

Securities and Exchange Commission Historical Society
Donald M. Hoerl Oral History
with Kenneth Durr
October 28, 2021

Ken Durr: This is an interview with Don Hoerl for the SEC Historical Society's Virtual Museum and Archive on the history of financial regulation. Today is October 28th, 2021 and I'm Kenneth Durr. Don, it's good to see you today.

Don Hoerl: Good to see you.

Ken Durr: Thanks for taking some time to talk.

Don Hoerl: Thank you for giving me the opportunity.

Ken Durr: Yes. Well let's go back. I know you're in Colorado now, let's go back to where you grew up, where you went to college, how you got involved in the law.

Don Hoerl: I grew up in a small farming community, Boonville, Missouri, population 7,000. I did my undergraduate work at UCLA, graduated in 1968. I went to law school in Boulder, Colorado, and graduated in 1972.

Ken Durr: Okay. Did you take any securities courses when you were in law school?

Don Hoerl: You know, I did not. Although a curious thing, in later years, through my work at the SEC, I got to know a securities professor at CU.

I got to know my securities professor at CU, and he remembered me. He said, "You were a very good student of mine," and we talked about that, and he said, "I remember you though." I did not take a securities course at CU.

Ken Durr: Okay. So, what was your career path after you left college?

Don Hoerl: After I left law school?

Ken Durr: Law school, yes.

Don Hoerl: After I left CU, I was looking for a job, any job, and I wound up finding a job in Pueblo, Colorado in the district attorney's office which prosecuted local Colorado criminal law. Prosecuting violations of the Colorado criminal law, drug laws, burglary, assaults. I got assigned some murders, but never really carried them to trial or anything, they all settled before trial. But those were the kind of things I did for three years. From there, I moved to Denver, worked one year for a railroad company, the Colorado & Rio Grande Railroad and from there I went to the US

Attorney's Office in Denver, where I worked three years in the criminal division for the US Attorney's Office. And then three years in the civil division for the US Attorney's Office, where I handled routine civil matters, court condemnations, those kinds of things.

Ken Durr: Okay. How did you get linked up with the SEC?

Don Hoerl: I worked with a lawyer in the US attorney's office who had left the US attorney's office and had begun working as a trial counsel for the SEC, who had left the SEC, and in the meantime, I had left the SEC, had gone into civil practice for a while. I did not like civil practice and had run across him, told him I was looking for work. He had since left the SEC and he had said, "Well, why don't you look at the SEC?" And he suggested, I talked to Bob Davenport who was then head of the Denver office at the SEC. He introduced me, and I interviewed with Bob. It interested me, and in time, Bob talked to me, and it seemed like a good match, and Bob hired me on.

Ken Durr: Tell me a little bit about Bob Davenport and what he told you about the SEC's work out there in Colorado.

Don Hoerl: Bob Davenport had been with the SEC for many, many, many years, and Bob Davenport, in time, had become a mentor of mine. But he had told me that the work of the SEC was as trial counsel because that was the name of the position. Trial counsel served as the lead litigator in the SEC for all matters that were in litigation for the SEC, both administrative proceedings and federal court. And you handled all aspects of litigation. You were the lead litigator, although you were not exclusively the only litigator for the contested litigation. You handled discovery, you handled the in-court stuff in federal court, and you handled all aspects of the administrative proceedings, and you were just responsible for everything that happened in litigation. Bob told me that he expected me to handle those things and I think Bob was interested in me because I had quite a bit, by that time, I had maybe nine to 10 years of litigation experience.

I think Bob was interested in my experience and Bob was interested in my background and that's why he wanted me to come on board. He had a number of things in litigation. Bob, at that time, had filed a number of cases stemming from some investigations that he had gone through. I think at that time they had had quite a substantial number of cases filed resulting from some sweeps that had occurred in the penny stock area, the most notable one being OTC Net. But there were several others, and the person that had introduced me to him had just left and I think was anxious for someone to take on those cases. He had a vacuum and so he had asked me if I was interested in it. He was interested in my experience, so he had asked me to come on and to take those cases on. And there were some other things too that were pending.

And so, he brought me on, and at that period, I had just started with a small private practice law firm that was not working out for me and so I was anxious to find a new position. So, it was a good match for me, and obviously, he felt it was a good match for them, so I took the job.

Ken Durr: So, a case like OTC Net -- that was a pretty big deal for the Denver regional office at that point, so you jumped right into that one?

Don Hoerl: Yes. It was filed at that time and at that time there was a parallel criminal case that was taking place with those defendants. An interesting side note to that case - - one of those defendants was a man by the name of Juan Carlos Schidlowski. In time—I guess I'm getting a little bit ahead of myself.

Ken Durr: Okay.

Don Hoerl: But that defendant had got permission from the judge in the criminal case to obtain his passport. He had to surrender his passport to the clerk of the court to go back and forth from his home in South America and at some point in time, he had obtained his passport from the clerk of the court. He had lifted his passport from the clerk of the court and, at one point in time, he had taken that passport and gone to South America, and he'd actually never returned to the United States to answer to the criminal court nor to the civil case that we filed. But that, I think that's getting ahead of the story a little bit.

Ken Durr: Is this a boiler room case, OTC Net?

Don Hoerl: Yeah, OTC Net was a boiler room case. It was a kind of a huge case.

OTC Net was, I forget the number of brokers that they had, but I want to say it was around 75 brokers that they had in the boiler room. They were reputed to have that number of reps in the case. And they were reputed to have a practice whereby the brokers, the reps, had to stand up at their desk in the morning and they had to tape their phones to their face and they had to stand up in the middle of the room and they had to dial their phones and they couldn't sit down and remove the phone from their face until they had actually made a sale at the beginning of the day. Never verified that, but I had some deposition testimony to that effect.

Ken Durr: That's a tough way to make a buck.

Don Hoerl: It is a tough way to make a buck. They had to wear a silk tie to work every day. If they didn't wear the silk tie, they had to go home and get it. And the tie that they did wear, that was not silk, the managers walked around, they would cut that non-silk tie off of their neck.

Ken Durr: As a trial counsel now, how much involvement do you have in the enforcement process? Were you providing feedback to the enforcement team or were you just essentially on the receiving end figuring out what to do with what they provided?

Don Hoerl: Certainly not in the beginning because, by the time I first started there, and for the most part, the entire time that I was there, I litigated cases that had already been investigated and filed. I was not involved in the actual investigation. The investigations had already been completed and filed. As time went on, particularly when I would wind up in Salt Lake City that changed because I became more of a manager and I'm sure we're going to get into that by the time we talk about Salt Lake. But when I started in Denver, the cases that I worked, they were already investigated and filed. I was working with things that had already been investigated and worked up.

Ken Durr: Okay. You talked about the fact that your previous experience made this something that you were good at, and it gave Bob Davenport a reason to hire you. What kind of things did you have to learn? What was new about the SEC trial counsel position?

Don Hoerl: I'm sorry, would you repeat the question?

Ken Durr: Yes. What did you have to learn? You had a lot of experience from your time at the US Attorneys that was useful I get, but what did you have to learn when you came into the SEC as trial counsel?

Don Hoerl: Well certainly I had to learn the whole world of securities law. I had learned the criminal law that I had to work with in the US Attorney's Office, and in Pueblo with the criminal law, you sort of, you knew the elements of the offense, and you knew how to apply the facts of the case to those elements. Prosecuting securities law was more nuanced. You had to apply more of an analysis and more of... Well, it's an interesting question, because you had to bring a set of facts into an area. You had to make out a case for fraud, from facts, from the circumstance. You had to make out a circumstantial case and you had to make a context into fraud. You rarely had someone pointing a gun.

You didn't have a smoking gun and you didn't have a hard set of facts to apply to an element. You had to say, "This made out a case for fraud." You didn't have someone say, "I admit this," you didn't have a smoking gun. That's, that's a great question because I've never really thought about it that way, to be honest with you.

Ken Durr: Does this get to intent to defraud, the scienter issue?

Don Hoerl: I'm sorry?

Ken Durr: Does this get to intent to defraud? It's difficult to prove intent.

Don Hoerl: Yes. You had to create a frame of mind from a set of facts and circumstances and conduct that was not really that explicit. You had to infer things, to infer a state of mind and to infer a course of conduct from facts and circumstances that were not explicit. You had to make it more implicit and argue inferences more from facts and circumstances than from explicit conduct is the best way I can put it.

Ken Durr: Okay, that's good. We'll let the philosophy go for a minute and get back to some stories.

Don Hoerl: Yes. I'm sorry I couldn't do a better job with that.

Ken Durr: No, no, that's good. I just want to touch on Blinder Robinson because that's of those colorful cases from the Denver folklore, and you were involved in that one as well.

Don Hoerl: Yes, I was one of the members of the trial team that conducted the administrative proceedings. There were two other people on it. I was not the lead member of that team. That was a very long administrative proceeding. He was certainly one of the most colorful figures in the Denver penny stock market. He was kind of a wild character. There was also a parallel criminal proceeding on it. He eventually pled guilty and went to jail on it, as you know. One of the great stories from that is, at one time, during the administrative proceedings, at one of the recesses, he came storming out of the administrative proceeding and he was talking to a reporter or talking to one of the observers there. And he made a reference to one of the other members of the trial team. And he said, "If ever I need a heart transplant, I want his heart," referring to the other member of the trial team, "Because his heart has never been used."

Ken Durr: Was headquarters involved in that case?

Don Hoerl: They were not involved. Well, of course, they were involved in the approval of it, they were involved in the appeals and all of that.

Ken Durr: Right.

Don Hoerl: They were not involved in the trial of the administrative proceeding.

Ken Durr: Okay. Tell me about the opportunity to go to Salt Lake. How did that come about?

Don Hoerl: I, at some point, realized that I did not want to spend my career as a litigator. Lots of stress, lots of time away from the family. I wanted to go into management and Salt Lake was a smaller office. I wanted to get into management, and it was a small office. I thought that was a chance to do it in a smaller setting. Learn management, again in a small setting. The head of that office at that time was

retiring. I asked Bob Davenport, because at that time Salt Lake reported to Denver, and I asked Bob if he would give me that opportunity and he did.

Ken Durr: So, Salt Lake was a district office of the Denver region. Did it have a reputation? Were there things that came to mind when you talked about Salt Lake?

Don Hoerl: Sure. Salt Lake historically did have an exchange. As a matter of fact, I think, certainly at the time that I was there, there, it actually had a building that had the Salt Lake Stock Exchange. And I think that building still exists to this day. Salt Lake City was known as the sewer of the securities industry. It was known as the penny stock fraud capital of the world. And so, it had quite a reputation. I suspect it was a little bit exaggerated. It was fun. Well, we referred to it that way, but yes, it had quite a reputation as being one of them, it goes back to the days of the mining industry, in which small low-priced securities were traded. But it had quite a reputation as being a fraudulent small stock, fraudulent securities, penny stock fraud.

Ken Durr: What was the challenge for you when you came to Salt Lake as the director? What did you have to learn, what did you have to get up to speed on?

Don Hoerl: Well, Ken Israel came with me to Salt Lake. He was in Denver before I was, at the same time I was in Denver, and I really had to learn a lot about securities law. Ken Israel, he knew a lot about the securities laws. I had the litigation experience. Ken had the securities laws. He had an extensive background in securities laws. I think we had a pretty good team and neither of us had a lot of management experience.

It was a small office, both of us had to learn the management side of things. Ken had the securities business or the securities laws experience. I had the more practical side of things in the litigation side. And I think we made a terrific team. The challenge was that we had to learn Salt Lake.

We had to come to understand what the whole, mining, small-cap side of the business was, and we had to learn the Salt Lake side. The staff in Salt Lake was small and it was going through something of a turnover. And it had the reputation for being fraud ridden if you will. So, there were all sorts of challenges that we were going into, and Ken and I really co-managed the place, even though I was the head of the office. And the challenges were trying to get to know just the whole thing.

Ken Durr: You also had responsibility for examinations at this point, which I assume was something you hadn't looked at before.

Don Hoerl: There was a man there, there was an examination side of Salt Lake. There were, oh, two or three examiners, but they were managed out of Denver.

Ken Durr: Oh, interesting. Okay. So, the district was just an enforcement office.

Don Hoerl: They were, yes. An interesting side. I mean, an interesting footnote too, just the whole office layout to get to several of the offices, you actually had to walk through other people's offices, and you would start at one office and to get to, say, the fourth office down the way you had to walk through, you had to walk through other people's offices. So, if there was a meeting being held, you had to knock on the door and say, excuse me, I'm I got to get to that fourth office down the way.

Ken Durr: So that brought people together, ensured communications in some way.

Don Hoerl: Yes.

Ken Durr: What were some of the cases that came up? I assume that there were some that were formative—your first few big cases. Tell me about some of those.

Don Hoerl: Well, I think the real focus in Salt Lake that I recall were the cases stemming from our work with the US Attorney's office. At some point in time, the US Attorney—and I think it really came up through the Department of Justice, the FBI and the US Attorney's office. They one point they approached us with a task force, because the whole problem of the penny stock issues and the whole reputation for being the sewer of the securities industry, they wanted to form a—that whole reputation had really sprung to be a national issue. Even an international issue. They wanted to form a task force. They wanted to have an FBI sting operation, and they wanted to do an FBI undercover operation.

And they approached us. As a matter of fact, they wanted to have somebody assigned to their office from our staff to help develop some undercover operation and undercover cases. And they wanted to bring in some people to approach—to let it be known that they wanted to have a sting operation. They wanted to have a shell company, and they wanted to sell stock to the public and do pump and dumps, do what is known as box shops, and they wanted our assistance. And I thought that was a good idea. Went to Bob Davenport and Bob thought it was a good idea, but that presented certain problems because if you did that, if you did a pump and dump, that means that to some extent innocent members of the public would be harmed because they would be buying shares of the shell company that would have no real business.

So, in fact, we began thinking through this and we decided we would have to go to the Commission and get their approval. So, we developed a letter of understanding with the FBI Department of Justice, and we went through the Commission and the Commission approved it. And we developed a little bit of a plan. The Commission approved it, then the plan involved, we would have a shell company and there would be something like one sale. The FBI would have a shell company and there would be one sale of a share. There would be a sale of the shell company. And once that sale took place, then there, the promoter would be

arrested. The shell company would be taken down and then whoever bought shares in the shell on the other side would be reimbursed for their purchase.

And that would be the end of that particular transaction, that particular company. And then we'd move on to the next one. And we did that to the extent that there were about 90 to a hundred such transactions and such convictions that took place. That was a very successful operation. And we did that on over a period of, oh, I want to say over a year. I had weekly meetings with the undercover operators, or the undercover agents, over that period. We felt that was a very successful operation. And I think the FBI did that over more than just in Salt Lake City. I think they did that in a number of different cities. And we had one of our staff members assigned full-time to the US Attorney's office during that period.

That was in the late 1980s. We also had in the late 1980s, and this was Ken Israel's idea, we also had some significant trading suspensions. There were some promoters who found a way to revive some pre-1933—you were asking about some big cases. We, Ken Israel, identified some companies that were being promoted in the pink sheets. These were companies that were traded in what was known as the pink sheets. Some companies that had been incorporated prior to the enactment of the securities act. Therefore, they did not need to be registered under the 1933 act. They were revived. And they were revived by simply creating false documents that allowed them to be traded in the pink sheets.

And Ken Israel found a way to suspend trading. It was a mass trading suspension. There were two of them, and there were many—I forget the number of companies that we suspended trading in. And those companies were being traded and they were being traded fraudulently.

And again, I'm sitting here forgetting exactly how they were being traded to the public, but Ken Israel had developed a way to suspend trading on them, which resulted in them being unable to be traded to the public again. And that was a successful plan by Ken, that resulted in the suspension of that trading. That was one of the big actions taken by us in Salt Lake City. And that was an example of where Ken knew the securities act and led to successful action by the Salt Lake City office.

Ken Durr: So, these are two big, big cases that got headlines. And I take it that the objective here is to send a message to kind of change that, that culture that you talked about around Salt Lake City. Did that happen? Did that work?

Don Hoerl: I think it did. I mean, you talk about going back well over 30 years, but I think it did. And it's hard for me to look back and tell you what the culture was after I left Salt Lake City, because I think the work of the Salt Lake City office after I left, I think the cases that they brought and the work that they did changed. That's a reflection of the cases they identified in the cases they brought.

Ken Durr: Okay. And that was Ken Israel. You kind of left him to step up when you headed out.

Don Hoerl: I'm sorry?

Ken Durr: Ken Israel stepped up when you headed out to Philadelphia, right?

Don Hoerl: Yes.

Ken Durr: So, one of the things that's interesting here is that I think you're one of the few people I'm talking to who has led four different regional offices. And you're, we're going from Salt Lake. I guess Salt Lake was a district office at this point.

Don Hoerl: Salt Lake, Philly, Denver.

Ken Durr: Right.

Don Hoerl: Fort Worth.

Ken Durr: Right. This is '93 when you left Salt Lake, and this is a period, I think Arthur Levitt's come in as chairman. And there's a bit of a reorganization. Was this your move part of that reorganization?

Don Hoerl: Yes, it was. I had left Salt Lake City for Fort Worth at the same time that there was the reorganization that you're referring to. There was a realignment. A number of the offices that were regional offices became district offices and reported to some offices that remained as regional offices. One example being the Philadelphia office, where I went to, became a district office of the New York office. Others, like Fort Worth, became a district office of the Denver office. Seattle became a district office of the Los Angeles regional office and others too. I forget exactly. I think the Miami office became a district office of the Atlanta regional office.

Ken Durr: Okay. So, you went from, you went from Salt Lake to Philadelphia in 1993. What were your first impressions? What kind of things made you say, "oh, well this is different," or "I'm going to have to take a look at this?" What was the learning curve coming into a place on the East Coast instead of the Rockies?

Don Hoerl: Well, the West to the East, just on the personal level of course was different. I think the big difference for me was that just having a huge, huge, huge examination program was the major change. I had to learn the '40 Act program from scratch, because I didn't really have much of a background in a "40 Act program. Of course, the Philadelphia area has a large broker dealer program and has a large investment advisor, investment company population. Just, just learning what that is all about. Not only in terms of just that kind of an industry, learning about having well over half of your staff as examination staff doing that kind of

work, and learning how they go about their work was just a tremendous challenge for me. The titles of the managers of the people who managed those programs were assistant directors.

And we had an assistant director for the examination for the '40 Act side and for the broker dealer side. They were very experienced. They had been there a long time. I got to know them very well, spent a long time with them, just understanding their program, how they made their assignments, how they went about what they did was—as I said, I just spent a lot of time just understanding the nuts and bolts of their programs and how they interfaced with the enforcement side of the program, how they made their referrals from the examination program into the enforcement program. Just took up a tremendous amount of my time. It was a challenge for me.

They also would spend more time; the examination side spent more time with the enforcement side. They were much more aggressive, if you will, identifying cases for the enforcement program and bringing cases to the enforcement program. They were much more sensitive to what should be brought to the enforcement program. And I saw that as a good thing. And I saw that as more of a—in comparing how that worked in Denver and in Salt Lake City, I saw that as more of an opportunity if you will, for examination to work with enforcement.

Ken Durr: Was that just something that just happened in Philadelphia? Were there structural reasons why you encountered that there? Was it the nature of the cases?

Don Hoerl: Well, I think it was more that there were more cases there. And I think that it was a cultural difference if you will, because in Denver, I think the personalities were such that there was a more of a—in Denver we were more goal oriented to get our examination program completed because we want to get our examinations done. And maybe in Philadelphia, there was more, “hey, there’s a problem with this particular investment advisor,” or “there’s a problem with maybe a fraud going on, or a problem with the conduct, with the behavior that needs to be addressed by enforcement. So, let’s take it to enforcement.” There was more of a sensitivity, if you will, to the behavior that needs to be addressed, than maybe was present in Denver.

Ken Durr: Another thing that’s going on is that in the exam program you’ve got OCIE coming in and OCIE is trying to bring a little bit of national coherence to the exam program. Were you aware that that was happening?

Don Hoerl: Well, OCIE wasn’t in Philadelphia yet. OCIE really didn’t come into being until, oh, I’m going to say, if I recall, 2009, 2010. It is still exam, I think.

Don Hoerl: I think there was the beginning of the sense that we want this to become a national program, and we want enforcement and exam to become more a national sense or a national program. Everybody is one, but it really hadn’t been thought of that

way. I think there was a beginning of it, but it really wasn't there yet. I think that was part of the reorganization as it was beginning. People were beginning to think that way. I think that was part of the reorganization. It was a sense that's where they were heading, but it wasn't there yet. If that was behind your suggestion of OCIE.

Ken Durr: Yes.

Don Hoerl: But I think there was more of a sense that the exam and enforcement programs ought to be more together when I was in Philadelphia and when they were naming districts as part of regions. But no, in my view, and this is my view only, it wasn't there yet. But in Philadelphia, I think there was more of a sense that the examination enforcement programs were there. I didn't have that sense when I was in Denver and Salt Lake City.

Ken Durr: Okay. So, for example, leads for cases might come from the exam staff more often in a place like Philadelphia.

Don Hoerl: Yes. I don't think the types of cases in Philadelphia were different, but I think the mix of cases was different. You would get more broker-dealer kinds of cases, broker-dealer, and '40 Act cases. I think there were more of those in Philadelphia than there was in Denver, but the mix of cases, there were more '40 Act, more broker-dealer cases in Denver. A good example being the well-known case, the Zandford case. That turned out to be a groundbreaking case called the Zandford case.

Ken Durr: Yes.

Don Hoerl: The Zandford case being the case where a broker-dealer was using his discretionary authority to steal money, or to exercise his discretionary authority to sell securities of his client's, and then stealing the money and using the money for his own purposes. That was a case that wound up to be a criminal case as well. He got prosecuted criminally, and then we got a summary judgment based upon the criminal case in district court. Well, in the district court, he argued that we didn't have a right to the summary judgment because his theft of the funds was not in connection with the sale of securities. Well, at the time, we got the summary judgment. We brushed off his in connection with argument, and so did the federal district judge.

Well, that eventually, as you may know, reached the Supreme Court, and the Supreme Court agreed with us that it was "in connection with," but we'd never realized at our level, that there was really much of an issue with the "in connection with" argument. But it did reach the Supreme Court because at the appellate level, the appellate court said, yes, this is not "in connection with." Well, we didn't see it that way, and we sort of disregarded it. It eventually reached the Supreme Court. The Supreme Court said, yes, this is in connection

with the sale of a security. But we didn't think it was much of an issue on the "in connection with," at our level. We didn't even see it as an issue, and we didn't deal with it.

And the truth is, we didn't deal with it very much at the Philadelphia district office level, because once it got out of our hands, out of the district court level, it was dealt with by the general counsel's office level. But it's surprising how something you don't even notice at the district office level, at our level, and at the Commission, how something like that can elevate itself so quickly or so surprisingly into a Supreme Court issue. We just didn't see it as an issue.

Ken Durr: Right. It's interesting. This definition of "in connection with" was not something that the SEC was working on, like a definition of insider trading or something.

Don Hoerl: No. We just brushed it off at our level. And then it got to the appellate court level, which of course, the general counsel dealt with, and then it got to the Supreme Court level. We didn't even blink an eye at it. It just breezed right by us. When we wrote up our motion for summary judgment, which is how we dealt with it, I didn't go back to it, but it probably had a one paragraph, and a short paragraph at that, at our level. It was just nothing to us, and yet it wound up to be a Supreme Court case and wound up to be an expansion of an argument.

Ken Durr: So, you're a district office in Philadelphia, and you talked about, there were some folks who'd been there a long time. I want to know about your relationships with the New York Regional Office. How much authority, just checking in with them or actually exercising authority, did they have? And did this cause a morale issue for the folks in Philadelphia?

Don Hoerl: Well, it was a new relationship, and we were feeling our way, trying to figure out exactly what the relationship would be. Historically, when we were a regional office... Well, I think the change was mostly with the enforcement side. And historically, when we would complete our investigations or when we had issues in our investigations, a regional office would go to Washington with questions, with issues. When we completed our investigations, we would take our memos directly to DC. We would take our memorandums to DC. They would review them, and there would be the back and forth as to the issues, to the memos, and to issues regarding settlements.

Now, we had to take them to New York, and New York was very extensively involved. They had assigned one person to be the primary reviewer, and they gave it a very rigorous review. And that person would take a very, very close look at it for everything ranging from, were we citing the correct cases, to grammar, and that would impact very heavily on us. My practice was to look at the memo very carefully before it went to New York. And I would look at everything from grammar to, is the settlement, right? Are we using the right cases? Do we have the right evidence? Have we marshaled the correct evidence?

And it would be sent to that particular reviewer and there would be an exchange between that reviewer and me. And the exchange would, on occasion, significantly slow up the process and that would impact morale. It was very substantial. And as I say, it would impact morale, and there were occasions when there would be hard feelings.

Ken Durr: Was there anything you could do to mitigate that, as the leader there?

Don Hoerl: Well, it was a challenge, of course. I would talk to the reviewer in Washington. Occasionally, I would talk to the head of the office about that and try to work through that, and you had to bring your best people skills to it.

Ken Durr: Something that showed up on some of the research I did was that Philadelphia actually took action against the Philadelphia Stock Exchange itself, late in your tenure. Can you tell me about that?

Don Hoerl: Yes. And I don't have a great memory of that. My best memory is, it was late in my tenure, and I was in my transition back to Denver. And I think the home office was heavily involved in it. I know our people were involved in it. I remember we were involved in the examination of the Philadelphia, and I know that staff out of Washington were—staff and management in DC were involved in both managing the examination and conducting the examination. And I know our people were involved in the examination of it. I was not heavily involved in the examination of it, but I know our people were. The funding of the operations was of concern, but beyond that, I don't have a good memory of it.

Ken Durr: Okay. It would make sense that DC would be involved. This must have been a very touchy subject.

Don Hoerl: Oh, yes. And I know they were concerned with it because I know it was the viability of the operations. And it was, if I recall right, it had to do with the funding, and the money, and how the funds were flowing. And of course, that's always a touchy subject.

Ken Durr: Yes. Well, let's take you back to Denver. It's 1996, something like that. So essentially, you're coming back to Denver a good 10 or 15 years later. Tell me how the office had changed over the years.

Don Hoerl: Well, one, and this is not a major one, but they had stopped reviewing small offerings that they had done before. And so, a lot of those personnel had changed. The examination people... well, a lot of the supervisory staff had changed. I think they had changed just about that time, both on the enforcement and on the examination side. That's about the time, at least to my way of thinking, technology was beginning to take hold, and people who had been there both on the enforcement and the examination side, who had done their work and done it very capably, who had done things—and I don't want to say old fashioned,

because that carries with it, sort of a pejorative tone, and I don't mean to be that way. But those who had done it handwritten, doing it the old-fashioned way with charts, had not gotten used to electronics. An example being, how do you chart trades? Well, now you could do it by calling for electronic trading. They had done it by getting boxes of trading tickets.

Well, they simply weren't used to doing it the newer way, but they were retiring, and their supervisors were also retiring. So, a lot of the personnel and their supervisors were leaving, and that was true on both the examination and the enforcement side. So that was one change that had been taking place. And now changes were taking place in terms of the kinds of cases too because the kinds of cases that were beginning to take place were, oh, the local kind of pumps and dumps, the issuer frauds, the false press releases. All those kinds of cases were beginning to change and were moving away from the more localized cases into cases that were more national in character. You were seeing cases that had more of a national impact in many ways. You were seeing the rise in accounting cases. You were seeing larger Ponzi schemes. You were seeing large accounting frauds. You were seeing large internet cases. They all seemed to be seeing a national impact.

You were seeing an examination program that was sort of... The examination program was viewed as having a national impact more than just a local impact. The regional offices were seeing us supporting a national examination program. Things were larger in scope, in my view. You were feeling yourself as sort of a national—it was a national SEC and not just a regional one. When I left Denver and Salt Lake before it sort of had a feel of being regional. It was the Denver region.

Now, it was Denver as part of an SEC. And I think that that sort of bore itself out, because as you begin reaching towards—and this is getting a bit ahead of things—but when Madoff struck, 2008, and in 2009 and 2010, when OCIE and all the specialty units came in, that's when in my mind things truly happened. When I look back on it, the OCIE and when the specialty units did come into being, that trend really began, when I look back on it, it really began to take place back when I went back to Denver in '96.

Ken Durr: And computer technology would've been a big part of this I imagine.

Don Hoerl: Yes because you could communicate with the then version of Zoom.

Ken Durr: Right.

Don Hoerl: You could have weekly meetings nationwide. You had the technology to do that, and we began to do those kinds of things. You could communicate.

Ken Durr: Yes, that's a good one. And we haven't touched on it, but throughout the years, how did headquarters maintain relationships with the regions? I believe there was a week-long meeting in DC, things like that. Can you tell me about some of those efforts?

Don Hoerl: Well, yes. And I'm not exactly sure when it began, but I know at some point, we began to have weekly enforcement meetings where everybody would be on a conference call. And I want to say Monday meetings in which you would have exchanges where you would see everybody, not necessarily at the same time, but you could communicate. The enforcement director would be on television, and you would have a conference call, and you would talk about significant events coming. You would all report in as to what you were going to be filing, and you would—I'm trying to recover when that all started, but you would have those, and you would hit a button and you would talk about what you were doing.

Ken Durr: Were you in Philadelphia? Or were you in Denver?

Don Hoerl: No. I don't recall them happening in Philadelphia.

Ken Durr: Okay.

Don Hoerl: I think they started some time when we were in Denver.

Ken Durr: Okay. That's a good enough timeframe. And that goes along with what you were saying earlier.

Don Hoerl: Yes.

Ken Durr: Things kind of became nationalized.

Don Hoerl: Yes. And then at some point, we began to be able to plug in, in the same way with Commission meetings. We would have the capability at some point to plug ourselves in, to present our cases to the commission. And there would be a time when we would go back to present significant cases to the Commission in person. And there was a time in which we would present... well, the folks in Washington would present our cases for us.

Ken Durr: Right.

Don Hoerl: That evolved into our going back to present significant cases. Then, there came a time when we would present our cases by television. And significant cases, we would go back and present our significant cases in person.

Don Hoerl: That would involve us going back, say a day earlier in which we would walk around to the Commission offices a day early to talk about issues in person to the various commissioners, and then present a case in person at the Commission

table. Then there came a time when we would present all of our cases by television or by video, I should say in person.

Ken Durr: Okay. Well, let's talk about some of the cases in Denver and in the period in which you are now regional administrator. For example, you mentioned accounting cases, accounting fraud cases. They just came in a wave.

Don Hoerl: Yes. I suspect maybe the wave is continuing. I don't know because one of the things I did when I retired, I said I was not going to get on any service that, every time a commission filed a case—I have not been on a service that pings me every time a commission case is filed. I just stopped. But I don't know, the commission cases are filed any number of them, but I think the most notable one was the Commission's case against Qwest International and Joe Nacchio. It was a financial fraud case, probably the most notable one that we filed. They were actually officed in the same building we were. He was kind of a colorful case.

As a matter of fact, there were a number of times in which I happened to be on the same elevator with him. He was quoted by one of the other members of our staff, who obviously Nacchio did not know was a member of our staff, but he was riding on the elevator, and they were talking about our investigation. He was talking to one of his staff and he talked about us. He said, "Oh, they couldn't find a fraud if it was an elephant in a haystack." But we found the damn thing.

Anyway, it was a multifaceted fraud. We brought the case. It was a multifaceted accounting fraud. They were backdating contracts to meet revenues in certain periods. Backdating contracts to meet revenue targets during certain periods of time. They were counting non-reoccurring revenue as if it was reoccurring revenue. We found an email in which one of the managers wrote another manager saying, "there are repercussions if we don't make our numbers, but oddly enough, no repercussions, if we cut corners." But there was a parallel criminal case, he wound up going to jail for a number of years. He went to prison. We worked closely with the criminal authorities on that one. As we did with a number of the accounting cases that we worked on. I guess that's one of the things that I take some pride in. I guess because of my work in the US Attorney's Office, I did try to cultivate work with US Attorney's Offices.

But anyway, he went to jail with that. We had almost weekly meetings, weekly lunch luncheon meetings with the US Attorney's Offices on that. I think that was successful, we a civil case, I think we had like seven different officers of Quest that we had civil cases against, Nacchio was the only criminal case that came out of that. He was convicted on, I want to say, 23 different counts of insider trading on that.

I just forget, and I had the numbers on hand right in my mind before we started, but it was a multi-million-dollar fraud. That was probably the biggest accounting fraud case. We had several others, we had InfoUSA, which was undisclosed

related party transactions. He caused nearly \$10 million in payments to be made for personal luxury items, 20 cars, jet travel club membership, several homes. American Italian Pasta Company. Accounting fraud led to a criminal prosecution, overstating pretax income overstatement. We worked with the criminal authorities, in Kansas City, US Attorney's office there, the FBI.

Ken Durr: Was the Commission interested in coordinating on these accounting fraud cases since this was a nationwide phenomenon?

Don Hoerl: Well, I don't think it was a Commission-wide effort. I think for the most part, this was our effort here in Denver. I don't recall that it was a coordinated effort by the Commission. I think the Commission was interested in it. I talked to DC, but I didn't think it was necessary, and I think the Commission was aware of it at the time that we presented the cases to the Commission. I think they were certainly aware of it, but I don't think it was like something that I went to the Commission with and said, "We need to coordinate on a nationwide basis on these matters." Well, to answer your question, maybe more directly, I don't think it was something like we need to coordinate on the commission wide basis to get these accounting cases presented to US Attorney's Office on a nationwide basis.

I think it was left to individual regional offices to go to the US Attorney's Offices in the particular regions. I think individual regional offices would go on their own. I think several did, I think most of us tried to cultivate relationships. I think many of us did successfully go to US Attorney's Offices to say, "This is a case you should be interested in." I think US Attorney's Offices were interested and did pick them up, but I don't think it was a nationwide effort to do this.

Ken Durr: Okay. We talked about the fact that you were at four different regional offices, and I want to get to Fort Worth. You were kind of dispatched down there, I guess, for about a year. Tell me the background to that.

Don Hoerl: I think there was a rough patch that was going on. The head of the office left, and they wanted some outside leadership, and they asked me to go down there and lead the office for a period of time and I did. They had a great staff down there and I don't know what there is to say about that beyond I went down there for a period of time.

Ken Durr: Well, you were talking about how the regions had their own kind of cultures and they could be different in certain ways. I wanted to get a sense of whether you developed an appreciation for Fort Worth's culture.

Don Hoerl: Well, yes. I did appreciate their culture. They had a great group of people. They had great leadership in place. They had a good group of senior leadership down there. They had experienced leadership; they knew what they were doing. They really didn't require a great deal of direction.

Ken Durr: Okay.

Don Hoerl: I think they just needed someone down there to sit in the seat and sign off on the various things that needed signing off on, to be honest with you.

Ken Durr: Okay.

Don Hoerl: The head of enforcement had been there a long time, knew what he was doing, knew how to lead an investigation. He was a former assistant US Attorney. He had headed a trial unit and headed some investigations. Again, knew what he was doing and how to, how to get people to get things done. On the examination side, they had some experienced leadership.

Ken Durr: Denver was involved with mining stocks. It kind of revolved around mining stocks in the old days. Fort Worth was oil and gas. So, I wondered if there were any traces of that left.

Don Hoerl: I don't think so. Certainly, during my first stint in Denver, there were traces of mining, yes. But I don't recall there being a lot of oil and gas left over in Fort Worth when I was there. Actually, I was only in Fort Worth from like... Oh, I want to say April to September.

Ken Durr: Okay.

Don Hoerl: Over a summer. I'm trying to think of the cases that they had. I don't recall that much oil and gas left over.

Ken Durr: Okay. Well, let's head toward the later period. We've sort of skipped over that 2008 period when the Madoff case hit. That had a formative effect on a lot of things. Tell me about that from your perspective.

Don Hoerl: If I recall right, I was named head of the Denver office, permanent head, in late November, early December of 2008. Madoff hit in December; I think?

Ken Durr: Yes.

Don Hoerl: 2008. That resulted in transformation of OCIE, our transformation of the exam period and creation of OCIE. That transformed everything that sort of alerted all of us to... Ponzis had been around a long time. What really happened is that it dawned on all of us that Ponzis were more than maybe a few million to mega millions. And made us all realize that maybe we had to take a look at everything, and we did look at everything. There were mega meetings to look at mega Ponzis. We had meetings DC to put a microscope on everything, both on the examination and on the enforcement side.

I can remember meetings sitting around having big round tables on the enforcement and the examination side, talking about pieces. Then we broke up into groups to talk about everything again. I had not really looked at the examination side very much except when I was at Philly. But I had to re-look at the examination side in a different way and be part of the discussion about how we changed things on the examination side and how we changed things on the enforcement side.

On the enforcement side, there was the creation of the specialty units. I think the biggest challenge on the enforcement side, in particular, was dropping back just a little bit. The two things on the enforcement side were the creation of specialty units and the breakup of the branches. Because the units led to the breaking up of the branches, no longer would there be branch chiefs.

Ken Durr: Right.

Don Hoerl: That led frankly to some hard feelings, because suddenly, the assistant's job... The structure was you had the associate, you had the assistants, and you had the branch chiefs. Well, no longer would there be branch chiefs. That broke up one level of supervision. The assistants sort of became the branch chiefs, or it changed their supervision function. I think that led to some disorientation at the assistant levels. It led to some morale issues with the assistants. I think the challenge as associates and as regional directors to encourage the staff attorneys to take a hard look at joining the specialty units, I think there was some resistance to that.

There was some resistance, I think by some regional directors, some resistance by some associates to encourage joining specialty units. I for one felt that staff attorneys ought to take a hard look at joining the specialty units, because always there was a need to have good solid cases to work, working good cases, complex cases, important cases. I thought it was a good thing. I think working pump and dumps working smaller cases, especially for experienced attorneys.

Ken Durr: What specialty units did you have based in Denver?

Don Hoerl: Well, none in the beginning. Later, there were some specialty units based in Denver, and now I forget exactly which ones. But there were some later, in the beginning, none.

Ken Durr: Okay. Did you have specialty units come in from outside and work in Denver while you were there?

Don Hoerl: The way it worked while I was there was that staff attorneys would join a specialty unit being managed elsewhere.

Ken Durr: Okay.

Don Hoerl: I tried to encourage my people to join the specialty units. You couldn't say to a staff attorney "Join a specialty unit." They had to volunteer for it. In the beginning, I tried to encourage them to look at it. I don't know exactly how early they began doing that. They began as time went on. I forget exactly how that was. But I felt that it was important for them to do that because I thought those cases would be more interesting, more challenging, and it would give them a chance to work with other people and just learn other things, because they were experienced people. They were good people, and it would be important.

Now I think some of my assistants in the office would be resistant to that because they would be losing some of their good people, but I just felt that that was a good thing. I really felt that the trend was going so much in the direction of one enforcement nationwide enforcement group. That's the trend and we'd better get on board. Now I don't think everybody shared that view. I don't think some of the regional directors felt that way. That was my view.

Ken Durr: Yes. You didn't retire until 2013 or so, so you would've had a few years to see that unfolding?

Don Hoerl: Yes. I'm not sure exactly, I think the exam side continued to evolve. I think it was more of an organic thing. I think the enforcement side did also continue to evolve, but maybe not as dynamic as the enforcement side did.

Ken Durr: Okay.

Don Hoerl: No, I think the exam side evolved more dynamically than the enforcement side did. Or maybe more quickly is what I mean.

Ken Durr: Well, this has been great. I've gotten a lot of good insight on how things worked at the regions, and in various times. Is there anything that we haven't talked about that we should touch on?

Don Hoerl: Oh, probably, but I'm done.

Ken Durr: Okay. Well thanks very much for taking the time today to talk. I really appreciate it.

Don Hoerl: Thank you.