

**Securities and Exchange Commission Historical Society
Group Interview on Ivan Boesky with Charles Carberry,
Gary Lynch, Robert McCaw, Harvey Pitt, Therese Pritchard,
Peter Sonnenthal, John Sturc and Leonard Wang
Conducted on September 13, 2004, by Jonathan Katz and Daniel Hawke**

JK: Well, should I just begin by saying—everyone's introduced themselves—it's September 13, 2004. And it's roughly eighteen years, almost, before the anniversary of Boesky Day. Everyone's here to—to share their experiences and talk about the case and, hopefully, a little bit of the significance of the case, then and now. How—we're going to follow a very rough outline and we'll just see where the discussion leads us. The first topic is just the environment of the '80s. We don't have anyone identified to take the lead. Maybe Gary or Harvey, you want to start talking about this?

GL: Yes, I guess I'll take the lead then. It sounds like everything I say is so obvious. [laughs] I'm having trouble saying it. Starting in the late '70s, very early '80s, there was a wave of merger and—Merger and Acquisition Activity in the United States. While there were cases brought in the late '70s against insider trading, and certainly there have been some before that time, though relatively few, the—the large insider—insider trading cases really began in earnest, I would say, in 1981 with the St. Joe's case, the Santa Fe case and other cases where the amount of profits were in the millions of dollars. I mean, prior to that time, there were \$30- and \$40,000 cases being brought. And frankly, they were the norm rather than the exception.

And it became very clear, if one looked at the trading pattern prior to the announcement of a proposed takeover, either friendly or hostile, that there was almost always a lot of

activity in the target stock prior to the announcement because—so, unless it was merely coincidence, one would think that perhaps some people had access to inside information material, nonpublic information concerning that upcoming—upcoming announcement. So the cases picked up. The number of cases picked up. The amount of profits picked up. That led to the passage of the Insider Trading Sanctions Act in 1983, which gave the Commission the ability to, I think for the first time in its history, actually, levy fines for violative activity. And it was targeted at insider trading; it did not extend to other types of violations of the securities laws. But for violations of the insider trading laws, it could lead up to a fine of three times the amount of profit made or loss avoided. I don't know if anyone wants to jump in on this.

HP: Well, this is Harvey Pitt. I'll just jump in and say when John Shad became Chairman, he came from Wall Street, a strong Wall Street background. And most people who did deals, either as bankers or as lawyers, were troubled by the constant run-up of prices before trading—before a tender offer was announced—and Shad made one of his cause celebres was that he would come down with hobnailed boots on insider trading. And while I don't know this, my surmise is that he did that, in part because of this frustration that everybody who was associated with the process had. If he represented, for example, the bidder, this was really awful because it had the clear capacity, given the very competitive market for control of boosting the price up. So there was a focus on insider trading that had caused, I think, people to start taking a closer look at the kinds of behavior and the SEC sort of followed Shad's directive and

really began focusing quite heavily and quite competently on looking at trading patterns and cases. So the entire environment there was one of, I think, renewed emphasis on insider trading. Another, I think, factor, which we were discussing actually before we went live with this, was the whole notion of arbitrage back in that period of time. There were many people in the investment banking community who specialized in arbitrage, namely, watching contests for control and trying to decide initially whether prospective acquisition would, in fact, occur or whether it wouldn't.

But eventually it started to lead to pre-announcement activities where people tried to identify potential targets. And in some cases there were people who were trying to make events comply with their own sort of expectations and predictions. And so there became a lot of speculation, a lot of currency in finding out who might well be a target for a takeover, speculating about it. Stock prices would run up whenever that happened. And there was definitely a very frenzied type of behavior in that environment.

JS: But I think sort of transitioning to this case, the notion that the Dennis Levine case, the Boesky case and the Milken case came about by virtue of a targeted, focused, investigative effort pointed to those two people is a misnomer. It was more accidental. I mean, one of the frustrations from an investigative point of view of the activity that Harvey described is, I think, while there was perhaps a widespread recognition that something was going—that there was a degree of corruption, that was going on that was undetected. Finding that degree of corruption was very, very difficult because, A, trading

patterns were readily explained by virtue of people being professionals and, B, the degree of candor one received was not always high. Leo, for example, long thought—before Dennis Levine was identified—long thought Dennis Levine was Dennis Levine because of an experience he had that occurred to him in connection with a prior investigation of a takeover.

LW: Yes, well, John's earlier point, I think, bears emphasis, particularly from the standpoint of the difficulty of the investigation. When I got this investigation, I was a branch chief—I'd been a branch chief five months—I thought it was a dead end. I was told, "Look at trading by the Bahamian bank." We had no treaty; we had no MOU. We were able to secure the testimony of a couple of brokers from Merrill Lynch who, according to an anonymous complaint, were involved in it. But their testimony didn't take us anywhere, except back to the Bahamian bank. We just had no way to get around Bahamian bank secrecy laws. And so I thought this was a sure-fire loser.

But before giving up, we just thought we'd play a couple of cards, try a couple of long shots. One was we sent a letter to the bank. We faxed it, asking the bank to voluntarily provide information about this trading. We thought that was like a laughable notion at the time but we had nothing to lose. And the other thing we did was we put out a border watch on the portfolio manager, whose name we had, who had been involved in the trading. And that I also thought was a dead end, because I just couldn't imagine this guy would come to the United States, particularly after we sent him a letter asking for

voluntary cooperation. You can't imagine he'd come to the U.S. after learning about our investigation.

GL: Leo, was the letter sent to the bank or to him personally?

LW: It was sent to the bank but I think his name was on it.

HP: This was Bank Leu, the Bahamian branch of Bank Leu, which was at that time an independent Swiss bank—actually, the oldest Swiss bank, I think.

LW: So after doing this—and I was working with Peter Sonnenthal. After doing this, Peter and I went on vacation. And then I was gone on vacation for about three or four weeks. When I got back, my assistant director, Paul Fisher, told me that the portfolio manager, Bernhard Meier, had, in fact, come into the United States. The Border Watch had, in fact, picked up on his arrival. [laughs] And we had managed to serve him. And to this day, I'm still astounded that this sequence of events happened.

GL: Oh, I have to say, I'm not. I think today it would happen. I mean, I think that bankers travel. I mean, I don't think one request would shut down all travel between a bank in the United States. I think in 2004 yet, with a similar pattern of conduct, we'd still have foreign bankers traveling and visiting the United States.

JS: Let me sort of step back, though, and just for people who aren't as familiar with what happened as we are, just a little bit of history. There were a number of investigations under way at the time, of which this was one, involving patterns of trading using offshore bank accounts. There was an earlier one that I think ultimately did not work out very well. Then this one came along, as Leo indicated, from an anonymous source, which was probably connected with Merrill Lynch. When it came in, Peter Sonnenthal, who's to my right, graciously agreed to do it. Leo agreed to supervise it. Because the other investigation was going nowhere in a hurry, many people were not enthusiastic about doing it.

And one of the problems was that the pattern—one way that other cases had been made—and there had been cases involving trading rings before but usually there was a common thread. All the deals in question were somehow connected to a particular investment bank or a particular law firm, or a particular printer. Sullivan and Cromwell was one. There were other issues. Here—and I know Peter went to great length to try to find every conceivable common link. My recollection is that it took a lot of time and there wasn't one.

PS: What we did was obtain chronologies and correlate and create a database of the names of people in the deals. And ultimately, because of the people involved, it would be possible to say, "Okay, there's just one theme but if you go back over the chronologies, you'll find everybody involved who is part of this ring. The initial work was done in a windowless

office, sending out letters and delay after delay after delay interposed by defense counsel.

And this is something that, I suppose, continues to this day. And it's the challenge of doing an investigation, to continuously apply, follow up, and obtain the evidence necessary to move forward.

LW: I'd like to just add that this investigation was done before we had PCs. We did have Lexitrons, which are these automated typewriters. But we did not have PCs. And it was Peter's tremendous organizational ability that allowed us to marshal this enormous amount of data into a coherent fashion, which, later on in the story, when we get around to pursuing Levine on an emergency basis, Peter was able to pull all this stuff in his file. And we were able to put together a coherent complaint that really laid out the story.

HP: Before we just move on, there are a couple of observations. One is, if you are juxtaposing this timeframe of the early '80s, the general rubric in insider trading cases was that the staff would, after getting a chronology—would bring in the people who traded, assuming they were subject to process and then ask them why they traded. And people would explain their rationale and reasons. It's interesting because today, although there hasn't been an abatement of cases, there's much more information available. I mean, today people could make much more persuasive cases by just sweeping the Internet and trying to find every reference to a particular company. And you'll find rumors or articles or what have you, but back then, the Internet wasn't in existence.

And people were required to explain why they traded. The other thing to bear in mind is, I think that the bank took the SEC's letter seriously. It surprised me that Bernie Meier, who was the portfolio manager, decided to travel to the U.S., because he did have an option. He was coming to visit his lawyer, and his lawyer was willing to go to the Bahamas to visit him. I have that on very good authority. And Meier was very adamant that he was going to come to the United States, stay at the Waldorf Astoria and meet with his lawyer in Manhattan. And that's indeed why he showed up. But this was something that could have been foreseen and, indeed, it may have been foreseen but it wasn't prevented.

GL: I want to make a point that I think John alluded to anyway, but I'll make it directly. And Harvey was gracious enough to say good things about the Insider Trading Program that the SEC ran in the early '80s. In fact, the public perception of it, at least some at least reflected in the press, was that it wasn't working at all; it wasn't doing a very good job. I remember the article (I believe it was in "Fortune" or "Forbes"). The headline was "The Un-winnable War on Insider Trading." And I do think that was also not only an external perception, but reflected somewhat internally.

There weren't a lot of people who were really dying to work on insider trading cases, because there was the impression that there were too many dry holes, that a lot of these cases went nowhere and you could spend a year of your time and not end up with a case. And this wasn't the only one. I remember one of the other cases that we made, at the time

had a huge impact, the Paul Thayer case when we sued him—he was the Deputy Secretary . . .

LW: Secretary of Defense.

GL: . . . at the time. And I mean, I remember very well in that one the staff attorney who was assigned to the case. At least one staff attorney who was assigned to the case was adamant that she had to be taken off of it because it was a dog and hurting her career. And I was asked then as an associate director in the Division of Enforcement by the then director to see if I couldn't do something to help her, given that she was assigned to this dog case.

HP: Yes. And you certainly took care of that problem.

GL: [laughs] As it turned out, that became one of the big cases of all time. But it wasn't as though this was viewed externally—the Insider Trading Program was viewed externally or internally as a wonderful thing to be involved in. I think that's important to know, because I do think it influenced some of the decisions that were made, both in connection with the Bank Leu case and then some of the later cases, as we went on where it—which represented somewhat of a departure from decisions that had been made previously.

JK: Wasn't part of the problem also the—the questionable legal status of these sort of—trading? And the theory of insider trading was in flux at the time, wasn't it?

GL: Very much so. You had the Chiarella case. There was another case brought against a Wall Street reporter that was very controversial, Dirks.

HP: Winans.

GL: The Winans case brought against a reporter who tracked in the names of companies that were about to appear in the Heard on the Street column constituted inappropriate conduct, illegal conduct, or whatever.

JK: How did that affect staff doing the investigation, knowledge that—that the theories were uncertain?

GL: I don't think it really did. I think it was more that you wouldn't be able to put the facts together.

TP: I think it was the theoretical question about whether insider trading was a violation or not, but the fact that there were many cases that were dead ends, because, frankly, without somebody talking and coming forward, they really were very difficult to put together.

RM: There was also a lot of economic literature out there, including, I believe, some from the Commission's own economic staff, that suggested that the run-up in advance of takeovers was a market phenomenon and not the result of a widespread illegal conduct. So the whole atmosphere . . .

JS: Or that the illegal conduct was economically beneficial.

TP: Right.

GL: Exactly. That it made for efficient markets, that it was a good thing to encourage insider trading, because then the markets more quickly reflected what the market price should actually be of the security.

JS: In fact, there was a "Wall Street Journal" article with a graph in it, the editorial, which . . .

PG: The "lynched" markets.

JS: This was the article, which depict, compare . . .

TP: The "lynch mob."

JS: . . . compared and contrasted two markets, one of which was a straight line going in an even way. And the other one showed a price, an immediate jump and then an immediate leveling off. And the latter one—one was labeled "The Efficient Market." The other one was labeled "The Fully Lynched Market."

HP: I do want to say I recollect, having spoken to Gary at that time, and he was not as amused by the editorial as [laughter] we all seem to be today.

JS: But, I mean, my own view then and now is that if you're the government and the "Wall Street" editorial page doesn't like what you're doing, you must be doing something right, because generally their view is that if you do nothing, that's the best thing. But having said that, and the thing that made—I mean, made a difference here too though is that the prior—once—and this was due to brilliant work on Peter's part, as well as the late Ed Harrington, that a subpoena was served giving the SEC jurisdiction over the bank, because the previous cases in New York had established a basis for the Commission to see various forms of compulsion from district judges that could threaten the bank's well being in the United States in terms of its ability to do business without complying with the bank, notwithstanding the provisions under Swiss or Bahamian bank secrecy.

HP: That's an important point because, from a bank's perspective, this was a bank that, as you noted a moment ago, was a Swiss bank with a Bahamian branch. It was the Bahamian branch that was the center of activities but they also had a New York representational

office. And, as John is pointing out, there was definitely a possibility that, if the bank itself could be deemed to be implicated in some of the activities, then there could be an assertion of jurisdiction over at least the New York presence. I think it's also fair to say that, whether the portfolio manager's service constituted service on the bank or not was not an issue, that it was in either the bank's or the SEC's interest to try and litigate, because that could have been a very complicated issue. But the bank was much more concerned about its international stature, as opposed to whether or not it was going to win or lose if somebody tried to seize some assets that resided in New York.

PS: Two things. First, your management abilities were great because I never had a clue that insider trading was not a high priority or an attractive place to work. And then [laughter]
...

HP: Apparently, you're saying you were duped.

PS: Well, [laughter] pleasantly so. But I think after the testimony of Brian Campbell, it became clear that this was not a typical case. And the attention given to it in terms of the effort was great. And there was an extraordinary amount of follow-up to measure the progress of obtaining testimony as well as documents from investment banks and others who were involved. Brian Campbell had no credible explanation of several different deals. And it was clear there was something very big, that it was worth the effort. And I think probably you all can speak to that how very quickly this became a priority.

LW: Well, I think it became a priority in part because we managed to get the subpoena served on Bernie Meier.

GL: Leo's absolutely right. It became a priority that day because that was a huge breakthrough.

HP: We ought to move this, it seems to me, from the Bank Leu event to Boesky by just giving sort of a little transitional bridge, which was that eventually the bank and others of its personnel, but not Bernie Meier, worked out a settlement with the SEC whereby a procedure was created for the bank to apply to the attorney general of the Bahamas to get the name of the person whose account had involved all the trading. And from the SEC's perspective, I think this was a no-brainer deal because they were not giving up their right to then bring litigation if, in fact, the attorney general said no. But from the bank's perspective, this was a no-brainer because in no other case in which the law had been made about seizing assets and so on had there ever been an effort to try and get a governmental official of another country to be petitioned to render a decision.

Much to everyone's surprise and in a decision that he later disavowed, the attorney general not only allowed access to the identity of the account holder, which was a fellow named Dennis Levine, who worked at Drexel Burnham, but also did so on the theory that, since this was a securities trading account, it really didn't fall under bank secrecy,

which, had that conclusion stood, would have eviscerated bank secrecy completely in the Bahamas. And I think later on they realized that.

GL: Later on was within 30 days.

HP: But as soon as the attorney general ruled, the bank—I have it on very good authority—made a phone call to Mr. Lynch through his counsel and gave him Dennis Levine's name.

GL: I just wanted to say one thing though. You talked about the Commission's decision to enter into this arrangement as a no-brainer. I remember it being discussed at great length as to whether or not we would enter into an arrangement where the guilty party, the bank, if in fact they actually knew who this person was and executed trades for them would be let off, if you will. Not prosecuted, not fined heavily, whatever. And to my knowledge, that was the first time the Commission entered into that kind of arrangement where you gave a complete pass to a corporate entity for their cooperation.

JS: Perhaps to this day, it's perhaps the only time.

HP: Well, it was not a complete pass because there was disgorgement of all of the profits, the trading profits, because the Commission was appropriately sensitive to the fact that they weren't going to let somebody keep ill-gotten gains. You had a foreign bank over whom the Commission had questionable jurisdiction. The bank was returning all of its profits. Everyone who traded, and following Dennis Levine, returned their profits. So in that

sense everybody became whole and the quid pro quo was that Dennis Levine's name was given out.

GL: I agree it was the right decision to make.

LW: I think one almost unique aspect of this case is we were able to penetrate Bahamian bank secrecy without a treaty and without a MOU. And that's very difficult to do even today. I think that was part of our thinking why this was a good deal for us.

GL: Well, we were in a position—at the time we did the deal, we didn't know whether we'd penetrated or not. But we knew if we didn't penetrate it, Bank Leu had a choice then of deciding to violate Bahamian law and end up in a very public litigation. And I think we made that point subtly clear to the Bahamian authorities.

HP: It was clear; I'm not sure it was subtle. [laughter] But I can't say for sure because I wasn't in the exact meeting when that deal was worked out, as you recall.

GL: I recall it very well. There was some effort to persuade you that it wasn't a good idea for you to be counsel for the bank.

HP: Well, there was counsel for the bank but the attorney general decided he did not want to meet with U.S. lawyers who represented the bank. He would only meet with Bahamian

Counsel. This Michael. I'm getting old; I can't remember his name. He was there but the U.S. Counsel, name was Michael Rauch and Harvey Pitt were not allowed in the room. And the more difficult part came when the Attorney General, after the meeting, wanted to meet me and Michael and say hello to us. And Michael had to persuade me to attend this meeting.

JK: At what point was Charley Carberry brought into this?

JS: About this time.

CC: Yeah, it was much easier for us. We got a call from Gary, essentially, and—discussing what we would be able to do in connection with the bank in terms of not proceeding against the bank. And, given our practices in our office, that was about a ninety-second discussion with the U.S. Attorney Rudy Giuliani, that we wouldn't proceed against the bank and be happy to assist the agency. Our major concern at that time was the amount of perjury in SEC investigations. We were constantly hearing how prevalent it was and some of the excuses for trading people were giving were not credible. It just seemed that the process was breaking down. And so anything we could do to assist the Commission in obstruction and perjury investigations was really the forefront of the U.S. Attorney's office's policy right then.

JS: So, I mean, the key thing, I think, in terms of—to be sure, as part of the negotiations to resolve the case, Harvey being the good lawyer he is, had conveyed the notion that the information that the bank had was of significant value, because it would lead to a major matter involving Wall Street. But—and I don't know that I—you know, and so the time—Dennis Levine was at the time a managing director of Drexel Burnham Lambert involved in the Merger and Acquisition Department. And the number of trades here was, what, about fifty or so different trades, Leo?

LW: I think there was—Peter may remember—I think there was 102 total that we alleged in the complaint, and something like fifty-five were profitable—something like that.

HP: There were twenty-eight in the original subpoenas.

JS: Right, right. So it was a large number of transactions over a long period of time. And I don't know that we—I, personally, didn't realize myself what it—that this would become, even of itself a cause celebre once it was revealed. Maybe I was too young and too naive but it was. It took a lot—I mean, what—from an investigative point of view, at the point that, you know, these discussions were going on, there was—the process that Peter had described as sending out requests for information, subpoenas, taking testimony—stopped. There was a sort of complete shutdown of any external effort on the investigation, and the reason being that we—you know, no one—one, there was all

this money out there that Levine had made from his trading. It was about \$12 million, as I recall.

LW: I think it was \$10 million in the account.

JS: In the account. And, which was a lot of money and it could leave any second. What we needed to do was to mine the information we had, which included taking the testimony of the bank employees, which was done in London by Peter and by Paul Fisher.

HP: And Leo.

JS: And Leo.

PS: Charles Carberry was there.

JS: And then putting together a case without alerting any external authority that the case was on the way, that—and that also is where Charley's office came in, because the fact that not just the perjury issue but also that Charley's office had been active in criminal prosecutions of insider trading cases before this period of time.

HP: One of a few U.S. Attorney's offices.

JS: I think it was essentially, the only one. I mean, the Thayer case was brought here in the District of Columbia. But that was the only other place I can think of where any case was brought. Made a huge difference in terms of how the case was to be conducted, how it was to be proceeded, and then how it would be litigated, because the idea, I think—from an investigative point of view and sort of tactical point of view—was to maximize surprise, the theory being that by accumulating information, commencing emergency litigation, the Commission would be able to litigate its case in the United States and be able to prosecute its case at a time when it had the maximum advantage, informationally and otherwise.

And the defense would have the least information and the most incentive to resolve the case quickly, rather than to get into a long, drawn-out dispute. But it did surprise me personally when the case was brought just how publicly it was perceived. I think the reason for that, notwithstanding suspicion, it was not yet thought that anybody who was really of major significance within a major investment bank was really deeply involved in what fundamentally was corrupt behavior.

HP: John, I have to interrupt you here because I recall when we were trying to persuade the staff to do this deal, we told you that it would lead to a big fish. And it was you who said, "Well, for what you're asking, it damn well better be Moby Dick." So I think you knew that—and we told you that we thought that's what you would wind up with, somebody who was senior enough. But I think in fairness, we certainly promised you

that the person who had the account was somebody who was not going to be a file clerk, a Xerox operator, a paralegal, or any of the other category of very significant jobs in our society that have made up these cases but didn't necessarily command front page. So I actually gave you credit for demanding that we give you somebody important and I think you're being too modest.

GL: There was a media frenzy as a result of that case that far surpassed the Thayer case, even though he was Deputy Secretary of Defense at that time, and any other insider trading case. And I think the media frenzy surprised a lot of us. Of course, we didn't know what was to come later. I remember being on one of these PW programs, sitting there having dinner the night before the program. I don't know if you were there, Harvey, or not, but John may have been there—Art Mathews and a number of other leading figures in the SEC defense bar who were saying that this was the top one, two, or three cases ever brought by the Commission. It was interesting then because, while then there was certainty that there would be other big cases.

JS: But I think that step led to, there are a couple of things. And one is that with the Levine case, the sense of immunity, their impunity was over. The notion that senior people on the street could engage in illegal behavior and get away with it—the SEC was toothless to do anything about it—was gone. Secondly, the active involvement of Charley's office in the case meant that the stakes were higher, particularly since Levine had been arrested,

which was, I think, the first time that a white collar defendant was—was picked up, held overnight . . .

CC: Well, actually, he wasn't picked up; Dennis [chuckles] showed up at the office. He heard we were looking for him. [laughter] And he asked Tom Doonan what was this process? And Doonan said, "This process is arrest."

LW: But he—he wouldn't have shown up if you hadn't been looking for him. [chuckles]

CC: No, no. Exactly. He thought the marshals were trying to serve a subpoena.

GL: We've been talking about the Dennis Levine case. It should be said that Dennis Levine was the first person to be sued. But within relatively short order there was a lawyer at a major M&A law firm, Wachtell Lipton. There were two other bankers, as I recall or . . .

PS: Ilan Reich.

LW: I think it was three.

CC: That's what gets us to Boesky because Dennis is the one who gives us the allegation that Boesky's involved in insider trading.

GL: But my point, Charley, was, even as part of that case, it showed that there was this ring.

CC: Right. No, it gave us the ring and Dennis was able then, because God knows why these people would talk to him, except for Boesky—take calls with everybody involved, except the lawyer and Boesky.

JS: But the point I was thinking from a systemic view is just that the involvement of Charley's office, particularly in that way and the willingness to use the criminal process and to apply essentially the same techniques as had been applied investigatively to many other areas, whether it was mob cases, or drug cases or what have you to the investigation of white collar cases in the SEC area, to my knowledge, had not been done before. And the fact that one particular individual would have an incentive and would be encouraged to provide information over what historically had been viewed to be civil matters was a very significant issue. And it made an enormous difference to the ability to investigate subsequent cases.

JK: Do we want to move on to Boesky?

GL: Sure.

TP: Do you want me to jump in here and talk a little bit about—I showed up on the scene, actually, just as the Levine deal was being inked. And I remember essentially being told, "He said something about Boesky. Let's figure it out." And really, where we began was

not with a lot. Levine told us about an arrangement where he got 5 percent of some deals and 1 percent of other deals. And he provided information to Boesky.

JS: Five percent of . . .

TP: Of the profits . . .

JS: Profits, right.

TP: On the illegal deals. And, as I recall, there was one piece of paper with five stock symbols on it that was allegedly the list of deals on which Boesky owed Levine money. And that was our evidence. There was no money changing hands. There were no taped calls. There really wasn't much. And we knew that wasn't going to be enough. And really, it is to, once again, Peter and Leo's credit. We took a look back at the many deals we'd investigated previously where Boesky had been successful, where he had failed to put a story together and—and deals we hadn't investigated where Boesky had bid and made a lot of money, and tried to find a pattern and couldn't once again.

And I remember walking up to the front office and saying to you, John, "This subpoena's going to ask for the kitchen sink," because what we decided to do was to make it clear that Levine had provided us information about Boesky, and then really pick many of the significant investment bankers that we thought were likely providers of information, and

asked Ivan for all the information he had about his communications with a who's who of

...

HP: But why do you speak about the subpoena in the singular? [laughter]

TP: Well, I recall it as one subpoena that listed about eight million people.

HP: I recall that Boesky received twenty-nine subpoenas.

TP: All at once? Was there really—did we divide them . . .

GL: I'd say twenty-seven.

HP: About twenty-seven.

TP: We did them all separately. Is that what we did?

HP: Every entity. I think you got, for every initial in his name [laughter], a separate subpoena. But there were either twenty-seven or twenty-nine subpoenas that ultimately were issued and all arrived at Ivan Boesky's desk.

RM: Well, I think at this point it's useful to say a little bit about who Ivan was, because it's not altogether clear to recent graduates from law school. Ivan had been an arbitrageur through the early—late '70s and early '80s. He, until March of 1986, had a capital of about \$100 million raised from limited partners of his various ventures, and then in March of 1986 had with the investment banking help of Drexel and Michael Milken engaged in a major reorganization in which he raised about \$300 million in equity and about \$660 million in debt, through debentures, many of which were bought by savings and loan institutions, affiliated or at least dealing with Drexel.

So that he, starting in early '86, had had capital of roughly a billion dollars, and that that capital had been leveraged through various financings and stock loan programs, so that he owned about \$3 billion worth of stock and traded a significant, although single digit percentage of the stock's daily volume on the New York Stock Exchange.

JS: And part of the environment, with respect to it, is at the time—I mean, Boesky, to some degree, courted publicity. He put out a book; he was well known. You would regularly see him discussed in the newspapers. And his entry into a particular stock, given that it was a takeover period—was a harbinger of a takeover at some point by someone. And so he was in many respects a very feared trader within the financial community, certainly the best known of the risk arbitrageurs at the time, and a person of public visibility that was really quite substantial. And so that, I think, adds to the background as well.

RM: Here's an interesting little historical footnote, that he operated from offices on Fifth Avenue in New York that had previously belonged or been leased by Mark Rich. And before Mark Rich had them, they were the offices of the Shah of Iran.

LW: If I could just go back to investigative technique for a second. One thing that we put into the subpoenas—Harvey's quite right; it was definitely plural—was a reference to any actual or potential employment agreements or discussions relating there to between Boesky and Levine. And this was something Levine had told us about. He had discussed the possibility of setting up some sort of venture with Mr. Boesky and going to work for him. This is something that was only known to Boesky and Levine and no one else in the world until the government learned about it from Levine. So this was a way of signaling to Boesky that we really did have the inside story.

HP: It worked. [laughter]

TP: I am interested in hearing from you all whether he thought we knew more than just what Dennis Levine had provided us, based on the subpoenas he received, or whether that was really the universe of what you all thought we knew at the time.

HP: Let me say, because this segues into the decision to settle, that when you saw the subpoena—at least when a lawyer saw the subpoena, it was very clear to us that Dennis Levine had spilled his guts to the government. And the government was making it very

clear—because nobody who'd ever known Ivan Boesky or ever heard of him making an employment offer to Dennis Levine—it really was the kind of fact that only Dennis Levine or Ivan, as Terry said, could possibly have known. And at that point, you also need to understand that Boesky had been a veteran of dozens and dozens of SEC investigations—not necessarily more than a couple of dozen.

But he had been a veteran of dozens and in each case the SEC staff would ask him what the basis for his trading was. He would explain, often producing files, which showed documents that he had accumulated and amassed, and explaining what his trades were. All I can say, because I think notwithstanding that it's eighteen years later, attorney-client confidentiality still has to adhere. But let me just say that what certainly got us thinking along the lines of settlement were a couple of hypotheticals that we discussed, which did not originate from the lawyers. And at that point it became clear that you could spend a lot of time rummaging through all of Boesky's activities, irrespective of whether anything that occurred was legal or not.

And so, since we knew we were going to have an investigation, I made what I considered to be the smartest legal judgment I ever made. I told Boesky that we would not represent him, certainly not alone and maybe not at all, and recommended that he bring in Wilmer Cutler and Ted Levine and Bob McCaw so that he had two law firms representing him to deal with any potential issues that might come up where there were transactions that one or the other firms might have handled. But it was clear to me from the outset that we

could not handle this with one law firm. And, as I said, we could not have done better than to get Ted and Bob McCaw working with us, who were really phenomenal. And it was an effort.

GL: If I can just pick up on a point, I think that Leo said a while ago. Yes, Levine was cooperating. Yes, he provided some information but I think—you can correct me if you had a different view. My view at the time was that the quality of the evidence, shall we say, Levine was providing was very low, to say the least. And I think there was a decision made to issue twenty-seven subpoenas to certainly give the impression that we were declaring war, and I think we were declaring war, but that we had a lot more ammo than we actually had. I mean, today with World Series of Poker on TV, this is a little bit like going all in on a pair of deuces, and just for the bluster of it. And maybe that overstates it a little bit. But we were not impressed at all with . . .

TP: We didn't have it and we'd go for it.

HP: There were a couple of other things you did, one I hope Terry doesn't mind raising. But, you know, the SEC has a standard practice. Whenever they issue a subpoena, counsel picks up the phone, calls the staff and says, "Can I have a copy of the formal order?" And I remember speaking to Terry and Terry said to me, "No." Now, there was a little provision in the Commission's rules that said for good cause the staff could deny it but they had to make a copy of the formal order available to anybody who was subpoenaed.

And so I had to come over with two of my colleagues and we took the formal order, which I think was about three pages.

And each of us memorized—we sat there and read this. We each memorized one page, ran out into the hall and then wrote up the entire subpoena and actually got it. We actually had the whole thing. But we thought—again, I think this was part of what you were talking about, Gary, about creating an illusion. That really wasn't what was operative here. It wasn't so much as to what evidence you had vis-à-vis insider trading necessarily or even any other information. Part of it was, I mean, there were real issues about where the law would go, whether—even if everything Levine said were true, you were still going to be able to make a case, et cetera. I mean, there were all sorts of potential issues.

But I think ultimately one of the things it came down to was whether Boesky wanted to run the risk, not that the government had better information than it was thought they had, but whether they were not going to give up. That is, that having been told by Levine that Boesky was involved in insider trading, the one thing we thought was clearly so was that the government was not going to go away and that we were going to be hit with continual requests for information and documents. And basically every last jot and tittle of his business records were going to be produced. And that really was what caused the introspection, "Do you want to go through that? Because you may be able to beat anything Levine says but nobody can say for sure in any business operation, when you

start going through with a fine-tooth comb, what you'll find and what you won't find.

And do you want to submit to that?"

That was really—I mean, so in that sense the strategy worked perfectly because you communicated that you had a notion and you weren't going to let it go without a real struggle. He was looking at basically turning over every piece of paper in his office.

That's what was the motivating factor, I think, in terms of getting around to discussing settlements.

RM: I think one other really important factor on the defense side of this, and it's an important factor from the Commission. At this stage of the investigation, the Commission staff was generally looking into a black hole. They don't know what's there. And I think our view of the Levine evidence, and we had more of it ultimately than you had, was that it was a terrible case for the government. There were no payments. It was all on the come and it would have been extremely difficult to have proven that case. On the other hand, you didn't know what else was in the black hole, which was, as events are going to prove as we go through the rest of this, and it's those factors in many respects, not what you knew and thought you knew, not the Levine case, that provoked the result that actually occurred. And I think that's an important thing to keep in mind.

HD: Yeah, I think that's a very good articulation of what we were ultimately concluding. And I must say, this is a judgment—I always had a saying when I practiced law, "This is why

God makes clients." Only the client can make this judgment. Nobody else can make it. And so no one should be under any misapprehension that somehow the lawyers went in there and said, "You've got to do this." You know, "You can't litigate," or anything of that nature. I think we were very sober in our assessments, both--and as Bob just indicated or alluded to earlier, that the insider trading element did not strike a lot of panic. What was of concern was what the black hole would reveal, as Bob put it, and whether Boesky could withstand that kind of intensive scrutiny.

But one thing that was clear was he wasn't going to be able to go in, give an explanation for his trades, walk out and never have to deal with the SEC again. That was not going to happen and so he had to make that choice. But the fact is, he did make it. He understood what he was dealing with. He understood what the consequences were. He understood what his defenses were and certainly of the insider trading issues and the like. And there's one other aspect to this that is sort of touched upon by what Bob said. Since you start trying to figure out what's in the black hole, you don't only look at what is in the black hole; you also look at who is in the black hole. And one could have imagined in a situation, since ultimately Boesky did produce a proffer to the government and so on, that some of the people who were on that proffer could, had they been found by other means, produced a proffer as well which had Boesky on it.

So one other issue was, "Where are you at this point in time?" And from Boesky's perspective it was very clear that Bank Leu gave up Dennis Levine. Dennis Levine gave

up Ivan Boesky. That meant that Boesky, if he were going to settle, had the opportunity to give up other people or run the risk that other people would give him up. And those are also choices you have to make.

PS: Just a very brief ironic footnote. Ultimately, all the documents from the Boesky organization were produced to the government and were reviewed. [laughter]

TP: And I'll just say the next thing I remember, and I think it was that you called me, and Gary was in Maine, and said, no, you wouldn't be complying with the subpoenas and needed to discuss the subpoenas. And you preferred to do it out of town. And the next thing that happened was we all flew to Boston.

GL: I remember being very annoyed. I was the one who was negotiating. They called me, I thought, to negotiate a subpoena.

TP: Did he call you directly?

HP: You were at your sister's house.

GL: No. Well, no, I was in Maine at a bed and breakfast.

JS: Somehow you found Gary.

HP: So I found Gary and I did call him and I said, "Look, we've been served with twenty-seven subpoenas here. They ask for everything, including Boesky's underwear. And it's worth your while, we think, for us to sit down and have a discussion about this whole thing. And Gary said to me—I mean, Gary and I go back a long way. We have, I think, a very good relationship. Gary said to me, "Harvey, if you're calling me to negotiate the breadth of this subpoena and I come back from Maine, I am not going to be happy." And I said, "Gary, you should assume that I'm not calling you so that you can whittle down your subpoena."

[End Tape 1, Side A]

[Begin Tape 1, Side B]

GL: We settle on Boston. I would fly down to Doug Scart's office. And I think we met in the library. Who flew up for it?

TP: John and I.

GL: John was there. Terry, you were there. Sure. I remember going through the presentation, hearing it and there isn't the time to go into great detail. But the long and short of it was that there was going to be a proposed settlement coming out and there were some allusions to what might happen as part of the cooperation. We've got a lot of

A's and B's, not terribly specific. But specific enough that I think our appetite was whetted.

TP: And what I remember is there were three things he cared about, that Seeme's money not be touched, that he not go to jail, and I can't remember the third one.

HP: I think one of the things was that her money not be touched, his children's money—their trust accounts—wouldn't be touched, and that the partnerships would not be sued or that they would go after—you would go after any partners unless you had independent grounds for doing it. Those were, I think, the three things that were tantamount. And we did say that we thought there had to be a resolution of potential criminal charges if we were going to do this. That is, that we didn't want to just settle with the SEC.

GL: I recall you saying that there could be no criminal charges.

JS: That's my recollection as well.

TP: That was your initial position.

GL: Because I remember going out on a limb, even though criminal jurisdiction certainly wasn't ours, and saying, "That's not going to happen. We're going to do a deal that's"—if it wasn't in that meeting, it was soon thereafter because I . . .

CC: And I had a meeting with Harvey and Ted and we discussed what was possible. And it was when Rudy was on trial up in Connecticut so I wasn't able to speak to him 'til the weekend. And we basically had discussed a one-count disposition.

JS: Actually, it was a two-count disposition.

CC: No, I mean, two counts was what we were giving but in light of what this deal was worth to the Commission and to us, I mean, we had no problems agreeing to one count. But Harvey did then suggest maybe no counts and we couldn't get there.

HP: Now that you say it, I seem to recall [laughter] that our opening position was no jail time.

JS: But this took a long time to work out, took a good two weeks, as I recollect.

HP: Well, you're going to tell us what happened. I read about it in the papers. I don't know if it's true. Bob and I and Rausch and Levine—Ted was there—left the room. Somebody claimed that you, John, had gotten up on top of the table and started dancing. I don't know if that's true.

JS: Those of us who know my dancing capabilities [laughter] would know that that's clearly apocryphal.

TP: I think that it was Gary they thought got on the table and I can attest to the fact that he did do a Rocky Balboa imitation but it was not on the table. [laughter]

JS: But in any case though, I mean, it was a long time before—it took a couple weeks to pull this together, as I recollect it.

RM: I also remember at some point, and I don't know whether it was this meeting or a subsequent meeting, and Gary and maybe Charley, as well, took the position that the detail, or lack thereof, in the proffer was such that if we were going to do it then we had better make the proffer a good deal more detailed and specific, and that we spent a lot of time working on the proffer, which, of course, is a difficult task from a defense side to make sure that you get enough details to satisfy the government without saying a single thing that cannot ultimately be substantiated down the road.

HP: One of the things I think, and Bob is, as is typical, being a little bit modest. The first draft of the proffer that we did was an incredibly carefully crafted document. It was basically reviewed at great length by a very thoughtful and careful lawyer. And I remember it was Carberry who said—I think it was Charley who said—no, maybe it was you, Gary, who said the Commission was very disappointed. Or Charley said there—but "disappointed" was the word that we heard. And then, as Bob correctly points out, we were—we were told that if we had better stuff, it had better show up in the proffer or this deal was going to be over.

GL: I think it was Charley and I and maybe others sitting around and on the spot, having reviewed it, just said, "This isn't what we thought we were getting."

CC: I remember a meeting in D.C. where everyone was there, because no one in the Commission ever travels alone. [laughter] And there was me, and Harvey, and Bob, and Ted and Mike. And, in fact, Harvey went out and ordered for pizza. And it had to be from a particular restaurant, which I think was in eastern Kentucky because it took a long time to get there. And the meeting broke down, like, at one or two in the morning. And I went back to my hotel and I got a call from John Sturc at, like, 7:30 saying, "Get back here." And that was the day, I recall, that we reached an agreement.

HP: Yeah, the pizza came from a place that no longer is in business; it was Gepetto's. It was very good pizza but, you're right, it did take a long time. [laughter] And I remember the staff being very insistent that we had to figure out to the penny what everyone's share was—Charley saying, "I'm a criminal prosecutor. I don't work at the SEC."

DH: Where were the meetings that took place? Were they taking place in the building? And were there concerns about—of the congregation of the various parties signaling that something big was up.

HP: The meetings actually took place at Fried Frank's Washington offices at 1001 Pennsylvania Avenue. It's one of the only times I've ever known the staff to engage in

extensive negotiations outside of the building. The general approach is you come visit the staff and so on, which is as it should be. But everyone was concerned, both on the Commission staff side and on our side that people—just seeing all of these people coming in repeatedly for meetings like this—were going to start putting two and two together. And so it was agreed that we held most of the meetings at our offices instead of at the SEC's.

JS: And then they started at seven at night, as well.

HP: We didn't want a lot of people seeing the traffic. We had the same concerns at our place. We didn't want senior government officials coming over and being seen by a lot of different people.

GL: Very few people within the agency knew of this right up to the announcement. Actually, I remember it being somewhat a sore point later after it was done, that people felt like for a case of this magnitude, that for us within the staff of the Division not to trust others to bring them into the loop was wrong. But I think we felt strongly that one of the major benefits of this was that the work that Boesky was going to do with Charley's office, to the extent there was an article in the "New York Times" or "Wall Street Journal," that there was something cooking, that it was going really make it impossible to get any benefit out of this cooperation.

RM: I remember that a very strong element of what the government wanted from Boesky was cooperation and wearing a wire in subsequent meetings, and that that led everybody to want to be extraordinarily careful. And, Gary, we had the same issue within our law firm. We kept the information about the discussions to a very small group of partners even and then only the other lawyers working on the case. And we instructed every one of them that they were not to discuss it even within the law firm.

HP: As did we. I mean, most of the people in our firm learned about this about the same time that the deal became public. We just convened people and told them that they would shortly be reading and hearing about a settlement and that we had been working on it. But no one was permitted to know about this. And we kept the crew very limited and I certainly swore them to secrecy—which I must say on all sides, the government side, both the SEC, U.S. Attorney side and Wilmer and Fried Frank—I am amazed at what a great job was done to keep all of this confidential. I've had more experience with this issue since then and I can tell you that it's very hard to keep anything like that a secret.

GL: I know within the Commission, I remember telling John Shad, then Chairman, about it, but it was relatively late in the process that we were working on this. But in terms of the other Commissioners, my recollection is we let them know at the meeting. I think we even asked their legal assistants not to be there.

JK: That's right.

GL: Very, very limited as once we got the deal done up to November 14th, my recollection is there's some issues that necessarily involved other people at the Commission. But that, particularly initially, we really had a very small number of people both within the Division of Enforcement and at the Commission level.

JK: Gary, what was your reaction when you first received the proffer when you saw who Boesky was prepared to talk about?

GL: I think we came out of Boston, the meeting in Boston with a pretty good idea. Again, our own speculation, but just as the descriptions and based on what we knew about some of the Boesky trading positions, I think we basically knew who A, B, C, and D were.

HP: This proffer had five initials. The proffer itself didn't mention names; it just mentioned descriptions. But then there was an answer key that was attached and given to the government, which just had A, B, C, D, and E. And it had names listed alongside each of the those letters so that the staff could then, by comparing the two documents, figure . . .

RM: You got that later.

GL: We got that later.

TP: Now, my recollection is we didn't know out of Boston . . .

HP: No.

TP: . . . who A, B, C, D, and E were. But there was so much chatter. I remember in particular Bob McCaw saying that what we were going to learn was going toCwas going to expose the true way that Wall Street worked and change it forever. And it was very dramatic and, you know, we left knowing it was huge.

GL: Well, eighteen years is a long time. [laughter] No, if we were trying to recreate what happened two weeks ago, we'd have different recollections of it, but eighteen years ago—I have a pretty strong recollection. I came out of that at least knowing Mike Milken and Drexel, and actually knowing who one of the other persons was as well—actually, someone who didn't end up as a defendant in a suit. But I had a couple of names; I came out of that meeting, maybe not a 100 percent certain.

HP: Right, we didn't . . .

GL: But 98 percent sure.

HP: . . . explicitly give you the names obviously. But we certainly wanted to make sure you understood that we were not asking you to go on a fool's errand, but that there was some real substance here.

JK: The reason I asked because Dan and I listened to the tape of the Commission meeting when you presented the proffer.

GL: [laughs] I'd love to listen to that; that would be great.

JK: And it was clear from the tape that you and John had immediately identified Milken, Drexel and Boyd Jefferies as well. The other people, there was a great deal of speculation on.

GL: Oh, 'cause we didn't actually get the key.

RM: Right, you got the key later.

JK: Do you recall at all the presentation to the Commission?

GL: I don't recall it at all.

JK: The fascinating thing is the skepticism of John Shad and the Commission as to the bona fides of Boesky's cooperation and whether he would go forward with it.

JS: I recollect it was not an easy sell. Since I came to the Commission from the U.S. Attorney's Office, I was more comfortable with this kind of arrangement than most. But

this was not the kind of thing that was done, entering into an agreement with someone in conjunction with a criminal plea, a part of which was an understanding that certain concessions were going to be made as to who would be charged, who would not be charged, what the resolution would be, knowing that, if the person were to admit all the facts, there would be additional claims that the person would be subject to, that the Commission was explicitly agreeing not to bring. This was not a normal mode of thinking.

Secondly, the other thing that was—and we'll get to it—there was a big issue, was the concept that the case would be delayed for a period of time, and that the individual in question would be continuing in their mode of business for a period of time while working for the government. Because when you think about it, this is an agency whose premise is full disclosure. Everybody gets the facts on the table; everyone makes decisions based on them. Securities were going to be traded involving a major player, who was going to disappear in effect after a period of time. The government knew it; the individual knew it and nobody else knew it. That was not an easy—that whole concept was not an easy one to explain.

HP: But part of that was really for the government's benefit. In other words, if a deal had been worked out and executed immediately, then Boesky's ability, and the government's ability to get information from certain people and provide additional information would have dissipated.

HP: Nobody would have talked to him.

JS: Oh, for sure. But I think for a number of the Commissioners, and Chairman Shad in particular, were convinced that we were going to get burnt, that within days Boesky would be in Brazil, the money would be gone, and we would all be . . .

HP: Whipsawed.

JS: Well, we'd be ridden out of town on a rail is what would happen. And he would be impeached and we'd all be in trouble, I think. He didn't say those words. But I certainly think that was going through his mind.

HP: He shouldn't have worried about those things. [laughter]

JS: Indeed, indeed. And, being 32 or 33, I was naive enough not to worry about these things.

HP: That was a very gratuitous comment, John. You're making the rest of us who are a lot older feel very bad.

JS: I'm not sure I would have recommended the same thing, frankly.

GL: I think we all recognized that there was some risk in this, and that if it didn't go well, this was not going to be a good day for our careers. I certainly recognize that. Particularly with John Shad, it was a hard sell to get the deal done because of his concern that somehow we were being hoodwinked. And every time an issue got raised over the next ten months, twelve months until he went off to take the Ambassadorship to the Netherlands. He was concerned that we'd been hoodwinked on this issue or that issue.

JK: Were you surprised it was a tough sell?

GL: There were risks in this and, again, it was the first time the Commission had done this kind of deal. There was a certain amount of it but then more quickly than you would have liked. We had to get it done quickly because the longer it went on, the more risk that there was going to be a leak, and the rumors that it would destroy his ability to be an effective cooperator.

RM: In many aspects of this rhythm, the U.S. Attorney's Office insistence on using Boesky as a cooperator with a wire to try to collect . . .

CC: Well, it wasn't insistence. We suggested it was in his interest. [laughter]

RM: We viewed that as the insistence, Charley, but that's okay.

CC: But, it was something we wanted to have the opportunity to do. And it was something that everybody worked hard to try to achieve. And we would have liked to have done it a little bit differently. But, for example, the drop-dead date was dictated by the securities laws. People felt they had to make a disclosure.

GL: Well, there had to be a 10.Q, right?

HP: Ya.

RM: And this was every bit as big an issue and problem on the defense side as it was on the government side. I mean, to have a client who's running a \$3 billion portfolio, is engaging in transactions, and it's not a comfortable position for the client to be in. It's certainly not a comfortable position for the lawyers to be trying to give any advice in. And you want that period minimized as much as possible, and you want as many protections built into it. And the agreement that we did with the SEC has explicit provisions to protect him.

GL: While we recognized as it being risky at the time, I think it would be far riskier today.

HP: Does anybody here think we would have done the same deal today?

GL: I would have done the same deal today if I were today. But the political environment was as it was in 1986. I think today, in 2004 I think it would be very difficult to, as politicized as the regulation of securities markets has become.

CC: I also think, with the sentencing guidelines, it may have been very difficult to do.

HP: Trying to put myself in a different position, if I were Chairman of the Commission and the staff came up with this deal in this environment, I would never have gone for it. I don't think it could have been done. And I think in some senses, that's unfortunate. I think one thing that Bob and I and others told the staff was that we thought that this would have a dramatic effect. It might lead to new legislation, new regulations, and the like, that we were talking about something that was going to give the Commission the kind of view that they almost never could get otherwise.

And I think that all proved out. I mean, a lot of things changed. A lot of laws changed. Statutes were adopted. Regulations were adopted. It all proved out. His cooperation—put aside Dennis—the quality of Dennis Levine's cooperation—the quality of Boesky's cooperation was incredible, which I credit mostly—not just to the staff, but to Bob, who handled all of that element of that. And from our side, it's just interesting to hear that Shad thought he would go to Brazil. I don't want to speak for Bob but I think I can. I think both of us were worried that everything we put in that proffer had darn well better be true, that we were not going to have anything in that statement that we didn't think

Boesky could support and that we didn't know how he would support. But I never worried, certainly, that he wouldn't deliver. Once we knew he was going to settle, we were assured he was going to settle . . .

RM: This comes back to the point that Harvey made earlier, which is the client made his decision. And indeed, my perception is that the client was very firm in the decision to go forward with this deal from fairly early on in the process, that he'd gone through a personal calculus and had come to a conclusion and was committed to that conclusion. And I viewed in many respects the job of the lawyer being—to make sure that, in proceeding with his cooperation, he did not inadvertently or through lack of experience with this process make a misstep, and that therefore, each piece of the cooperation had to be fully vetted. We had to extend the documents. We had to make sure that they were consistent with the documents. We vetted the stories over and over again before the government ever heard them and really worked at trying to make the cooperation effective.

GL: I want to be understood in saying that now I wouldn't do this because it didn't work out as planned. I think it worked out so much better than we could have hoped at the time. It was in many ways the dream deal for us with some of the criticism that came later and everything else. The effect of this on abusive practices in the market was massive. If you look back at it and you say it was absolutely the right decision, I'm just saying that in today's political environment, knowing that you're going to be shot at from so many

different quarters over everything—you know, we took heat back then. The kind of heat that you would take today would be something that no agency or person could sustain.

HP: It would not be sustainable.

GL: You would have had to fire me. The Commission would have had to fire me after the articles started surfacing about Boesky's sales. I would not have lasted. The three months or so while that was hot until we finally—people got over that and accepted it and accepted that it really wasn't illegal.

JS: Particularly because we—could not be explained publicly what it was that Boesky had to say, that which was the justification.

HP: But I don't know. I think we're all—I think everybody here is agreeing that this deal was a product of that time and those circumstances. I think we all think it was the right deal from all perspectives. Certainly looking at it both from a defense perspective and government perspective, I think the government made the right decision. I think the government got a lot and that's part of what I wanted to buttress what Bob was just saying, which is we were also very worried about over-promising. I mean, we used the word over-promise repeatedly in our own internal discussions, because it was crystal clear that we had an obligation to our client to prevent him from saying things that the government might find quite enticing but might not be sustainable.

And we did not want the government to do a deal with him based on misperceptions of what he could prove. And that's a situation where you sometimes have to protect a client from himself, because you want to make certain that the government walks away from this saying, "Okay, this is what it is; I know it." And then the reaction is, "Gee, we got a lot more than we thought we were going to get." That was—that was clearly our goal from—from the get go with that.

PS: This reference to a meeting with Representative Markey, sometimes each generation writes its own history. Looking back, I think it's—everybody's making the same point. There was no real interference from some larger being, larger government being. You people around this table made these decisions in whatever you thought was the best interest, wherever the facts took you. And there's a temptation today to write history in terms of its ideological outcome that you want. I think it's crucial to bring across the idea that you people made the decisions based on your own knowledge and interests at the time, whether you were government or private. And there was no interference. And there was an operation in the democratic way that people like you were just doing your jobs.

JS: We haven't mentioned the role of the Commission. They were very supportive. To be sure, there was anxiety, as Gary described and I described. But on a personal level, I think it was palpably obvious that Shad in particular was extremely uneasy, because a number of the people who were involved were—the head of Drexel Burnham was a

personal friend. There were issues with regard to the Kidder Peabody firm where he had personal friends. And the whole episode was essentially an indictment of the manner in which business had been conducted in a number of very large firms with which he was personally associated. And Drexel was represented by a law firm which had long represented E.F. Hutton, his own firm. He was a personal friend of his. And none of that got in the way of process. He did not get in the way and—nor did anybody else.

JK: John Shad had made his entire career in investment banking mostly. And at times, he almost had sort of a naive belief in the integrity of the process.

GL: Oh, he did.

JK: And hearing this proffer and hearing this description of people, who were some of the biggest names in the securities industry, suggesting a level of organized corruption, how do you think that influenced him? How do you think that affected his reaction to this case?

GL: I think at first his reaction was, "This can't be true."

CC: There was a point where Gary brought John Shad up to New York and I met with him and Gary and filled him in on what we knew at that point. This was midway or maybe a little bit past midway in the cooperation. And he truly was stunned. I mean, all he did

was slap his head every time we would bring up a new fact. But at the same time, you know, I mean, both John Shad and Rudy Giuliani and anyone else who knew from the beginning, you know, never interfered on any operational level with what the two agencies were doing. And the other thing that was, I think, very novel about this case was the level of cooperation between the two agencies, at least up until that point, and the openness between the two agencies for everything except grand jury material.

RM: I have a perception of the case and I'm very interested as to whether Gary and Charley and others have the same perception. But Boesky's cooperation led to the case against Milken and Drexel, Boyd Jefferies, Speer Leeds, Marty Siegel, the Guinness Argyle Distillers case in the U.K., and John Mulheren. And my own belief is that the government would not have had an opportunity to prosecute all of those cases, either on the civil side or on the criminal side, had the government done this on a case-by-case basis.

It's my own belief that the delay that was occasioned by the Drexel resistance, or Michael Milken's resistance, ultimately prevented the government from pursuing cases that might well have arisen out of Drexel's conduct beyond Boesky, taking it the next step. And my perception is that today, the way in which the laws have changed with the sentencing guidelines and the increased toughness on the part of the government with more regulatory agencies, and particularly agencies with criminal power involved, that the actual effect is counterproductive, that instead of being able to accelerate cases and bring

them within the statute of limitations, or within the horizon in which it is possible, that actually cases are slipping away from the government because of the disincentive for this kind of cooperation.

CC: On part of it I would agree with you and part of it I probably would disagree. I agree with the fact that at least from the criminal perspective, we could not have made the cases that were made without Boesky's cooperation. I mean, the SEC may well have been able to proceed in going through a couple of cases civilly. But it would have never reached the degree of evidence we needed and we just wouldn't have been able to do it. On whether today the sentencing guidelines act as a hurdle for cooperation, I guess my belief is that, if anything, and I'll give you the example of Enron, it drives people in to cooperate who might not otherwise cooperate. I think the sentencing in the Dynegy case of the mid-level executive to 20-something years is something that everybody realizes could happen and that, you know, the only way to get outside the sentencing guidelines is with cooperation. You could contest things back then and still wind up with relatively light sentences, and that's not possible anymore.

JK: When you talk about Boesky's cooperation, compared with Levine's and Siegel's and Milken's, what made Boesky different?

JS: Terry, you and Leo dealt with Siegel more than—I certainly did not.

LW: Well, I certainly thought, to second what Harvey said, that Boesky was exceptionally well prepared and very, very helpful. And certainly, we would not have been able to put these cases together without him. Comparing him to some of the other people, there were other players in this drama who were also very, very helpful and very well prepared. But to go back to an earlier point, something I've been thinking about, I've never—I've never seen any other case where we've gotten a proffer like the Boesky proffer. And so the people who are saying, "Well, you couldn't possibly do a deal like this today," that may be true in some details, but if you have a client [chuckles] who's prepared to make a proffer like this and authorizes you to do so, believe me, I think the staff will go well out of its way to try and figure out some way to work things out.

TP: That's what I would say precisely about Boesky's cooperation. He had so much more to give than a Marty Siegel did. And he took us through it methodically so that we had—as I recall, by November, teams assigned to particular deals. And there were two staff lawyers handling three of Boesky's deals and preparing subpoenas for the next round. His cooperation was of a size and a format that it enabled us to pursue the cases.

JS: Actually, in the long run, the best benefit of the period, two-month window, as it turned out, was just the ability to understand what was going on, to get ready for the next step and be able to do it with—in, basically, some privacy.

RM: There's one little piece of the cooperation that's always intrigued me. Guinness Argyle Distillers was not included in the proffer. Shortly after the SEC had entered into the U.K. MOU, which I believe was probably negotiated on the U.K. side with the belief that it was only going to be of benefit to the U.S. and not the U.K. I walked into Gary's office and laid out the facts with respect to Guinness Argyle Distillers and made the U.K. the instantaneous beneficiary of that MOU. It was a great moment.

GL: I think we signed the MOU sometime in '86.

JS: My recollection, Bob, was that we were meeting with Boesky and it was then in Harvey's office in New York. And Peter and I, I think Leo was there, pulled this out and said, "We really need to ask him about this." What the episode concerned was essentially a manipulation of a takeover in the U.K., a very large one. And while I don't think Boesky knew it at the time, it turned out to be of equivalent magnitude there as the issues here, because it involved a lot of major figures in British finance, ultimate—what the case concerned or the matter concerned was a manipulation of the takeover, which was then done by competing stock trading.

That's what that was about. And what struck me about Boesky personally in meeting him was that he had a degree of insight, it seemed to me, that most people don't have in these circumstances in the sense that he had a sense of the unreality of the world in which he was living. The manner in which he was behaving and the lifestyle in which he was

engaged, as well as that of others, was different from that which was normal, and that was not even normal. And that somehow, by describing all of this, he was in his own mind returning to the norm. That was the perception that I had.

LW: Well, actually, to jump in, that ties in to a perception I had, which is that, as a trader, he would have had to learn to control his emotions because, if you let your emotions take over in the market, you're dead. And when we got into the debriefing process with this, he was very, very dispassionate and controlled, I never saw him lose his temper, or lose it or lose anything. I saw a lot of cooperating witnesses under emotional stress. But he was always cool.

HP: We helped him vent that before [laughter] . . .

LW: And we thank you for doing that. [laughter]

HP: I do want to say one thing though, because what amazed me about the breadth of his cooperation, and I agree with you entirely on it, he had a lot more to give. And I was shocked and dismayed at how much he had to give. But as you worked with him, one thing became clear. This was a very smart guy. And what seemed to me to be so sad was the Levine deal, which is what brought him down, brought everything down, was absolutely unnecessary for him to really make a good living. He had the smarts—I think he still does—but he had the smarts to do this on his own. And so it made the whole

thing even more tragic, if you will. This was very, very sad to watch. He really had been a star figure in the investment world. And then to see him felled because of the games that were alleged between him and Levine was very, very sad, I think, and, unfortunately, wholly unnecessary.

JK: But how can you say that? Here was Boesky, who had the Levine deal, who had the Siegel deal, who had the Milken deal—the list was almost endless.

HP: First of all, the deals were different. I do have to say, the Siegel deal made writing the proffer an exciting [laughter]—having—I mean, when—when I was a kid we used to play a game called Red Light, Green Light. And when I discovered that those were the passwords for the passing of suitcases and money, it just really floored me. I take your point that there were a lot of things that were awry. But what I'm saying is this is a person who had the capacity to do this straight up. And I think it's tragic that he didn't. I just think it's tragic.

LW: I think Bob alluded to something though that is part of the reason for this. It's that the risk arbitrage business was growing. More and more people were jumping in and Boesky was raising more capital. It was getting harder and harder to do it where it was legal. And in order to keep ahead of the competition and keep his investors happy, I think he gradually felt the pressure. This is my own inference. He felt the pressure too, you know, stretch a little too far.

CC: I also think there was a sense back then you could get away with it.

HP: Well, I think that was endemic with just about everyone who saw this; it certainly marked Dennis Levine. I think it marked everybody, certainly Milken and others. And the people thought that they could get away with just about anything.

GL: A lot of people got away with it.

HP: Yes, they did.

GL: A lot of people got away with it and made a lot of money. I mean, John mentioned a lot of cases we closed. And we had one case in particular that was huge in profits, much larger than Levine's. So, I mean, there were a lot of—and they clearly had pristine sources of information somewhere. So a lot of people did—did get away with it.

HP: Absolutely.

GL: I think post November of 1986 they probably did a lot less trading.

HP: One other thing and just in terms of working out the settlement. I mean, one of the pieces that we were talking about dealt with what happened between the time we worked out the settlement and when it was announced. And as Bob indicated and as others indicated, the

government effectively wanted Boesky to remain in business and create the appearance that everything was going on as normal. Otherwise, his value as a cooperator, while still great, would not have been as great. At least that's --that was the thing. But from a defense perspective, that caused us a great deal of difficulty because, once you have a client who is going to plead to criminal charges, one thing you know is you don't want this client jaywalking after that, because all of that will have an effect on the sentencing and other things.

And so both the government and we had a real dilemma, if he was going to stay in business. And although there was criticism of this, I thought the ultimate solution that we came up with, having an independent monitor and so on on the premises and available, a role that Jerry Rath performed quite well, I think, was really intended to create protections for the public and, yet, allow the appearance of normalcy for a few more months and so on. But it was a very hard thing for us to come to terms with because we were very worried that, whether intentionally or unintentionally, there might be some misconduct in the running of the business. And that was going to have all sorts of implications for our client.

PS: Well, the question people might have about Ivan Boesky is, what happened to him after he went to prison and what effect prison had upon him, especially in light of sentencing guidelines and other efforts to increase penalties and the effort to deter criminal conduct. Was the sentence appropriate?

RM: I won't comment on the question of whether the sentence was appropriate. It certainly was fairer than ten years. It was a three-year sentence in which he served nineteen months. He has gone on to lead a very private life. Actually, one of the lessons from the defense side, of which many lawyers and nearly everyone in the press would probably disagree, but Boesky has followed the advice that he got and he's stayed completely out of the press. He has declined to participate in literally hundreds of interviews. And as a result, he leads a very quiet existence completely outside of the securities arena and the media.

Come back a little bit to the substantive issue. One of the things that Boesky series of cases did was to reinforce the importance of one of the sort of most basic concepts in the federal securities laws underlying dozens of different provisions, which is simply that it makes the difference who owns the security. And it got denigrated in the Milken press following the settlement as more parking, and lots of articles in the "Wall Street Journal" about how more parking was at the time. But many of the issues that we're talking about came about simply because the ownership of the securities was never properly recorded for the Commission or anyone else in the world to see. And that leads to all kinds of consequences, including, very importantly, the inability of the Commission to follow an insider trading case, if you can't even determine what securities . . .

JS: One of the misnomers about the Milken case perhaps is that it is thought as an insider trading case, which it wasn't. There was some aspects but that was really incidental. The

core of the case, and what made it very difficult to investigate—Leo and Peter and Charley spent enormous amounts of time on it—Terry also, even more was that it was really a huge manipulation of financial domination. It was really more akin to a cornering case or an anti-trust case where somebody cornered an aspect of the financial services markets and then leveraged that power in a variety of different ways, of which Boesky's was only a part, a small part, to exercise domination and control.

And part of that was what the function that you described was part of the manipulative behavior hiding the true ownership of securities in a way that was, frankly, not different in kind than a penny stock manipulation. It was just a very different matter. I'm not sure the public press ever got it, although I think the securities markets did.

JK: We talked about this earlier. To me, one of the fascinating things was that Boesky is not unique. Boesky is one of many arbitrageurs, green mailers, corporate raiders, whatever you wanted to use. They were all household names. They were all front-page stories. There really aren't anybody— isn't anybody like that today. Why is the market different? Why aren't there similar people in the market?

LW: Well, there's less takeover activity of the sort that we had in the '80s. I mean, there are still takeovers but they tend to be financial transactions—transactions negotiated in advance.

JK: That's what Boesky was. They would put companies into play.

LW: It's difficult to do that because that only works if somebody's going to buy the company, or at least have a credible threat to buy the company. Stock market valuations in the 1980s were much, much lower than they are today, both in absolute terms and measured by price earnings ratios. The Dow Jones industrial average in those days was between 800 and a thousand. And that doesn't sound, you know, fantastic to young people today but it was. Being able to put companies in play was a function of the low relative value of the stock price to the underlying assets. Today, stock prices are comparatively and absolutely priced much higher. And it's just hard to put a company into play because the potential for a takeover is just there.

RM: The real arbitrage on the side of insider trading, real arbitrage depended upon the lack of transparency in the marketplace. And one of the changes was that there is greater transparency in the marketplace as a result of a variety of electronic systems and regulations.

JS: There have been other areas of the market where, arguably, there has been a greater concentration of power. For a period of time, one could argue that the IPO market was dominated by a handful of underwriters and therefore, a series of abuses that rose out of that. Not having been involved in that, I've looked at that from afar and I don't espouse that to be true. But I think anytime you had a situation, which we do not currently have,

where one financial participant is the dominant player, that's potentially an invitation for abuse. And that, you know, is something that if one were looking over the radar, so to speak, as the Enforcement Division is now trying to do.

DH: What are the lessons and the impact of Boesky on the Enforcement Division?

RM: Well, it ushered in an era of monster fines; that's for sure. [laughs]

GL: I think it certainly ushered in that era. All in all, it enhanced the credibility of the Enforcement program. There was a rough ninety-day period after the announcement where we were being shot at. And I think even during that period of time while that was happening, the credibility of the program still had been enhanced by the initial announcement. Over the months, as those other cases were made, the credibility continued to go up. So I think all in all it was a—a great thing for the enforcement program. Obviously, it did usher in ITSFEA in 1988 and then just general penalty authority.

JS: I think the other thing though that it did beyond that was that this came towards the end of the Reagan Administration. The Reagan Administration began with a philosophy that regulation in general was a bad thing. And regulation in the securities markets was generally overdone. And the Enforcement Program, as it had been implemented under

Stanley Sporken was overdone; it needed to be rolled back, that there should be a cutback. And this ended that.

HP: I don't agree with the description, what the philosophy was. I think a philosophical concern was that regulation and over-regulation exists in a lot of areas. But one of the by-products of excessive or extensive regulation is a lessening of enforcement, because layout—everyone's specific conduct—it makes it harder for people to say they didn't know what the rules are. When you have so-called deregulation, one of the implications of deregulation, which many people don't fully comprehend, is that you then have to rely much more on enforcement. Because if the rules are no longer spelled out with precision and delineated in really minute detail, then the only way to get the markets to respond to conduct that is detrimental to the investing public, is by bringing enforcement cases, as opposed to regulation.

I agree with Gary. I think this improved the credibility of the Commission and its enforcement program enormously. It certainly proved that the Commission had not been paranoiac. There really were people out there cheating. There were a lot of people who said, "This is overblown," et cetera. "It doesn't happen." And now, people saw things on a magnitude. It did change the appetite of, I think, the staff. I think it had a very positive impact on recruiting people who wanted to be part of a lot of this effort. I remember at one point a lot of the offspring of the Boesky case had to be parceled out all over the

Division because people were concerned that they weren't getting some of the sexy cases and so on.

So you have people really very much interested in what was going on. And I think it led, in terms of the impact on the industry, to greater internal compliance, the realization that without mechanisms within the firms themselves to do their own policing, people could be subjected to enormous problems, even if they were the activities of one, or two or a few individuals. Dennis Levine is as responsible for the downfall of Drexel Burnham as Michael Milken was, maybe more so, if you look at it in terms of the cause and effect, because through his conduct, he really started to expose the underbelly of a lot of things that were going on in the industry.

This had a very beneficial effect. I don't think that there has been the extent of concerns about how professionals on the street behave. If you recall from the '80s and the Boesky Wall Street environment, we then went to Main Street and problems of trading at companies. And then, of course, we went to the New Millennium, Enron, and other situations where companies had falsified their books and records. But I think this produced enormous benefits for the investing public, for the Commission, and made very significant changes that are still with us today.

JK: Bob, you mentioned criminalization. I mean, Boesky was also essentially the beginning of the new generation of criminalization of securities law. All right, eighteen years afterward, is that a mixed bag?

RM: Well, you mean, has it gone too far?

JK: Ya.

HP: The question, I think, depends on what your definition "it" is because if you look at some of the more recent cases, putting on an agency perspective, one of the things that's most disconcerting, when you look at the SEC's enforcement processes, is having people come in and lie or obstruct justice. And what we're now seeing are a lot of cases in which the predominant charge really relates to falsification, destruction, lying, encouraging people not to testify. There's been a number of high-profile convictions. And it brought down Arthur Andersen completely eventually; although didn't have to, it did anyway.

I think that when you look at it from the perspective of how people behave, government at the end of the day has only very limited tools. It doesn't seem that way when you're defending against the government, but definitely very limited tools, because they have to become aware of misconduct and they have to be able to investigate the misconduct. And they have to be able to prove the misconduct and then they have to try the case, certainly in the criminal arena. So the notion that there is greater criminal interest, and

certainly one of the things that we did after Enron came down was to create a joint Justice Department and SEC Task Force, which has been very beneficial and very successful. That aspect of criminalization, speaking for myself, has gone too far. I don't think it's troublesome; I think it's beneficial.

But I think it was troublesome is what all, or many of us have alluded to during this discussion. And that is what I guess you might refer to as the blood lust that comes out there. When Michael Milken settled his cases, he wound up paying out, if memory serves right, close to a billion dollars, all tolled, with the civil actions, the government actions and everything else. And the press on that was, "It's not enough." And if you are somebody who struggled with these cases, as the staff often does, and then you get a hundred million dollars from an Ivan Boesky, which is an unheard of amount of money, just absolutely unheard of. And people are telling you, "It's not enough; you sold out cheap," or what have you, what it does is it distorts, in my view, the job that government legitimately can perform.

So I think it's not so much that there are criminal cases being brought. I think that's a good thing. That gives the Commission additional support in terms of preventing people who can be prevented from violating a law. But what I think the problem is is the blood lust, the desire to see bigger and larger penalties.

[End Tape 1, Side B]

[Begin Tape 2, Side A]

HP: When we announced to Xerox because, as you'll recall, Jack, Xerox paid a fine of \$10 million, which was the largest company fine ever. And on TV show after TV show, I was asked, "How could you settle so cheaply? Their fraud was several billion dollars." And no matter how many times you would try to explain to people, "The \$10 million dollars is coming out of the pockets of shareholders who didn't commit this fraud," you could not make that point. So, to me, it's not so much that many of these crimes are now criminalized, or that the criminal process has become a much truer partner of the civil process. To me, it's that the ability of regulators and prosecutors to exercise discretion has become more limited based upon concerns about the public impression of whether the government's being tough enough. That, to me, is a bigger concern than criminalization.

RM: And there is also an inequity sometimes, a way in which a particular human being winds up at the wrong place at the wrong time. And you can see it particularly in circumstances where the regulatory climate takes a sharp turn on—and one or two people get made an example of, even though the conduct is much more widely spread. And I think there's a real fairness issue, much more so, a fairness issue when the penalty is criminal, as opposed to when it's just a civil penalty.

JS: Let me add one other thought. It's again, also more subtle, I think, than whether the criminal process is involved or not, which is that the other problem that I think is becoming more difficult now is that, as part of the proof of cooperation, one of the elements is, A, that a company not provide information to individuals who may be subject, and that companies not in honoring obligations under state law to indemnify in advance is disfavored. And I can understand the superficial appeal. The problem that it creates is that the effect of that is to undermine, A, the adversary system, but more importantly, the values of it, which is that sometimes the government may have it wrong, that one of the roles of the adversary system is to insure that evidence is tested, and that only by a opportunity to present conflicting facts and the means to evaluate them can that actually be done in a effective way.

And the risk that you run is that you have sort of a situation where people are so afraid of the death penalty, so unable to resist it that you will have, in effect, a false confession scenario, which, you know, does happen, has happened in the street crime context.

GL: Charley coined a phrase that I heard you use, mindlessly aggressive. The pressure to be mindlessly aggressive. When any issue like this becomes a popular issue, where people don't really understand or it becomes a political issue. So what they want to see is aggressive, aggressive, aggressive. And I think the pressures on the regulators are much larger today.

JK: You had those pressures even after Boesky. How did you withstand them? What did you do when you were being attacked everyday in the press?

JS: As I mentioned to you before we started, the luckiest thing that ever happened was the Iran Contra case.

LW: We achieved something in the Levine and Boesky cases that we may not have fully achieved these days in our current situation, which is that there's sort of a belief, however rational or irrational, in the stock markets that the small investor, the little guy is always being ripped off by Wall Street insiders. And what we did in the Levine and Boesky cases, and ultimately the Drexel/Milken cases, is that we created sort of a cathartic effect. We nailed the big players, the high and the mighty, the market insiders, the people who some people might have thought were crooks. And we brought down the high and the mighty.

Now, certainly, there's a tabloid aspect to this kind of success. But because we achieved this cathartic effect, I don't think the public pressure on the government—on the government side was quite what it is today. I think today, at least, you know, we're in the middle of still dealing with, you know, financial reporting and mutual fund issues where I don't think we've quite achieved that cathartic effect yet and hopefully, we will.

GL: It also didn't come on the heels of a market bust either. If we had been dealing with a market decline, it maybe would not have been so successful. It's tough to find an

individual who hasn't been burned. I couldn't sit here today and say that I know that today, if this same matter were presented today in this environment, I'd have the privilege to go ahead from the Commission.

HP: The question assumes something that was only promised at the time. And the notion that, for example, the Chairman then was concerned about whether there'd be real cooperation or what its value is, you know, is a very natural human reaction, which is, "My gosh. Are we really going to get what we're bargaining for?" Because until I do the deal, I don't know what I'm going to get. When I get what I get, it may be too late. I may find that it really isn't what was promised, and then what am I going to do?

So it turned out the right way and I think that's, again, a tribute to the people who were representing the government and a tribute to people like Bob McCaw, who worked so tirelessly on the cooperation elements. But that doesn't always happen. A lot of people come in; they promise you things they don't deliver. They mean it perhaps; some of them may not mean it and then they just can't produce it. So it's hard—it's—you wouldn't know that up front is all I'm saying.

TP: Well, and the other thing you wouldn't know, which we knew at the time was, we didn't have a case if we didn't take this deal. And despite what was being written in the press, I think we understood that. And by the time the real tough press hit, we had been through two months of cooperation. We knew what we were getting and we were cutting our next deal. So I think there was some comfort in all of that for us.

CC: But there was a great deal of luck. You know, one of the things that Harvey and Gary both mentioned, if we had to litigate all these things, we wouldn't have gotten very much. And so not only did Boesky make the decision to cooperate, but Jefferies made the decision to cooperate; Siegel made the decision to cooperate. And each one of those people would have been another sideshow and another long, contested thing. And some of those cases weren't the easiest to explain to non-market factfinders. And they would have been difficult cases.

JS: And, indeed, some of them were lost as in the Mulheren case.

CC: Eventually—you know, that's the other question. When do you stop a program? When do you make a decision that you basically have the people you can have and maybe you should move on and do something else? I think typically you see that almost in every great government success story that the end—there may be some cases that people brought that perhaps they shouldn't have.

RM: Charley, one of the factors about this that caused the most angst, really, on both sides was the delay that was designed to permit the government to collect electronic evidence with Boesky still in the saddle. In retrospect, did you get the value out of that aspect of it that you anticipated, or the value that made the risk worth doing? And, were you to do the deal again, would you take that same risk?

CC: I would take the same risk. That would be without a doubt. It wasn't the greatest but some of it was good, and I don't think anybody suffered by us doing that. I think it became a public relations issue but I don't think there was any real downside to the market by doing that.

HP: I couldn't agree more with you, Charley. I think that's 100 percent right.

CC: One thing I just wanted to ask that always troubled me about the whole time, and it may just been a different New York perspective than a Washington perspective. And that is almost a demonization of Boesky. You know, Boesky was a white collar criminal. He wasn't the most evil man who ever lived. And I was getting letters—and I think this is part—because one of the things we didn't talk about was, you know, all of these political cases going wrong at the same time, like the Yuppie Five and—that were incredibly anti-Semitic.

And there was a sort of this demonization of Boesky because of his religion. Boesky was a criminal but no different than most. You know, he broke the laws. They weren't exactly the Ten Commandments. You know, some of them were—I forget what we had the guy, who was his number one guy, plead guilty to. It was a net capital violation, first criminal prosecution of a net capital violation. And that was to me one of the very disturbing elements that I was seeing here in New York.

GL: Well, I think that part of it was that Drexel helped a lot in doing that. I don't know when before the announcement they got word of this but they knew some days going in. And they were ready. They had the PR machine ready. They had that wonderful picture of Boesky. They were rolling on this hard and, fortunately, it played well with "USA Today."

RM: Well, and that was part of the Drexel defense campaign. They were trying to discredit what they thought was going to be your lead witness against Milken.

JK: Well, thank you one and all.

[End of Interview]