, you know, how the municipal bond market works.

WT: Who are some of the principal contacts at the SEC at that time?

PM: Catherine McGuire in what is now trading and markets. Kate, as she calls herself, a really terrific, very brilliant woman, actually had an office in the mid-'70s within Market Reg called something like the Bureau of Municipal Securities, or something like that, and she had a couple people working for her, including John McNally. John is now a partner at Hawkins Delafield & Wood. He left the SEC after working in the municipal securities unit under Kate and went to Wood & Dawson. John as become very, very involved, and stayed very involved, in NABL. He's an immediate past president of NABL and worked very closely with Elisse Walter in the work that led up to the 2012 Commission report on the municipal securities market.

John met a woman named Marcia MacHarg, who was also working for Kate. They subsequently married, and when I left Hawkins to go to Debevoise, Marcia showed up the same day. She had worked in the municipal securities group and then became counsel to Commissioner Steve Friedman, who had been a partner at Debevoise, and Steve returned to Debevoise and brought his counsel, Marcia MacHarg, with him. Marcia went on to become a very successful '40 Act lawyer at Debevoise and one of the really top '40 Act lawyers in the country. But at that time, we started on the same day and were talking about who we knew, and her husband John just happened to be a bond lawyer and that's when I ran into John and we've been good friends ever since then. His background at the SEC really has helped NABL grow, and John has been a very important person in raising the professional consciousness of the operation of the securities laws in all of this.

Massachusetts was very interesting at that time. I became a partner at Mintz Levin, continued to work in the municipal area as well as on project finance, and one of my partners was a guy named John Markey who had a brother named Ed Markey, now Senator Ed Markey from Massachusetts, who then was a Congressman who chaired the subcommittee on – I can't recall exactly what it was, but it was under Dingell's

Commerce Committee and John held hearings in the fall of 1993 on the municipal securities market.

The municipal securities market was shaken in early May of 1993 – for some reason I think it was May 4th, 1993 – the top fold of the *New York Times* announced that Merrill Lynch had suspended its top four people in public finance. The head of the group at the time was a woman named Marsha Eisenberg, and a legendary lawyer, SEC alum, who was general counsel at Merrill at that time, Steve Hammerman. Steve really kind of set the gold standard for in-house counsel, and had an approach of, "You've got a problem, you come to me, we'll investigate it, and we will take care of you because you're part of the team, and we'll go to the SEC and let them know what the problem is and fix the issue before we go there, but let them know what's going on and let the chips fall where they may" – kind of doing the right thing and really a significant positive cultural force in the market. Steve of course had been at the SEC, I think ran the New York office at one time or another, maybe twice, before he left to go to White Weld.

At that time, I think the concerns that Merrill had about its municipal finance group largely circled around a huge financing for the New Jersey Turnpike Authority. James Florio, the governor of New Jersey, had as I think his chief of staff a fellow who had a two-person municipal advisory firm based in southern New Jersey that just happened to be municipal adviser on a number of huge state projects. I think the original concern focused on the New Jersey Turnpike but ultimately led to a fellow who was a huge personality in municipal finance in Boston named Mark Ferber.

And it turned out through this process, there was a banker who covered Massachusetts quite a bit who I had worked with, everyone worked with, named Jeff Carey. Jeff was involved in Merrill's relationship with some of the more prominent issuers up there. And soon the SEC and the Justice Department started looking at financings of the Mass. Water Resources Authority. The MWRA was a huge project to clean up Boston Harbor. A lot of small towns were just sending sewage effluent straight into the harbor, and a Massachusetts judge at the time just ordered the cleanup, and this huge, huge project was undertaken. And it turned out that there was a hidden arrangement between Ferber, who was the financial adviser for MWRA, and Merrill, where there were kickbacks of a couple million bucks involved for selection of use of swap deals and underwriting assignments and the like.

That really focused interest on corruption in the municipal bond market. Pay-to-play was beginning to take on a big level of concern then. I remember doing a financing in Rhode Island for one of the universities as an underwriter's counsel and then getting a letter from the governor inviting me to take a $10,000 table at a fundraiser – clearly something far beyond the means of a lowly associate at a Boston law firm. But I mean that was just the atmosphere in which a lot of work was conducted, and some people played along with that. A lot of us just stuck with the quality of our work and figured that would always be our one and only calling card.

But pay-to-play and corruption coincided with Arthur Levitt coming in as chair. Through John, I had come off the NABL board at that point. I had completed my time on the NABL board.

WT: If we're going to go into the SEC at this point, I'm wondering if I can stop you. We haven't mentioned the 1986 Tax Reform Act at all, and I know that the consequences of that were quite profound.

PM: Yes, they were, and that really changed the types of facilities that could be financed. That increased the importance of tax lawyers in financings, removed the types of financings that could be done.

WT: But specifically, you're referring to things like industrial development bonds then?

PM: Industrial development bonds. You couldn't do massage parlors, suntan parlors, that sort of thing anymore. It also cut back on the type of port facilities that could be done. But it was not the death knell for public finance that many thought it would be. It continued on its growth cycle. The sophistication required of bond counsel in tax matters increased dramatically, and from an investor's point of view one of the key features of buying a tax-exempt municipal bond is the tax exemption. So naturally, the tax status and tax compliance flows over naturally into disclosure, and a risky structure, a structure that tempts the IRS to come in and challenge it and say these bonds don't qualify, is a risk that investors obviously would need to know about.

And so tax disclosure became a key element for disclosure in general, and actually turned out to be a pivotal point in some of the early cases brought under Arthur Levitt related to tax status and municipal bonds, involving, among other people, Robert Cochran, who by some of his handling of the bids for investment, he was giving people a last look in return for a payment. So that they could win the investment, he'd get a payment from the party to whom he'd given the last look. That jeopardized the tax status of the bonds, and of course the official statement said nothing about the last look that Cochran would use in terms of bidding out the proceeds. So, you had a disclosure problem and a hook for the SEC to come in using the antifraud hook to grab that and go after that type of activity. But the '86 Act really did have that kind of formative role, and ratcheted up the importance of NABL. Through this time NABL is growing too, as an organization that really does a lot to promote high standards in the marketplace.

Back to '93: Levitt's sworn in in August of '93. The SEC at that point is completing its market study led by Kate McGuire and Robert Colby in the Market Regulation section, and that is presented to Congress in '93 simultaneous with Levitt's hearings as chairman, and in that the SEC proposes a couple things. They suggest removing the exemption under Section 3(a)(2) for conduit bond financings. Conduit bond financings had been kind of a football kicked back and forth between the SEC and Congress since, oh, about 1979, when the SEC came out with Rule 131, which said if there's a separate security underneath, that security has to qualify for exemption too; industrial development bonds don't.

Senator Long, a big champion of municipal bonds, kicked back and said, "Well, okay, we'll just fix that," and the 3(a)(2) was changed and has a specific reference to a section of the Internal Revenue Code stuck in it that now is obsolete but at that time referred to the central section in the tax code that dealt with tax exemption for municipal bonds. And so this back and forth between Congress and the SEC over corporate conduit financings went on, and still lives on in the 2012 report, because one of the recommendations that the SEC has in the 2012 report is removing the exemption from conduit securities for corporate entities.

But that was one of the things the SEC laid out in the '93 report. They also laid out a proposal for continuing disclosure, a modification of Rule 15c2-12, to put in a framework for continuing disclosure. That prompted that group that I referred to before, that goes back to the table at Jackie's, surfacing in the Group of Ten, or the Gang of Ten I think they were called. The SEC in the fall of '93 started calling in lawyers, bankers, issuers, to just come talk to them about how things are done. Elisse Walter and Amy Meltzer Starr were key players in that, along with Kate McGuire and a lawyer named Ed Pittman. Ed had been an attorney in Kate McGuire's group, a chief counsel in market regulation, and then became counsel to Commissioner Rick Roberts. Rick Roberts, of course, too, he's a Commissioner that comes in and identifies at least one area that they're going to kind of make a hallmark of their tenure as a Commissioner, and Rick took on municipal securities. Rick was a protégé of Senator Richard Shelby, and so there was an affinity there as well.

The SEC was becoming very interested in municipal securities. David Ruder, who was then Chairman, came and spoke at a NABL event; they were really becoming more and more attuned to the community. Ed Markey had these hearings, called in Kit Taylor at the MSRB, John Pinto from NASD, the Bond Lawyers – Drew Kintzinger was the president at that time, Andrew Kintzinger – The Bond Market Association came in, all looking at the state of the municipal bond market. And now-Senator Markey was very, very good at using a lot of the different relationships he had, and he reached out to his brother John, and I prepared a series of questions and topics that might be looked at, did a memo: here are some interesting areas to think about and here are some areas to explore.

It really was, again, a seminal hearing in the area and began to ratchet the pressure up on the Municipal Securities Rulemaking Board, in particular, as well as NASD, to take a strong look at the area. Because the big interest at the time was pay-to-play and kickbacks, and one of the things that Markey did, he had Pinto and Taylor up there and he went to Rule G-20, which is kind of a cap on gifts and gratuities at a hundred bucks, and he said, “All right, well you know we’re hearing about all this corruption in the municipal bond market” – and I’m paraphrasing it – “what is this G-20? This would seem to offer enough ammunition to be able to harness at least some activity. How many investigations and AWCs do you have for violation of G-20?” “None.” And he kind of went down basically this list of questions, the outcome of which really was a sense in the testimony that the MSRB rules may be out there, but there was no real enforcement of them.

Congressman Markey remarked at the end of the testimony that, "Well, I'm going to watch with arched eyebrow" – and I think that was a headline that made it into *The Bond Buyer* at the time – "your activities going forward, gentlemen." And so, I mean, there's a lot sort of formulating at that time. Levitt was quoted in *The Bond Buyer* at the time saying he wanted to bring someone in to the SEC to work with him on regulating the municipal market, someone who understood the securities laws but also understood the market. I was single, I rented my apartment in Boston, and I thought, "Boy, that's for me, I'd love to be able to do that and I've got what looks like the background for it."

I contacted a number of different people, Kate McGuire and others, visited Congressman Markey, and ended up coming down and being interviewed by Arthur, and by Carrie Dwyer who was then one of his counsels but really was his de facto chief of staff, an absolutely brilliant woman, excellent instinct and sense, and Arthur relied on her tremendously and deservedly so. That was late October, and I heard nothing. Who knows what's going to happen with this? To me, it was a dream job, and it turned out to be. It was a wonderful experience. I was just getting ready to go. I had started something up in Boston called the New England-Middle East Business Council with basically a group of firms, some in the defense area some in others that did business in the Middle East, and started this through Mintz Levin.

And then Governor Weld was going on a trade mission to Israel – and this was right at the time of the Oslo meeting and there was all sorts of hope – and so Bill Weld asked me to go to Israel with him, in part because of this New England-Middle East Business Council thing. So I'm getting ready to go on that, and I get a phone call from Sy Lorne, who is the General Counsel of the SEC saying, "How quickly can you get here?" I was thrilled, and I said, "Well, can we wait until the end of March?" Mintz Levin, like many partnerships, pays the bulk of its compensation to its partners on the last day of the fiscal year, which was March 31st. And after some going back and forth through the firm, they agreed to basically a projection of what my income was going to be for the year and would give me that when I went.

So in the middle of March, March 20th or something like that, I resigned from Mintz Levin and came down and started working for Arthur Levitt. And the papers at that time – I still have them in a file drawer out there – had me reporting, I had a dual reporting relationship. My two supervisors were Arthur Levitt and Sy Lorne, so I reported to the General Counsel and to the Chairman, but I was positioned as an attorney fellow in the Office of General Counsel. When I was interviewed, Arthur asked me if I had the job what I would do, and I said, "Well, you can't really expect to get much out of Congress in terms of legislation, so you have to use your rulemaking authority and enforcement authority." And enforcement in particular through settled administrative proceedings can tell a story. Because of the nature of administrative proceedings, the Commission has the ability to write a narrative of what it considered to be wrong with the conduct underlying the administrative proceeding. So here's a way for you to create a mosaic of administrative proceedings within a broader outlying of regulation, and basically speak to and regulate the municipal bond market in a way that, you know, you can't do it the same way as regulating the corporate market.

Critical to that, but particularly to the rulemaking, will be having a coalition of support of all of the different people at the table at Jackie's. I come back to that fall period, it was very clear, and Levitt said he was going to be proposing regulation, this prompted the Group of Ten, which is basically the bankers, the lawyers, the trustees, the issuers, several different issuer organizations picking up the states as well as cities and towns, to issue a proposal. And one of the leaders in that was Jeff Green from GFOA, Jeff, one of the original people at the table at Jackie's.

WT: I was just seeing in that book that he was also at the Port Authority?

PM: Yes, he was the assistant general counsel to the Port Authority of New York for many, many years. That sort of proposal, letter from the Group of Ten laid out what was really an acceptable framework for modifications to 15c2-12. The product of all of the interviews and letters emerged on March 9th. I came down to Washington for that. We had an understanding that I'd be leaving Mintz in another ten days or so, and I came down and joined with Carrie Dwyer and went into the open Commission meeting where the SEC issued its interpretation of the application of the antifraud provisions to the municipal securities market, proposed Rule 15c2-12 amendments that created the continuing disclosure, and proposed 15c2-13, a rule that was never adopted but served as a key club in driving the Municipal Securities Rulemaking Board to create real-time transaction reporting in the municipal market. 15c2-13 was a requirement that basically broker-dealers disclose the markup on riskless principal transactions. And there was no price transparency in the market at the time, and so a purchaser of a bond could have no idea whether they were being charged a few basis points or a few whole interest points in the markup of the bond that they just purchased, and 15c2-13 was targeted at at least laying that open.

Those were proposed. I joined the Commission shortly after that, first to work with Joe Franco in the General Counsel's office. Joe is now a professor of law at Suffolk University, but really honing the fine points on G-37, the pay-to-play rule, and Joe and I worked pretty hard in getting that ready to be approved by the Commission.

WT: Is this the first draft of it? Because I know there were a couple of them.

PM: There were a couple; no, this was the last draft. This was just before it was enacted. I mean, because that was one of the underlying themes during the summer of Mark Ferber and others as well, that summer that started with, again, the *New York Times*, Breeden stepping down, Mary Schapiro coming in as acting chair, a lot of this activity going in, and this is building up, particularly in the *New York Times*. The *New York Times* was paying a lot of attention to this coming up to Levitt's hearings in early August.

There was an original stab at pay-to-play that, as chair of NABL's securities committee, my committee gave some comments on, but it really was kind of an unworkable kind of approach. The voluntary ban was put in place that fall. I remember talking with a number of bankers at different firms about whether they should sign this, what were the pros, what were the cons. This is a train that is leaving the station and it is good to be on it, and that's the route that most people took.

So, at this point G-37 is about to be put before the Commission. The Commission at that time, I'm trying to remember who – Rick Roberts was on it, Steve Wallman was just coming on board, and actually had an office right next to mine as he was getting ready to come in, and so I got to know Steve pretty well. The rule was adopted and very quickly challenged by Mr. Blount. There were all sorts of rumors as to who was putting up money behind Blount. Nothing credible ever emerged into daylight, but William Blount of course came back almost twenty years later in Jefferson County, and Blount's challenge was essentially First Amendment-based.

The MSRB hired Harvey Pitt as their lawyer. The SEC had Sy Lorne, Joe Franco, a couple other people, Eric Summergrad. Eric had been a year behind me at law school at NYU and was a familiar face, very, very bright guy, and we worked on the challenge in the D.C. Circuit. We were pretty confident that we would win, that we'd prevail, but early in the morning, coming in, Arthur got in the elevator with me and stopped the button and said, "So, what are we going to do if we lose?" I don't remember exactly what. I said something like, "We'll dust ourselves off and attack from a different angle." But he was just very interactive and really a great manager and a great person to work for.

But, after that, our discussion was there would come a time – we didn’t want to push this on the staff right away, but there would come a time when an Office of Municipal Securities would be created. In the interim I was to use my position as reporting to him, reporting to the General Counsel, to kind of inject myself into whatever I could. He charged me with being very aggressive and just making things happen. One of the things that he wanted to happen was that enforcement cases be brought. There were a number of them that had been milling around, and the SEC was very lucky at that time to have a younger lawyer named William Baker, Bill Baker, on its staff – a very, very good enforcement lawyer, and very good lawyer today; he’s a partner at Latham – and a younger lawyer named Larry West.

Bill was emerging as the lead person in the home office on municipal enforcement. He was working on a series of cases that involved Bob Cochran, and the activity out in Oklahoma that Cochran was engaged in. The U.S. attorney had muscled the SEC out of the way and took Cochran to trial first, but there are those who were present who say they didn’t put on the best of all possible cases, and basically lost. It was appealed, I mean there was kind of a back and forth. Cochran hired Al Dershowitz. The SEC started its proceedings. They went through the whole district court trial, lost at trial, partial success on appeal. But in the meantime Cochran’s firm, Stifel Nicolas, settled out with the SEC. That was one of the cases in early ’94 that focused on the tax status as a key disclosure issue.

There were early cases that involved sort of influence peddling and financial advisers coming in, making payments down in Florida, certifying that they hadn't made any gift or gratuity when they had, and being caught up in that. But I had been an enforcement lawyer and started out life as an enforcement lawyer, and still knew some – Jason Gettinger, for example, was still up in New York. I paid a visit to Dick Walker, who was then head of the New York office, and Jason and others, and I suggested to Arthur and Bill McLucas that what I could do was do a training course on how to investigate a municipal bond deal. They liked the idea.

I did one in the home office – it's a half-day, four-hour course – and then I went to Los Angeles, to New York, to Miami, to a number of the Commission's offices and basically trained people on how to do an investigative municipal bond matter. Start with the purchase agreement, and the key – if representations are made back and forth regarding the sale of those securities from the issuer to the underwriter, here you have statements made in connection with the purchase of this sale, all coming out of that contract, in it and then set out as conditions for closing. So that's your place to start. Then look at the official statement, and sort of take it from there. And of course there are tax certifications that are made, there are certifications of the quality of the disclosure, and a lot of other things. And that and the closing transcript became: this is where you start investigating a transaction in municipal bonds.

That was to pay off. I mean, through this summer we're going through rulemaking, and one of the key developments –

WT: Are we in ’94 now?

PM: Yes, this is the summer of ’94. One of the key developments at that point, the people from the Bond Dealers Association and a guy named Bill Masterson – who was a senior at that time, a head of a financial advisory firm Masterson Moreland, that later merged into First Southwest – but Bill Masterson came in with a delegation from the bond markets group and met with Kate McGuire and others. And that’s where the idea was spawned, and I think it may have been Kate and Elisse, with Kate really sort of pushing it. “Well, there might be some room for some reconsideration of ‘13 if there’s full commitment to support real-time transaction reporting at the MSRB.”

And essentially, that sentiment was conveyed that support was going to be given, and November 10th, 1994, the SEC adopted amendments to 15c2-12, a key feature of which I’ll come back to in a moment, and postponed action on 15c2-13, specifically saying at the time that they were going to defer action and monitor the progress of the MSRB in implementing changes to G-14. Rule G-14 is the rule under which RTRS, the Real-Time Transaction Reporting System, occurs.

At about that same time, Elisse Walter and Amy Starr offered to SIFMA and the Group of Ten a notion, and the whole concern was just, “How are we going to govern what’s supposed to be part of continuing disclosure?” I mean, you can’t set standards for the content of an official statement in terms of line-item disclosure. How are you going to do continuing disclosure going forward? If you start singling stuff out, you're getting into the line-item disclosure line. The agreement was made, floated and accepted, that the official statement would be the footprint for continuing disclosure. So the annual financial information, the audited financial information, if audited, was used in the official statement, plus key operating and financial data would be the template for continuing disclosure on an ongoing basis.

So the phrase "annual financial information and operating data," which is one of the cornerstones of continuing disclosure, plus the eleven events, which became known as the Eleven Deadly Sins, together with one that was oft overlooked, a failure to file notice – if you failed to file the annual financial information on time, you were required to file a failure to file notice explaining why you couldn't file it and when you would file it – that's how that all came into formation.

We were progressing forward through the summer. I had recused myself from the stuff that was going on with respect to Mark Ferber because of my prior involvement up in Boston, but I certainly watched with great interest as that developed. And 15c2-12 was adopted on November 10th, and I'm thinking, "Okay, what am I going to do?" I had just stepped down from the board but had still been involved with an organization called Traditions for Tomorrow. Traditions for Tomorrow works with indigenous people in Central and South America, and was started by a close friend and associate from Debevoise & Plimpton named Diego Gradis. I took off to Guatemala with Diego to visit several projects that Traditions had financed, and others that they were considering financing, and basically spent ten, twelve days in the jungles of Guatemala, in the Highlands, including very close to the war zone up in Chiapas. We spent a couple of days in a refugee center. And so you can imagine, the last thing – municipal securities is erased entirely from my mind.

I come back on a Saturday in December, it may have been December 3rd, to Washington. I was still single at the time. I go inside my house and pick up the newspapers, and I see Thursday's *New York Times* and *Wall Street Journal*: Orange County, California, has billion dollar deficit. The next day, the Orange County deficit exceeds $2 billion, and I'm thinking that things are going to be really interesting when I go into work on Monday. I went into work early and quickly got a call from Bill McLucas saying, "Hey, I'm in Arthur's office. Can you get down here?" So I go down, and Arthur and Bill and Barry Barbash – no, Barry wasn't there, the fellow who was head of Market Reg was in there, he's now general counsel at TIAA-CREF – and we're talking about Orange County and how they're on the precipice of bankruptcy and what could happen.

I had a good deal of familiarity with municipal bankruptcy, because one of my clients, right behind you, Mass. Municipal Wholesale Electric Company, that's that sketch right at the top. Mass. Municipal Wholesale Electric is a joint action public power agency that just happened to own about 17 percent of the Seabrook Nuclear Plant. And, among other things, a number of their members had take-or-pay contracts that were geared to the cost of power, and they could rise or fall just like those in WPPSS, or the cost of the facility. And so, you know, here you have this kind of mini WPPSS, and as it becomes more and more expensive to construct, it's driving the cost of power to these small municipal light districts up. And municipal bankruptcy became basically a very important issue for Mass. Municipal Wholesale Electric, because they were concerned about all these little light districts going bankrupt. That, fortunately, gave me an understanding of how Chapter 9 worked.

A couple things happened that Monday. One was Arthur said, "Well, what kind of risk do you think is here?" I said, "Well, I think a lot of their debt seems to be floating rate debt, and held by money market funds." Arthur said, "Get Barry Barbash down here," and Barry Barbash came in. I said, "I think the only amount of systemic risk could be who are the banks, because they're all tender option, they're all these seven-day puts, and if there are a lot of banks with letters of credit behind that, and if it's concentrated with one particular bank, the Fed may need to be prepared to extend some sort of lifeline to that bank if there's a run on the bank. Because people will say, 'Holy moly, how is Last Union Bank going to be able to handle all these tenders coming in at the same time?' Well, you know, or they may be Japanese banks, or who knows."

As it turned out, a number of the tenders were basically backed by the Orange County pool itself, so that limited exposure. But we had our one moment of conversation with Alan Greenspan to relay this potential risk, and he came back and said, "No, we checked in on the exposure and it's pretty minimal. They're all Japanese, ha ha ha." And of course, they weren't. I mean, it was just a joke. And they really turned out, most of them looked to the Orange County pools. But there was beginning – there was a call with the county. The county was represented by a woman named Jean Costanza. Jean was somebody who I worked with on this deal. I told you I'm going to resort to tangible objects, but this is a California Public Facilities Authority solid waste deal for North County, San Diego. Jean was at a firm called Buchalter Nemer, the bond counsel on that. My client was the developer Ogden Haverhill that was actually going to be building the facility. So I knew Jean and really thought to myself, "Oh my god, Jean, what are you doing there?" A really sweet person, but what a mess that was. And there was some concern about the county's viability. I stayed up all night and did a primer sort of memo on how Chapter 9 worked, and there was a closed Commission meeting the next day. We talked a bit about Chapter 9 and how it works, and they can't be forced into bankruptcy; they have to choose to go in themselves, they have to have the authority to go in.

At the same time, there is a monitoring of – the Commission was really impressive. I mean that and watching the response earlier to the Mexican debt crisis, I mean just really the levelheadedness, the sound judgment that was coming from the staff, really very, very impressive. And there were a group of people who were talking to the banks that had the repo agreements with Orange County, and whether they would roll over or not really was going to be like the trigger as to whether they would go in or not. And so we're following that, and some of the concern, I think, as I recall, that some of the holders had was how they would be positioned in bankruptcy, because one of the sections in bankruptcy was pretty vague as to how their collateral would be treated in a bankruptcy proceeding, basically the securities that they had under the repo arrangement under which they extended cash to Orange County.

And so that was a sort of pause, and I think a number of them had decided that they were uncomfortable enough with that treatment that they weren't going to roll over the securities. We were monitoring this. We had started lining up a bankruptcy counsel of our own within the Commission. Interestingly, then Congressman Chris Cox went on CNBC and said that the county was going to file for bankruptcy before they did. They did file about an hour later. We watched what happened in the market. There was concern about how this would ripple through, and I think the next morning Arthur, Carrie Dwyer, and I went to a SIFMA conference – and it may have been in Washington, it might have been in New York; I don't remember.

But Arthur went out and clearly wasn't going to talk about how markets – but was talking about the municipal market and its strength and how people needed to have their wits about them. But there was this palpable fear of whether a bankruptcy in the municipal market of a general obligation creditor was going to trigger the kind of global fallout that had been the fear if New York City had filed for bankruptcy rather than just done the moratorium dance that it did. Fortunately, that type of concern didn't spread, but municipal derivatives – Robert Citron had this very complex set of investments that enabled him to, through the earnings on them, bridge a sizeable structural gap in the Orange County budget. Those things were sort of fixed in place in the way they operated and were highly illiquid, so he couldn't unload them pretty quickly. And unfortunately that year, '94, I think there were six different occasions on which the Fed raised the shortterm rate, which of course devalued those investments at each stage along the way, and led to the pressure that was put on him.

And that was the fall, of course, when the Republicans took control of the House and the Senate. Senator D'Amato became the chairman of the Banking Committee and called for hearings on municipal derivatives that took place in January of '96. I was the person who was asked to be the principal drafter for Arthur's testimony at that hearing. And really not much – I mean that was basically being a coordinator between Linda Quinn, Kate McGuire, Barry Barbash, and others, putting together really the Commission's view on regulation of local government pools, for example, because the Commission didn't have jurisdiction over the Orange County pool, or should it? And the Commission's position was no, but we need to encourage sound investment policies and oversight. And certainly, we need to use the bully pulpit to do that.

So it was a very interesting period. It sort of took off from there. In the middle of all of this, Bill Baker and Larry West are beginning to hear words and look into a practice called yield burning, and that played out over a good period of time. Bill was fortunate in having Larry, a very solid mathematical mind, and Larry could do stuff in his head that would take people a calculator to do. He got it. He was also extremely precise, and that was critical in just sort of accurately defining the alleged wrongdoing. That took on a good part of activity and brought in, as it turned out, a good portion of Wall Street and branched off into financial advisers. It was interesting, because a couple financial advisers were using their position as financial adviser to say, "Hey, we'll sell you the government securities for the escrow," which raised questions about fiduciary duty and their obligation.

And, at the time, there was a fellow named Hardy Callcott who came in to work in the General Counsel's office. He had been at WilmerHale. Hardy and I struck up a pretty good friendship, and there were a couple of roadblocks that we tackled. One was concerns about the reliance on counsel defense. We were hearing a lot from enforcement that cases were stalled because everyone was saying they relied on counsel, and where could you go with that? Well, we took a step back and Hardy dusted off the *Steadman* case, and we together worked on a memo that came out of General Counsel that the Commission blessed and sent around, that basically outlined the key steps: you have to have these elements, otherwise there's not a reliance on counsel defense, so here's how to tackle it. That broke the log jam and a lot of cases started coming forward. That was one of Arthur's big concerns.

Of course, Orange County offered the classic case, and the key in that, including a lot of the elements that went into the settlement of administrative proceeding with the county, was the 21(a) report that set out the duties of issuer officials when approving disclosure, particularly the issuer board. And that of course, that standard, Hardy and I had worked on the initial language. There was a huge series of snowstorms that January that shut down Washington for a week, but Arthur was at the office and expected everyone else, at least his senior staff, to be there. I lived over right by Georgetown University, so I just came down K Street and walked in. Sy Lorne was there, Dick Walker was there, and

Arthur of course, and Dick and Sy, Bill McLucas and I hammered out the standard that's embedded in the 21(a) report.

There was some back and forth the night before. There were two Commissioners then, Arthur and Steve Wallman, and Steve called me at about two o'clock in the morning and we were going over the wording and he was very concerned. He was saying, "We can't ask these board members to do anything greater than the duties that we as Commissioners have. They need to be able to delegate and rely on the review that is given to them and the assurances that their staff give them that they've adequately reviewed. And they have to be able to ask questions and inform themselves, of course, but they don't have to review and understand every single thing. They can delegate it." And we made sure that that concept the next morning was clearly in there to his satisfaction, and the Commission authorized the proceedings.

It continued, really, on that way for the next number of years. There were a number of significant cases that came forward. We ended up with, I think if you totaled them up, about 150 different cases, settled administrative proceedings or litigated proceedings that came out of the municipal market at that time. So this idea of having a mosaic really worked out, and I found that gaining access to Commission administrative proceedings was very, very hard. As the Internet was growing – I'll have to come back to the creation of the Office of Municipal Securities – I had some members of the staff basically do a catalog of every case relating to municipal securities, every settled proceeding, litigated case, 21(a) report that the Commission had brought and categorize them by participant, whether it was an issuer, underwriter, financial adviser or attorney, accountant, and put those up on the web page.

And so we started that. Our idea was to make this accessible to lawyers in the market so that there was no excuse that they would not be informed of the Commission guidance in the form of settled administrative proceedings, or in the actual case law that had emanated from cases the Commission took and won in court. That office came about. The opportunity for it came in 1995. The Orange County bankruptcy clearly signified the need for some sort of coordinating office. The Commission had asked me, particularly after the briefing I gave them on how Chapter 9 worked, to take charge of –

[End]