

Securities and Exchange Commission Historical Society
Interview with Richard Walker
Conducted on May 14, 2015 by William Thomas

WT: This is an interview with Dick Walker for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is May 14, 2015, and we're in New York City. Thanks very much for agreeing to speak with us. We usually start with a little bit of biography, just to get a sense of where you're coming from. So, where are you from, and how did you make your way into law?

RW: I was born in Wilmington, Delaware, in 1950, and lived there my entire childhood. Then I left for college in the late '60s, attended Trinity College in Hartford, Connecticut, and then Temple Law School in Philadelphia. I believe that it was probably a pretty tumultuous time when I was in college, before I went to law school. It was the height of the Vietnam War. There were lots of anxieties about going off and fighting in a war that not a lot of people understood, and there were some uncertainties about whether there would be continued deferrals after college.

Actually, when I was in college I had a low draft number. I was drafted and had a physical exam in New Haven, Connecticut, which I passed, notwithstanding asthma, which was a prevalent condition that I suffered from. Ultimately, right after graduation, that decision had been reversed. I think they re-looked at the medical records and decided that the asthma was a disqualifier.

I had a very short period of time to make decisions about what I wanted to do, since I wasn't going into the service. Temple Law School, which was close by Wilmington, where I grew up, in the summer right before the fall classes began, accepted me and said that I'd be welcome to attend classes. So that's what led me to law, a new reprieve after not getting drafted.

WT: What did you study as an undergrad?

RW: I studied English and German, interestingly enough. The German just fell into place, but I was primarily an English major.

WT: I see that after you got your JD—that was 1975—you were a law clerk.

RW: I was. I clerked for the chief judge at the Third Circuit Court of Appeal, Collins Seitz, who was a wonderful man and a great mentor. He had formerly been the chancellor of Delaware Chancery Court, which was a very important court, and continues to be an important court today, for corporate law and corporate governance matters. He was quite a legend, certainly in Delaware. He was one of Delaware's leading figures, and I took a stab and applied to him. I think the fact that I was from Wilmington caught his eye and his attention, and he interviewed me and hired me as a law clerk.

WT: Had you been planning on doing the corporate law area?

RW: I was primarily interested in the corporate law area, and probably part of it was because, as a Wilmingtonian, corporate law is such a part of the fabric of Wilmington, no matter what you do. With large corporates that were domiciled in Delaware, there was often a lot of things that you'd read about in the newspaper, and there was a lot of attention paid to corporate law. I think Delaware has always been recognized as a center of corporate law, so I had a lot of exposure to it and maybe just gravitated to that naturally.

WT: And then after that you joined a law firm.

RW: I did, yes, I joined a firm in New York City, Cadwalader, Wickersham, and Taft, and I spent fifteen years there, first as a litigation associate and then as a partner for the last seven or eight years.

WT: Tell me about some of the things that you would have seen there that would have eventually led into securities.

RW: Well, I saw a lot. I had a very broad and diverse practice. I can remember some crazy types of things. I did handle the eviction for a real estate client of The Rolling Stones' former manager, and so that was at the one end of the scale. And then I did work in some SEC investigations on behalf of clients. That was very interesting work. I always thought it was interesting at the time. It was work that got your heart racing, because you never knew what the outcome was, or what the consequences were going to be. But I saw it, and both the subject matter and the process were very interesting to me.

I had a diverse group of other types of cases. I remember one case, we represented Holiday Inn, which was seeking insurance coverage for a hotel that they operated in Beirut, Lebanon, which had been absolutely decimated in the all-too-frequent fighting in Beirut. I remember the issue came down to whether the damage was caused by civil war, which would have meant that it was an excluded peril, or whether it was caused by “riot, strike, or civil commotion.” So, believe it or not, the entire trial centered on whether this was a civil commotion or a civil war. We won, so that was the good news. We proved it was a civil commotion.

WT: Very interesting. So, of course the 1980s was a very interesting time in the securities area. Did you see any cases in the insider trading, tender offer area that was so big at the time?

RW: I had some. In my private practice, I was involved in some civil tender offer disputes. We handled one on behalf of Household Financial Corporation, and that was my first taste of the tender offer area, a very interesting legal area. It’s very high stakes, because it’s fast moving and events are happening, so it’s not one of the kinds of areas where there’s a slow resolution of something over ten years. These cases are decided oftentimes on temporary restraining orders and things of that sort.

I also was involved in some SEC insider trading investigations from the client point of view, which were also, again, very interesting. It was the Milken, Boesky era, where, of

course, insider trading was gaining such prominence. It was about the time when Jim Stewart wrote his Pulitzer Prize-winning book, *Den of Thieves*. So it was a very exciting area, full of colorful scoundrels, if you will, and colorful individuals, and then made famous in Stewart's book—great stories about how these cases were made and developed. So it was a very interesting, prominent area during the '80s.

WT: Anything else that we should deal with from that time of private practice, or should we move into the SEC time?

RW: No, I think that's probably it. I have to say that, periodically during private practice, the lure of public service attracted me, and I had an unsuccessful flirtation with being an assistant U.S. attorney in the Southern District of New York. That never quite eventuated. I think I made a pass at the solicitor general's office in Washington. I made an application there, but the places and the number of people that they hire in that office are very small. I always had the interest and attraction to public service, it's something that I wanted to do, and I had always been interested in the SEC. One of my close law school classmates, Bill McLucas, had had a very successful career in Washington in the Enforcement Division, and he and I compared notes periodically and got to revel in some of the excitement that he was involved in. So the SEC was something that was always quite interesting and fascinating to me.

I remember, I guess it was probably 1990, there was a small little notice in the *Wall Street Journal* that the head of the SEC's New York office had announced that he was

stepping down, and I called Bill and I asked him what he thought about that job. I said, “Most of the time, we all see and hear about in the Enforcement Division in Washington, D.C. Is the New York office a backwater office? Is that a real, serious, substantial office? What would you think if I was interested in that and wanted to apply for that position?”

He said there were some terrific people in the New York office, that they had had some personnel issues over the years, but that they had fabulous, great people, and it would be kind of like rubbing two sticks together to get flames started, and he encouraged me to throw my hat into the ring, which is what I did. I applied for the, then I believe it was called regional director’s position, and lo and behold, I was successful. I was appointed regional director in the fall of 1991.

WT: On your resume, it said that your original title was administrator, and then director. Was that just a title change?

RW: That’s right. It was basically a bit of a title change, and also a bit of a change in responsibilities, too. Originally, I guess you’re right, I was regional administrator for the New York region. New York was a separate region. When Chairman Levitt was appointed several years later, he combined Boston, Philadelphia, and New York into a region, and changed my title to regional director of the Northeast region, rather than just the New York region. I think today it may have actually changed back. I think New

York may be a stand-alone region now, but I was basically the senior Commission official for first New York, and then New York, Boston, and Philadelphia.

WT: Tell me a little bit about the responsibilities at the New York office, especially vis-à-vis what was going on in Washington.

RW: The regional offices really performed two, and at that time actually three functions, but primarily the regional offices were responsible for enforcement and inspections. The inspection program—this was before OCIE was created, so inspections were done on a more decentralized basis. Each of the regions had inspection staffs that would conduct inspections of registered entities in their region, which is what we did. Probably half our staff was inspection-related staff. We also had enforcement staff, who would bring cases, and over time the enforcement authority was more centralized through Washington.

Under Chairman Breeden, he wanted all of the regional enforcement recommendations reviewed by the division's chief counsel, who was at the time Colleen Mahoney, when I first started. So we brought enforcement cases, we did inspections, and then there was a very small group, a branch of small issues that would do review of filings for certain kinds of corporate issuances. That subsequently was taken back by Washington. So the regional offices didn't have the full scope of policy making and other activities that the headquarters had in Washington. It was primarily focused on the items that I've mentioned.

WT: About how big was the office when you were there?

RW: I believe that there were probably about 120 when I started. It might have been actually a little bit bigger than that, and it grew incrementally over the years. I don't know what the number is now. I'm sure it's much larger. But it was a large regional office, I think the Commission's largest office at the time because of New York's proximity to financial markets and the Stock Exchange, so it was always a big, very active office of the Commission.

WT: That was going to be the next thing that I was going to ask about, being in the New York office versus the other regional offices. Are there special responsibilities of that office that one wouldn't see elsewhere?

RW: Interestingly enough, the answer is yes. We used to take a very aggressive stance vis-à-vis our jurisdiction. So we would, with a bit of a wink and a nod say, "Well, we have the jurisdiction to investigate any company that trades on the New York Stock Exchange, because of course the New York Stock Exchange is in our region." This resulted in some friendly competition with some of the other offices who would say, "How come you guys have opened an investigation on this company that's headquartered out here in Los Angeles," or some far-away place? We would say, "Well, you know, that company trades on the New York Stock Exchange. That's in our region, and so that's why we've opened the investigation."

So there were no hard and fast rules, but we were—and I think took some pride in being—very aggressive about trying to prospect for good leads and good cases. We would always be able to find some kind of a jurisdictional nexus because of New York’s importance to financial markets.

WT: Can you tell me a little bit more about that prospecting activity, and the question of how Enforcement brings cases of course is of great interest.

RW: Well, there are a number of different ways. Of course, the exam program sometimes kicks off various leads when the examiners go in and they find things of interest. Sometimes, there are referrals to Enforcement. But I have to say, there was enormous amount of resourcefulness among the staff.

We had a terrific, terrific guy, Martin Kupferberg, who was the head of our broker-dealer enforcement division, and he was so skillful. He would be talking with the policymakers in Washington all the time. He was very connected with the broker-dealer world. He had his ear to the ground. He had a great nose, and a sense for wrongdoing. So, I can remember many times he would come into my office with kind of a smile and a grin and he would say, “I’ve got a terrific deal for you. I’m going to make you 20 percent guaranteed interest on an investment.” I’d say, “Martin, what are you talking about?” He would have found some bogus investment that was being flogged or promulgated, where people were being promised unreasonably large and high returns, and Martin would

know right away. He would have a sixth or seventh sense that this was a fraud, so he would quickly open the cases, and he had very good instincts on that.

And frankly, I think the staff found and learned a lot of things simply by carefully and closely reading the newspapers. They would read the newspapers, and there were oftentimes very kind of telltale signals that they would come up with by just a simple, careful reading of the newspaper, of something that would catch their eye and cause them to say, “We should kick the tires here just a little bit. We should ask a couple of questions. How is it—” the easiest situations would be, “What caused this big loss?” Somebody has just reported a big loss, and they were just giving rosy projections three, four months ago.

But in some instances there were also cases where they were unexplained gains. I remember the Jett case, the case involving Joseph Jett, who had a brilliant (so he said) trading strategy at Kidder, Peabody. He was making enormous amounts of money, and no one could quite understand the basis for this. I think we learned that not only do you take a close look when people are losing money, but sometimes it’s useful to take a close look at when people are making a lot of money, too, and it’s not entirely clear what the reasons and the strategy that has led to that are.

WT: How often do things like tips become involved in the process?

RW: Tips are a very important part of the case selection process. Now, mind you, we would get an awful lot of tips that were simply dead ends. They weren't valuable tips. But certainly there were a number of situations where we would have people that would write to us or call us with a complaint, which we would follow up, and some were quite meritorious. We also found that many of the responsible firms, the Wall Street firms, large firms, would come to us and self-report things that they had found. Perhaps one of their traders or salespeople had done something wrong, and they took the matter into their hands, perhaps fired the person, but felt that they needed to self-report this. That was always appreciated, as well, when the firms would step forward and self-report.

WT: Are there particular cases that you recall, that stand out to you?

RW: It's funny that you should ask, because of course now I'm going to have a complete brain freeze as to which cases resulted from a tip.

WT: I just meant in general, not necessarily resulting from a tip. It wasn't a follow-up to my previous question, just looking back at particularly significant cases from your time in the New York office.

RW: We had some terrific cases. The first one that pops to mind is the Towers Financial case, which was a huge Ponzi scheme involving, I believe it was at the time a Fortune 500 company, and we had a very difficult time persuading people that, indeed, this was a Ponzi scheme. I think there was an enormous amount of fear that if we got this wrong

and we were falsely accusing a legitimate company, that there could be really serious consequences.

We spent an awful lot of time. The Commission's chief accountant at that time, Walter Schuetze, who had wonderful investigative instincts, worked with us, and convinced himself that this was a clear fraud. That's what gave us the wind and the backing, and we took it to Washington, and Chairman Breeden quickly recognized it. I think some of the staff that were advising some of the other Commissioners were a little bit ambivalent, but it proved to be correct. That was a case involving enormous losses and criminal prosecutions of some of the people.

There were a couple of other large Ponzi schemes that I remember, one involving this charity in Philadelphia, New Era Philanthropy, and it was almost like a tooth fairy scheme. If you give \$100, they will match your contribution to the charity of your choice. And everybody wondered, "Where is this other matching money coming from?" They had a lot of investors in this program. I think there was some Rockefeller money. I think the former Treasury secretary, William Simon, actually went on *60 Minutes*, claiming that this had been a legitimate business. As people oftentimes said, "But for the SEC's involvement, this would be viable today." Well, that was also proved to be very embarrassing for him, and it proved to be incorrect. It was a Ponzi scheme.

WT: I ran across that in the papers, that there was a lot of resistance by the people who were being defrauded.

RW: A lot of resistance. Exactly. A lot of times people, they would take the position that the SEC is just meddling here; over time these investments will pay off, and the SEC should just butt out. It's the SEC that's the cause of the losses, not the fact that the underlying investment strategy isn't valid. So that was another important case.

We had some wonderful insider trading cases that had been meticulously developed with rings of trading that spanned the US. A Motel 6 case had defendants from California, who tipped people in Texas, who tipped New Yorkers, and this was fastidiously put together by Carmen Lawrence, who was one of the stars of the office, and her team of Enforcement staff.

We had a large case, again Carmen Lawrence's area, involving Ed Downe, the former husband of Charlotte Ford, who was a very senior, well respected member of New York society and had access to some board members of other corporations. There was a ring that met in Southampton, so there were some glamorous facts about how they got together and exchanged information. Lots of really terrific cases.

The Jett case, which I mentioned earlier, where Joseph Jett had had this high flying, phenomenal trading strategy that collapsed, and frankly, it led to the collapse of Kidder, Peabody, when all was said and done. That was another one of the big cases that we brought.

WT: I ran into one action against Merrill Lynch with mispricing something called unit trusts.

RW: Correct. Yes, that was a case—in my experience, Merrill Lynch has, as many firms, a very jealously guarded, well-deserved, excellent reputation. They were really a firm I think that we had a lot of confidence in. They had a very strong legal and compliance group. And yet, for reasons that are no fault of a strong legal and compliance group, things happen that go wrong. And so we had an engagement with Merrill Lynch. It was painful for them to be named in an enforcement case, but we felt that the facts and the law warranted it, and we had to take what we felt was measured action in that case.

WT: You were involved with an early large case against a mutual fund with the First Investors Consolidated Corporation?

RW: Oh yes, that's another one that was done by Rick Marshall. We had sort of separate teams that did '40 Act investigative work that was headed by Rick Marshall, and then Martin Kupferberg did the broker-dealer cases, and Carmen Lawrence had the broadest jurisdiction of all, she could do whatever cases she wanted and did an excellent job of that. First Investors was a large case that we brought involving sales practices, involving the sale of mutual funds, and it was developed over a number of years. A lot of very bad evidence was developed, in terms of the way mutual funds had been sold by this complex. It was one of the office's big cases.

WT: Mutual funds is an area that, some years later, Arthur Levitt began to concentrate on, in terms of the governance of it.

RW: Yes.

WT: So was it apparent that there were going to be larger issues in this area that early on?

RW: It was. Certainly we would look at kind of the calculators, at how much money was managed and invested in mutual funds. This was a transitional period, so no longer did mom and pop investors buy single shares of stock. Those days are long gone, and people would instead buy a share of a mutual fund, which would have exposure to lots of different equities. So we would see the numbers grow and grow and grow, of amounts under management by mutual fund companies.

It became a high priority for Chairman Breeden. He was challenged with the task of trying to provide some kind of credible inspection program over a large, growing segment of the financial services industry. How can you be credible if a mutual fund thinks that you're only going to get examined once every fifteen years? You had to have a credible threat that you were going to be coming in and keeping your eyes on what the mutual funds were doing. So this was a very fast growing area back in the '90s and 2000s.

WT: And then, at the other end of the spectrum, there's the boiler rooms, microcaps. I read a couple speeches of yours on that, the occasional involvement of organized crime in that.

RW: Yes, that's right. Again, it was a different era, and some of the most celebrated boiler room cases were cases that were done out of the New York office. We had the misfortune of being very close to a lot of these places. Probably the most significant case that people will remember, that was subsequently memorialized in *The Wolf of Wall Street*, was the Stratton Oakmont case, which was this terrible bucket shop out on Long Island. Ironically, it was headquartered in Lake Success. We all will remember the movie with Leo DiCaprio and Jonah Hill, who were just reprobates, morally bankrupt individuals.

It was one of the first cases that—I walked into the office, this case was in full stream, and it was a very different time because there is no longer a need for a boiler room where there are large rooms with large tables and telephones—because nobody uses the telephone anymore, everything is done by Internet—but at the time, this was the way of communicating, soliciting, driving interest in a stock. People would get on the phone, cold call a lot of people, and say, “I've got a terrific stock we're looking at. It's about ready to pop. You can get it at the ground floor for a low amount, and I guarantee you within days your investment is going to double, triple.”

And indeed, they would be able to drive the prices of the stocks up, then take all of their ownership out, sell it while the stock was high, the old pump and dump, and then the

stock would crater and fall back. Stratton Oakmont, Hanover Sterling, they all seemed to have names of Sterling or Tiffany or something like that that gave them a false luster.

But we did a lot of those cases through the New York office.

WT: I'm curious, what's your opinion of the movie of that? Do you fear it glorifies it?

RW: The movie, frankly, didn't focus as much on the securities aspects as it did on the bankrupt lifestyle. And obviously that was something that we were all aware of, that the money was going for sex, drugs, and rock 'n' roll, and fancy cars, and boats and planes. But the movie really didn't focus on the securities aspects, or the enormous harm that it would cause people who would put their life savings in the hands of these people, only to lose it.

So I'm not a big fan of the movie. I do think, to the extent that it's shown as entertainment, it certainly was far less than entertaining to me, living through that kind of thing. I was not entertained by crooks, basically taking away people's life savings and precluding college educations and things of that sort. So that was not something that I viewed as very amusing.

WT: The Historical Society has recently done a deep dive into municipal securities. I guess you had at least a couple of cases in this area.

RW: Yes.

WT: And it was Chairman Levitt's early focus as well.

RW: It was. He came to the Commission, and actually focused all of us in the area of municipal securities, which was an area that hadn't really received a lot of attention. But he had an absolute nose for this. He was infallibly correct by asking us to focus in this particular area, and that is an area that bore fruit. We found that there were a lot of abuses that were taking place, which Chairman Levitt was very familiar with from his former days. He would say, "There's such pressure to buy tables, and to give money, and to make contributions, and things of that sort, for reciprocal promises of business." And sure enough, when we scratched the surface, we found quite a few abuses. We brought some cases in that area, and worked very closely with the U.S. Attorney's office to bring both civil and criminal cases in that area, which I think led ultimately—

WT: You're talking about pay-to-play, specifically?

RW: Yes.

WT: That was a new rule at the MSRB.

RW: It was a new rule, but the underlying practices before the rule was enacted were clearly covered by traditional—

WT: Fraud—

RW: Fraud, yes, 10b-5 and things of that sort, so we didn't need a rule to pursue those cases and investigations. Certainly the rule was an outgrowth of some of the things that we found—again, something that Chairman Levitt successfully pressed for. But some of these things were just old-fashioned fraud, and so we did a number of cases in that area.

WT: Tell me a little bit how you came to the Washington office, then, as General Counsel. How did that come about?

RW: Well, I had an interesting conversation. I can remember the first time that Chairman Levitt came to New York. Of course, he was a lifelong New Yorker, and when the new boss comes to town you want to put your best foot forward, so we had the staff ready to give him succinct briefings on certain cases. We didn't want to bore him. We wanted to make sure he met as many people as possible. I remember that very first day he came, and he was very gregarious. He wanted to meet as many people on the staff as he could. He was very interested in what people were doing. He was a great supporter, I think, of the staff, and very interested in people, personally and individually.

I got to know him through the early days, and I got to know him in that I would bring, I think, what he saw as some pretty good recommendations down to the Commission. So he would see me present cases at the table, and we developed a friendship, and frankly, I see him as one of my great mentors in life. He's just a wonderful person who I learned so

much from and gave me so many opportunities, both at the Commission and outside the Commission.

At a certain point, he said, “I’d like to have you come down to Washington.” There was no clear and direct role for me at the time, and we talked about that for a period of time. And then, I think at a certain point, Sy Lorne, who had been the General Counsel, announced that he was leaving, and Chairman Levitt called and said, “I’d like to have you replace Sy Lorne. I’ve talked to former Chairman Breeden and asked what’s his thoughts, who could take that job.” He spoke highly of me, and I guess he had talked to some other folks as well, and so he offered me the position of General Counsel and asked me to come down to Washington.

I’d been in the New York office at that point from 1991 through 1995. It was a perfect time to make a change and to see some new scenery, and take on a new challenge and tackle a new job, and so I moved to Washington in January of 2006 as General Counsel—a very, very difficult job. It was probably the most complicated, challenging job that I had at the Commission, because all roads lead through the General Counsel’s Office, and it requires such expertise in regulatory programs, enforcement-related matters, inspection matters. Everything the Commission does is passed on and vetted by some arm of the General Counsel’s Office, so it was an enormously broadening type of experience and role—very challenging. I worked as hard as I’ve ever worked in my life to try to get up to speed and learn all the things that the General Counsel’s Office was responsible for doing.

WT: Sticking with the municipal securities area for a little bit more, we spoke to Paul Maco as part of that, and he was talking about moving along multiple dimensions with that. So a lot of what was done was building, he called it a mosaic of cases, in order to attempt to kind of define the legal standards in this area.

RW: I think that's absolutely right. It was a very good description of it, actually. Paul, of course, was the first head of the Office of Municipal Securities, which was an office that Chairman Levitt created. But I think one of the things that we recognized—and Chairman Levitt was very skillful at recognizing that—showing the need for reform through the enforcement process made the reform go so much easier, rather than just telling people, “We need to do a reform.” If you brought cases that clinically displayed abuses in the market or things that needed to be addressed, it made the subsequent follow-on rule making much more compelling than if you just tried to rule make, supposedly for people's benefit, without concrete examples of wrongdoing.

So we viewed the enforcement aspects of the municipal securities program as working hand-in-glove with the regulatory and other changes that Paul Maco and his office were doing, and the outreach that they were making. It was a very seamless type of effort to try to combine and use enforcement to display areas where regulation and change was needed.

WT: Was this a strategy that Chairman Levitt was using in other areas, as well?

RW: He was, yes. It actually worked in the accounting and the auditing area. One of the most important programs I think that he pushed was auditor independence, independence between the accounting function and the consulting functions. I think we saw the growing business that was accruing to accounting firms in the service area to do non-audit types of consulting and servicing, and I think the view was that that created some conflicts of interest, that firms might, for the sake of getting lucrative consulting jobs, perhaps be more complacent as auditors than they otherwise should be. It was hard to prove.

I remember that Chairman Levitt was called by the Senate Banking Committee, who was pushing back on behalf of corporate America. Phil Gramm was the chairman of the Senate Banking Committee and gave Chairman Levitt a very difficult time, and said, "Well, we aren't seeing the evidence that you are talking about." Chairman Levitt says, "Well, we're seeing a lot of things that we can talk about in the enforcement area, and Richard Walker is working on some of those things."

The next thing that happened was Phil Gramm and the other members of the Senate Banking Committee wanted a briefing. This was something that was itself very challenging, because normally speaking we would draw the line and say that we could not share the results of non-public investigations with the Congress. Congress had oversight responsibilities, but there was no requirement that we share confidential information about investigations.

And normally arm's length was sufficient. We would simply tell the Congress, "We can't discuss; this is an ongoing investigation." In this particular case, there were multiple reasons why it was in our interest to give them a taste of some of the things that we were seeing in our investigations, just to make sure that they knew and understood why it was that we held the views that we held about consulting and auditing services.

So I remember, instead of the briefing taking place on the Hill, Senator Gramm said he would bring members of his committee over to the Commission's office. This was also very unprecedented. People from the Hill never came to the SEC's office. And not surprisingly, when they arrived on the given date, there were press people outside asking questions about what they were doing and what kinds of things they were going to be talking about. Everyone knew that they were coming to hear about auditor independence issues.

I gave them a briefing for a couple of hours. They asked a lot of questions. We had I think some very telling examples from cases that we were working on, which we anonymized so that no information was given about a particular person or firm. But I think very clearly, they understood how some of the temptations worked, and some of the downsides of allowing too close a relationship between consultants and auditors.

And when they left the building, we viewed ourselves as having achieved some measure of success when the press asked Phil Gramm on the way out, "So did you learn anything

today that changes your views on this topic?" Phil Gramm, without conceding that he had heard an earful of things that should have alarmed anybody, basically said, "Well, there's always several sides to every story, and so we heard some things that were of interest to us today." So I thought that was about the best we could pull out of that. But again, that was an area where we had to show and make examples for people to believe that there indeed were problems, and that we weren't just creating problems.

WT: I know that Chairman Levitt's primary strategy was to go after governance in these areas, for example, creating public representatives of the board. And of course, we have to wait for Sarbanes-Oxley to get real legislation in this area. But without that prospect in view, what were some of the legal challenges being thrown at the SEC from industry, if that's a good way of putting it?

RW: Well, I have to say that in those days, unfortunately, the dialogue was not particularly good dialogue with the accounting profession. We tried, and Chairman Levitt—I think one of the hallmark achievements was his ability to move this forward against tremendous opposition. There's no question about that, that we tried to improve the governance of the board that oversees the FASB, and there was enormous resistance to bringing outsiders in and shaking that up.

But he was a very persistent man, and I think his instincts were just excellent instincts in terms of doing this. We got and made a lot of progress, but oftentimes, it took, as I say, working through the enforcement process and through the policymaking process to make

these things happen. Not using enforcement as a weapon, no one would ever do that, but using enforcement as sort of an illustrator of some of the issues that existed.

WT: Was there any prospect of rulemaking at that time?

RW: There was always the threat. It was, as former Chairman Douglas said, the shotgun behind the door. We did not want to be heavy handed in terms of creating rules and using rulemaking to do that, but I think that was the ultimate prospect that lay there. But I think that the way Chairman Levitt liked to work was in partnership with the regulated industry. He tried to do that with broker-dealer firms for pay and compensation, and I think he tried to do that with the accounting profession, as well, to see if we could reach mutual understanding on reforms that were needed and avoid having to dictate things that would cause people to chafe under the yoke of regulation.

WT: When you came to Washington, I think that was at the very tail end of the period when there were only two Commissioners.

RW: Yes. Let's see, when I first arrived, I think that's right. In 2006, it was just Commissioner Wallman and Chairman Levitt, which was a very interesting dynamic, having just two out of five positions filled. I don't know whether it was a year later, but a short period of time later the Commission filled out. But that raised a lot of challenges. From a historical point of view, there had never been as few as two Commissioners. We had to go back and do a lot of research to find out whether the Commission was actually

entitled to function with just two. Jack Katz, who was then the corporate secretary, had some historical documents that we were able to make reference to, and I was able to talk with some of my predecessor General Counsels who had contemplated the possibility of less than three Commissioners. I don't think anyone ever thought it would get down to two, but it did. We satisfied ourselves that the Commission did have the opportunity to proceed and to convene with just two sitting Commissioners, the Chairman and one Commissioner.

WT: At the time, in the press, this was portrayed as neglect by the Clinton administration. Was that something that was felt within the Commission, in terms of not only that but funding as well?

RW: Yes, there was disappointment that the political process did not proceed more expeditiously. I would say as a staff member, it was a sign of neglect. It was a little bit of a "You guys don't matter as much as some of the other appointment processes," and that was somewhat dispiriting. But, again, I think one of the great things about the staff of the Commission is they are, to a person, so dedicated in terms of what they do that things like that—maybe they're brief setbacks, but they don't alter the enormous dedication that the staff has to doing what they're doing. Just get through that period.

WT: Now, you came into the GC's office after the passage of the Private Securities Litigation Reform Act, which I know had been divisive within the Commission.

RW: Oh yes, yes.

WT: I'm wondering if you can tell me, if you know anything about those positions, having been in New York at that time, but more what was the impact of the legislation on the SEC's activities?

RW: Well, it's very interesting. I had gotten bits and pieces of the very charged debate about the Private Securities Litigation Reform Act. It really split the Commission apart. Before I got to Washington, I remember I would have conversations with Bill McLucas, who was then the director of Enforcement, and Linda Quinn, who was the director of Corporation Finance, and I think they felt that the Commission was in real danger of sacrificing very important principles if it were to try to support or oppose in the wrong way legislation that would restrict the bringing of private civil actions. I think the General Counsel at the time, Sy Lorne, and Steve Wallman perhaps had a different view, but it was a very contentious debate, certainly throughout Washington, throughout the country that led to this.

I think that Chairman Levitt—probably he wasn't a lawyer, and he didn't, I think, fully share some of the views of doctrinaire staff, if you will, that some little tweaks to language about standards for bringing a case could cause the kinds of harms that some people were saying. I think he wanted to achieve the right resolution. I think he was a zealous guardian of the Commission's priorities and doctrine, and he didn't want to do

anything that would sacrifice Commission position. But it was a very difficult period that led to that.

So, when I arrived in Washington, it had just been passed, and one of the things that I had to do as General Counsel was to do a report on developments in the first year of the Private Securities Litigation Reform Act. That was a big challenge, because it's like watching grass grow. In a year's time, it's very difficult to make good, sound conclusions and assessments as to whether the law had somehow or another screened out viable cases that should have been brought, or had increased the number of frivolous cases. It was very difficult to get statistics and to draw conclusions. So we prepared a report that we circulated and released in a year's time, as we had been directed by the President to do, a report to the President on this thing. I have to say, it didn't reach any particularly startling or dramatic conclusions at that time, but it was something that I think was widely looked for and awaited.

WT: Another issue that the SEC was dealing with at this time was changing market structure. We were talking a little bit about the Internet in terms of it replacing the boiler room, but of course there's things like ATs and all of that.

RW: Absolutely.

WT: So you have a couple regulations.

RW: We did, yes. That was a very active period of time in terms of market regulation, in terms of changing markets. And enormous, as you said, alternative trading systems were coming to the fore, I think the whole debate about whether securities should be priced in twenty-five-cent increments as opposed to pennies or smaller increments. Speed of trading was increasing, enormous changes. And here the Commission was trying to do its best to open the doors to new technologies, to embrace technology, but to make sure that all of the protections that investors were entitled to were not sacrificed in this untested new area. So that was an area of enormous change and regulation.

WT: Was there a sense that you were trying to kind of take it bit-by-bit. You have the order handling rules, and then Reg ATS, but ultimately Reg NMS is not all the way up until 2005, and it was contentious even then.

RW: It was. There were a lot of things to take on during this period of time, and you just couldn't totally revamp and rewrite all of the rules, so you had to proceed incrementally and keep making changes in the area.

WT: And this was an area of particular interest to Commissioner Wallman?

RW: It was, yes.

WT: I'm talking to him tomorrow.

RW: He was very technologically savvy, and so this was an area of great importance to him. He was quite, I think, foresighted in terms of technology and the impacts that it could have in terms of the markets.

WT: And then, at the same time, again, there's the Wallman report from his advisory committee on capital formation that was sent out—do you pronounce it “Nismiya,” N-S-M-I-A?

RW: Yes, it was, NSMIA.

WT: And that whole area, and ultimately culminating, as I understand it, with this Aircraft Carrier release.

RW: That was different. That was under, later on, Brian Lane and the Division of Corporation Finance that tried to revamp the securities offering process. I think it was unfortunately dubbed Aircraft Carrier because it was too ambitious. It was too big and vast and complicated. And, yes, there was a passion to improve the securities offering process, to make it easier and more streamlined, but I think that this had the misfortune of going too far and, in effect, creating an entirely new system, rather than making incremental changes to the existing system.

So I think, as history will show, that after Brian Lane left the Commission and Alan Beller came in—I guess he didn't come in right away; I think it was first David Martin,

and then Alan Beller was appointed by Chairman Pitt. And, of course, he was a private practitioner of great skill, knowledge, and expertise in the securities offering area, and he was the guy that finally was able to achieve the rule changes that really revolutionized the securities offering process.

WT: Now, NSMIA was primarily a realignment of the broad exemptive authority given to the SEC, versus the state regulators? I'm not totally clear on this.

RW: No, and as you mention it, this is one that I guess over the passage of time and the lack of continuing connection—and this area is something that I probably spent less time on than some of the other matters.

WT: Did you have much to do with the—I guess it would have been at the concluding phases by the time you came into the GC's office—but the NASDAQ 21(a) report?

RW: Yes, that was something also that was worked on vigorously by enforcement, and obviously it was a hard-fought battle with the industry. Bill McLucas was the director of Enforcement at the time that was brought. I think the Chairman's Office was quite involved in making sure that that case came to a conclusion. I think some very important changes in terms of the way that the NASD was governed, long-lasting changes.

WT: Did Arthur Levitt ever speak at a general level about kind of a philosophy of changing governance in various institutions, SROs, later the mutual funds, of course the auditors?

RW: He certainly was probably one of the most effective Chairmen in history in terms of using the bully pulpit to set forth ideas and to suggest areas for change. He was a very gifted speaker, and spoke often with real messages for change. So he didn't do speeches just to say, "Here's what we've done." He would give forward-looking speeches and use those to achieve change. So he spoke about all of those issues, and not necessarily strung together, but individually, the importance of appropriate governance in some of those areas that you mentioned.

WT: Yes, "The Numbers Game" is of course the famous one.

RW: Oh yes, exactly.

WT: So is there anything else we should talk about with your time at the GC's office, before I go back to your time as director of Enforcement?

RW: I think you've hit many of the highlights that I remember.

WT: Okay, so then I guess Bill McLucas left, after being director of Enforcement for some time.

RW: Stanley Sporkin used to say Bill was the Babe Ruth of Enforcement because he was the Enforcement director for the longest period of time of anyone. He was an excellent, really terrifically, historically important Enforcement director.

WT: So it was Arthur Levitt, then, who asked you?

RW: He did. I was preparing to leave, and frankly, talking to an external firm. I was in the final stages of interviewing for a job, and I had told him that I was going to be doing this. Sort of a long and historically funny story, but anyway, he said, when he knew that Bill was going to be leaving, he said, "I'd really like you to stay to do the Enforcement job. I think this is a great opportunity for you, and you can always go to the private sector some other time, and I want you to stay. I'd like you to take that job."

To be honest, I was pretty far down the road in terms of talking to another outside firm. But somehow, I remember talking to Linda Quinn and I talked to a couple of other people, and I said, "Gosh, do you have any advice for me? What do you think I should do? This other opportunity is a pretty interesting opportunity." I think most of the people turned it back on me and said, "You're really going to have to search your soul and find out what it is that you really wanted to do."

I came to the realization that this was almost like a dream come true. I had thought, "Look, if this happened at this point, I've been at the Commission for six, seven, eight years, and I've had a great run. I've had a wonderful time, and no, I never was director

of Enforcement, but I had a terrific experience and two great jobs that I loved.” But then when I sat and thought, I said, “You know what? This is where my heart is. This is really what I want to do, and I will disengage from the private sector, and I will re-up in a new role which is extremely exciting to me, something I love.” And I did.

WT: Did it seem like a return, having been here in the New York office?

RW: It was different. Obviously, having oversight of all of the regional offices was a huge step up in terms of what I had done in New York. It was great to be reconnected with my colleagues from the New York office, whom I loved dearly. It was one of the most wonderful periods of my time working in New York, and I loved the people there and many of them were still there. But, nevertheless, it was brave new, bold new challenges, too. It was new era. There were new priorities. Nothing ever stands still, so there was a lot of new work to be done.

WT: What were the priorities when you came in?

RW: One of the priorities was the entire earnings management program that Chairman Levitt had been very outspoken about in terms of companies cooking the books, basically, to present unduly optimistic financial pictures, or play with earnings so that they could come in just above analysts’ estimates on a particular quarter and have favorable treatment by their stocks. It was something he had spoken a lot about. By that time, again, the cases, which took a long time to produce, were lagging the speeches and the

talking about some of the abuses, and we needed cases. We needed to show that this in fact was happening, and it wasn't just happening in small companies, but it was happening in large companies.

So we had a lot of cases in the inventory. I don't claim any credit for having developed all of these cases. A lot of them were cases that Bill McLucas had opened, and any Enforcement director gets a kind of a benefit of whatever is in the existing inventory when you walk through the door. But we tried to bring as many of those cases, exemplifying different sorts of ills, if you will—channel stuffing or cookie jar reserves, things of those different types. Each case would have an illustrative principle that was attached to it, and we tried to get as many of those cases rolled off as fast as we could. So that was an enormous area of focus and importance.

And frankly, when you look back historically and see that all of this stuff immediately preceded the Enron and WorldCom—he was not making up the fact that there were a lot of abuses that companies were engaged in. I think we were well ahead of the game in focusing on that area early, and showing people that there were a lot of abuses here.

WT: Arthur Andersen got its first ding in this period, too.

RW: It did. That was a case that was looked at, frankly, very much as a sort of an auditor independence case. A failure of independence was not charged, but it certainly permeated the entire order that this was a company that had a very lucrative consulting

business, and they were making decisions on the audit side that we felt were influenced by some of the consulting work and the desire to keep the client happy. But the case focused purely on misconduct in connection with the audit, but that was a very significant case.

WT: In your experience across your time at the SEC, what are the particular challenges of bringing an investigation or an enforcement action against a large company or a large broker dealer?

RW: Certainly you have to be fair, and the SEC's process is, I think, more fair and more exhaustive than any other law enforcement agency. People don't understand, and I think don't give the SEC enough credit. And frankly, it may be a bit of an albatross for the SEC. The U.S. Attorney, for instance, when they want to indict someone, they don't need to have a Commission of five people consider it and vote on it. The U.S. Attorney has the absolute right to decide to indict or not to indict. Now, there are some exceptions of cases that have to be heard by people in Washington if it's of such systemic importance, but by and large individual decisions can be made quickly, and usually are, by a U.S. Attorney or an individual law enforcement person.

Within the Commission, the process can really bog you down. The process is designed to ensure fairness to people, which it does, but the joke was that more time and more arguments against bringing a case were made from people within the Commission, during the process of getting a case approved, than were made by the lawyers for the party that

was ultimately charged. So you would have Commissioners with each two or three different legal assistants, looking for ways to challenge the Enforcement Division, looking for little hooks of things that they thought were wrong. You would have all of the different divisions with substantive authority in a case, Division of Corporation Finance, Investment Management, they would have teams of people analyzing the theories and the facts, and trying to figure out whether this was the right case to be brought.

So, historically, when a case was approved by the Commission, many of the staff would issue a huge sigh of relief, like, "Wow, we won." I would constantly have to remind people, "You're just starting. You've just gotten authority. You now have to prove this case, you have to win this case. So, don't think of it as being over, even though it feels like running the gauntlet sometimes." But, as I say, I think overall that is an enormous, important characteristic for the way that Commissions process this work.

There's lots of time and opportunity for engagement. And certainly, when you're dealing with a regulated entity that's not only just a large employer, but has responsibility for customer funds and accounts, you've got to be cautious and careful, and make sure that you've got your facts right, you don't pull the trigger when you shouldn't, and that you make sure that everyone is well protected.

WT: When you're attempting to get a case approved like that, it's very interesting, to what extent is that about opinions of the win-ability of the case, and to what extent is it opinions about the enforcement policy of the Commission?

RW: To be honest, win-ability is I believe probably of lesser importance than the policies and the principles. And going down in flames for something that you believe is right, I think there is no shame, and there's never any looking back. If you proceed with a case that you think is factually and legally supported, that supports an important policy or principle, and if you lose, there's some cost because of course the external world tallies your statistics and is constantly saying, "Oh, you only have a 60-percent success rate in cases that you brought in federal court," but I think, internally, it's a very principled type of decision. Certainly, the fairness requires that you have to look at the evidence and make sure that you have the evidence that supports your case. You have to make sure that you're not stretching or bringing legal claims that aren't well supported.

WT: I wanted to ask you specifically about the impact of the *O'Hagan* case, which of course was argued when you were GC, but also about the effect that it had on being able to bring cases under the misappropriation theory.

RW: The *O'Hagan* case was probably the single most important case while I was at the Commission, because of course, the case law on insider trading, there was never a specific statute, it was something that grew up and was validated by courts under 10b-5. The theories grew over time. There was the classical theory of a direct tip by a company

insider. But then there was the whole category of cases where it wasn't a company insider that was portraying the information, and that of course gave rise to the misappropriation theory. *O'Hagan* was about as good and as juicy a case as you could hope for on the facts, to try to sustain why this should be something that's illegal. It was argued brilliantly by the solicitor general, Michael Dreeben, who was, I think, assistant solicitor general. Paul Gonson, who was a very distinguished senior solicitor at the Commission at the time sat at the counsel table when this happened.

But, mind you, this was something that was of the utmost importance to the Commission's enforcement program, because if the *O'Hagan* case had been decided the other way and that that had cut out an entire leg, a very important leg of our enforcement program, I think we all recognized we had to do something about that. I think in the past, when Harvey Pitt was the General Counsel, he had drafted proposed legislation for insider trading, to make it illegal, and part of that legislation incorporated the misappropriation theory so that that would have been deemed to be the law. But ultimately that draft legislation lapse was never taken up, never considered.

Out of an abundance of caution, I was asked to dust that off, get that together, be ready very quickly to go to the Hill if we lost *O'Hagan*. The private bar, the ABA types were all predicting and prophesying that we were going to lose this case, and the Supreme Court was going to mop us up, and they were all quite confident that we were going to lose.

I remember I was on a trip in California. I had a conference that I was attending that I had to give a speech at when the case was decided. I remember I was on the plane, and I knew it was going to be released a certain day. When I landed in California, I learned the news that *O'Hagan*, in fact, had been affirmed and it came out in our favor, and I was desperately trying to get little tidbits of what the opinion had said.

WT: How many justices affirmed it?

RW: I believe it was six to three, but I could be wrong about that. It was an enormous victory in that we therefore shelved the draft legislation, put that away again. We decided that we had now established this theory with significant and reasonable concreteness; we didn't need to have legislation. And so we thought the legislative process can be quite perilous, there can be a lot of mischief in the legislative process, where people will get in and try to do little tweaks to the legislation that will actually cause harm to the program. So we thought the case was very clear in terms of explaining what the misappropriation theory was all about, and we were delighted.

WT: So you've been able to bring cases under the misappropriation theory before *O'Hagan*, of course. Was there increased success afterwards with that?

RW: I think unquestionably, that took away—there was always the hope, because the misappropriation theory had never been expressly validated by the Supreme Court. It had always been, “We live for another day,” and yet the courts of appeal had upheld cases

based on the misappropriation theory. But this was a real challenge and a test, and there was some thinking that it would be eviscerated.

WT: After that, a few years, is Regulation FD, and how does that impact the terrain?

RW: Regulation FD was, I think again, something that Chairman Levitt led the charge on with Harvey Goldschmid, who by then I think was the General Counsel at the time. It was designed to address the question of selective disclosure, of companies selectively giving tidbits of information to favored analysts who would then have an informational edge over the rest of the market, and that was not deemed to be a healthy, desirable practice.

It was extremely contentious at the time. Companies reacted violently against it, felt that it was going to chill disclosure and communication. I think the Commission took the position, no, it's just simply saying, whatever you communicate, you just have to communicate to everybody. I think the feeling was that the market would impose its own disciplines, that companies that disclosed less to the marketplace would be penalized in terms of their share value, because shareholders would say, "This company isn't as open and transparent as that company, and as between the two, I want to invest in the company that's more transparent in telling us information." There was, though, of course, the fear that this regulation was going to be used as kind of a gotcha, to bring enforcement cases that weren't warranted.

WT: In this case, is this one of these cases where this was one of the policy calls at the Commission where you would not bring an insider trading case against, say, for example, an analyst who had traded on the basis of data that had been selectively disclosed?

RW: No. I think we would have, if we had the case. If it was confidential information that was obtained in a relationship of trust and confidence, all the indicia, I think we would have brought the case. But I think what we wanted to assure the corporate and the issuer community is that we weren't going to be looking for sort of foot faults, and people tripping wires inadvertently. This wasn't going to be something where they were at their peril in deciding what to say and what not to say, that there was a reasonably clear line that material information needed to be disclosed kind of uniformly, but that we weren't going to be playing gotcha with people.

There was a lot of skepticism about that. I think I gave a couple of speeches towards the end, trying to calm the waters and tell people, "Judge us by what we do, and not by your fears. Work with us on this. This is something that, from a policy point of view, is extremely important." I think that the Commission did establish a pretty good track record that, when it brought cases, it brought cases where there were some really strong, compelling facts where people would say, "Well, I certainly understand why that case was brought." It has never been—and I think that the corporate community is now reassured—that this isn't just going to be an enforcement weapon and tool that's used indiscriminately.

So there needed to be some calm sprinkled over the roiled waters to make sure that people tried to use best efforts to follow this rule, and not to clam up and basically, “Well, the safest thing to do is just to say nothing, we’ll just not make disclosures,” because that’s not realistic. In an Internet world, you’ve got to constantly have communications going to the marketplace, but the people should be much more encouraged, using the Internet and other tools, to make broad disseminations publicly and simultaneously in a quick fashion. And that’s certainly the way that the world works today in terms of the Internet and public disclosures. They’re just instantaneous. It’s not done through publication, in a conventional sense, and mailing information to people. It’s done by Internet releases.

WT: On that note, I talked to Linda Thomsen a couple years ago, and she said that, even after the passage of Reg FD, there was a grace period so that people could get used to exactly what the requirements were.

RW: That’s right. I think this was an area where, obviously, we were not going to just turn our back on abuses, but I think we were going to try to administer this in a way that was responsible so that people just didn’t get further agitated. There was an awful lot of agitation, and I think people decided, “Okay, we have considered all of the arguments, pro and con, we’ve made some changes in the regulation to adapt to what people said, but overall, we think it’s important.” And today the debate still exists as to whether this is a good or a bad thing. I think it’s actually been a very positive rule.

WT: Returning to something that we touched on before, which is scams over the Internet, there's actually an Office of Internet Enforcement that was created in this period.

RW: Yes. One of my proudest developments—and there was a very tech savvy staff member named John Stark, who Bill McLucas had turned loose in the Internet area, and by the time I became director, I felt that it was time to dignify the work that he was doing, and the people that were working with him, and to create an Office of Internet Enforcement. Believe it or not, even as short a time ago as 1998, the use of the Internet for investment purposes was still beginning. It was in its early stages. I think we all had seen the migration of some of the old scams from the boiler room-type of environments to a new, simple, much easier media. You didn't need fifty people sitting at desks. One person with a keystroke could get communications out to the same number of people that you could reach by fifty people picking up the phone and calling.

So we thought it was very important to make sure that we had a very vigorous presence and were policing the Internet for fraud. And there was an awful lot of it, there still is a lot of it today, but we just did not want to have people think that this is the easy new way: “Now that they're cracking down on the boiler rooms, they're sending out the fraud squads, there's FBI, and things of that sort, I can do this in the comfort of my living room and avoid all of those risks.”

We didn't want people to think they could do that, so we were quite aggressive in terms of doing some Internet sweeps. We would focus on particular types of cases, whether it

was touting of securities, making false statements, predicting the success and receiving some money, or things of that sort, to highlight some of the recurring problems, which I think got a lot of attention at the time. We also brought a lot of the pump-and-dump-type of cases, where people would use the Internet to build up the price, then get out, then to have the price collapse.

WT: Another thing that I wanted to ask about is the coordination of Enforcement and civil and criminal prosecution. There's this extraordinary case, Operation Uptick, in particular.

RW: We had an excellent partnership with the Department of Justice, in particular Mary Jo White in the Southern District of New York. We worked very closely and effectively with them. They showed the Commission and its staff great respect, worked in a very effective way. The Commission was more effective in doing some things, and the U.S. Attorney's office was more effective in doing—and there was a clear and good understanding of how to work together.

Operation Uptick, and then before it Operation Thorcon, were brave new steps in terms of the cooperation between civil and criminal, in that we for the first time ever were involved with undercover operations by the FBI over which we didn't have full control. The Commission was very restricted in terms of the way it could get information, in terms of the notifications it would have to give to people that it was seeking information from. Basically, "I work for the Securities and Exchange Commission, the information you give me could be used for thousands of purposes."

The FBI was not so encumbered, and I think there was enormous debate within the Commission about whether this exposed the Commission to unnecessary risks, that if we were involved in some undercover operation, the FBI went and did things that we wouldn't be allowed to do, necessarily, by ourselves, that created investor harm. So in other words, sometimes, to pursue an undercover operation, you actually had to sit and observe a fraud, and that was something that gave the Commission a lot of fear and trepidation that we are at great risk if we allow a fraud to happen and don't stop it. But we put in enough safeguards into the thing. We had a great memorandum of understanding, protocols of things that we were comfortable with the FBI doing, things we weren't comfortable with. It was a great partnership that led to a series of really great cases, and some involving the criminal underworld.

WT: Right, organized crime.

RW: Organized crime, which is of course a topic that everyone was enormously afraid of. There was a lot written about it, the underworld and organized crime taking over securities. My own personal view was that that was somewhat overstated, but there was certainly and clearly evidence that the underworld, organized crime was involved in some securities activities. I never thought it was of such a large extent that some seemed to believe. But this was very effective in terms of a joint team effort between the Department of Justice, FBI, and the SEC.

WT: So it's mainly that microcap level.

RW: It was the lowest of the low, right. So microcap, the sort of cockroaches of the world that were causing so much harm to unsuspecting investors with just penny stocks and those microcap stocks just above the penny stocks.

WT: Is this when you first met Rob Khuzami?

RW: Actually, I met Rob Khuzami at my old law firm. We worked together on litigation in Cadwalader, Wickersham, and Taft, and I have one vivid recollection of Khuzami that involved a takeover case. There was a threat to one of our clients by a person who we thought was close to organized crime and had been involved in a lot of securities-related frauds. On a rainy weekend, we were getting ready to bring a temporary restraining order and we needed to come up with a RICO claim against this group, and we thought, "This is actually one that may really work, because these individuals that are trying to take over our client, they've had some convictions for mail fraud and wire fraud, and we can put those things together as predicate offenses and make this into a convincing RICO claim."

The problem was RICO was a very complicated and technical statute, and on this rainy weekend, I realized that Rob Khuzami had done some work in this area before. Someone said, "You're going to just have to call him." He was busy moving apartments in Brooklyn. I said, "Rob, you're going to have to come in. I need someone to draft some

RICO claims for me over the weekend,” which he did, and did a good job of. Actually, it was a successful job. But that’s where I first knew Rob.

I worked with him also when I was at the SEC. He was the head of the securities and commodities fraud taskforce at the U.S. Attorney’s office. We had, as I think I mentioned, a brisk partnership of doing cases together, so we’ve known one another for a number of years.

WT: Is there anything else during your Enforcement period that we haven’t covered?

RW: I’m sure I’ll think of great old stories the moment you leave, but I think that’s a pretty good summary.

WT: Okay, so then you spent about three years there, and then you decided that then was the time to go back?

RW: Then was the time. In fact, I had served very happily under two different Chairmen, first Chairman Breeden, and then Chairman Levitt left I think in February of 2001. I thought at the time, this is the right time because, if, in fairness, a new Chairman is coming in, either I have to re-up for a substantial period of time, or else I have to tell the new Chairman that I’m planning on leaving. I thought that, after ten years, the time was right to make a change. I just turned fifty, and I think I was pining away to return to New York a little bit, too.

So, when Chairman Pitt was appointed, I went in and I said, “Look, I”—I knew Chairman Pitt, because he was an active practitioner before the Commission, so we had always had a good relationship. He was extremely gracious, he told me he would like very much to have me stay, but he understood that my thinking was it was the time to go. I said, “I’ll help you during the transitional period, but my goal is to leave in September,” so I left in September.

WT: Was that before Enron hit?

RW: Right before Enron. I know. As I think about it, in retrospect—obviously, it had just been a couple of weeks shy of Enron—had I been there when Enron hit, then that would have been another five years, right? Because you can’t leave when something like that is happening. It was an Enron and a WorldCom, and all that whole string of cases, you stay and you tough it out. To be honest, that would have been a good thing. That would have been a very interesting period in history and an exciting period, and I’m sure I would have had no regrets. But it also did make my decision, I think it helped validate that, because there was just a whole new chapter for a new director, and that was Steve Cutler.

WT: So how did you decide to come here to Deutsche Bank, rather than a law firm?

RW: I think I talked to some law firms, and to be honest, the prospect of going back to private practice—which had become very business-focused and lawyers constantly hustling for

clients—was not something that appealed to me particularly. I spoke with Deutsche Bank, and it struck me that there was a big, broad opportunity. They were expanding rapidly as an investment bank, and in the securities area they were looking for someone to create a global fabric to their legal department. They had what I would call a series of colonies, very well-established groups of lawyers in different locations, but they didn't have someone who had strung it together and made a global team out of it, and that was a very exciting possibility that was not possible to do at some of the other firms because they already had it. So there was a very exciting, interesting opportunity at Deutsche which caught my attention, and that was what I chose to do.

WT: You had a bit of bad press about this a few years ago, I know. Now personally, I find the reporting from Matt Taibbi a little frustrating, in that he tends to rely on associations that seem shady.

RW: He did.

WT: But at the same time, there's deeper questions, like we were discussing, about the SEC's ability or willingness to bring cases against big firms.

RW: Correct.

WT: A propriety question stung Harvey Pitt a few years later in terms of William Webster's association with this audit committee. I'm wondering if you can address that.

RW: Yes, absolutely. Look, I think one of the great things is that the Commission's ethical responsibilities are taken very seriously by most of the staff. There was, during my time, a woman named Barbara Hannigan, who I think is now the chief ethics officer over at the PCAOB, but she was terrific because you could go to her, you could get very clear advice about what you could and couldn't do and how to protect yourself. So, when the investigation involving Deutsche Bank started, I hadn't been approached by Deutsche Bank, and sometime during the course of the investigation I was, and I concluded of course immediately I couldn't have a decisional role with respect to whether or not to bring a case against the bank, and I delegated it to others.

So I was stung by the *Rolling Stone* article. I thought it was very unfair, particularly because it came more than ten years after I had left, and after ten years of time trying to get people with the recollections of what had happened and what I did, it was just very difficult to do. But the inspector general did a fulsome investigation and issued a report, finding that I had not acted inappropriately and there was no appearance of impropriety to anything that I had done, that no decision had been made by me with respect to ultimately bringing or not bringing a case against Deutsche Bank.

I was happy to be fully exonerated by the inspector general, but obviously, that is never reported after the fact. What's reported is the headline look at this funny situation where Walker, you know, the Commission is doing an investigation. I think they quoted some unnamed members of the staff, again, why ten years later, who were disgruntled and

thought it was odd. But the inspector general did the investigation and I was fully vindicated.

WT: Are there standards—explicit or just general practices—about who an SEC member can join after leaving the SEC, in terms of who's been investigated?

RW: I don't think so.

WT: I know there are restrictions on being able to go back and—

RW: There are restrictions on activities, there's restrictions on whether you can or cannot appear before the Commission and on what matters, but I'm not aware of any restrictions on actual—I'm not sure by the time—frankly, I think the decision whether or not to proceed against Deutsche Bank, I wasn't involved in it, but I think it may have been made after I left, so I don't even think it had been made at the time.

WT: Okay, so then tell me, you've had two positions here at Deutsche Bank.

RW: Right. So my first position was the general counsel of the corporate investment bank, and that was a very clear and direct mandate: develop a seamless, global team that faces off against our business the way we operate. And at the time, as I say, this was a period of enormous build-out of our investment bank. And global, global, global: this was the mantra, everything had to be global. We don't operate regionally, we operate globally.

And the criticism, if there was one, was that the legal department was trapped in the past, that they operated regionally, and what there needed to be was more of a global fabric.

So I put together an organizational structure that was global in nature, got great people to assume roles and promoted some people from within to roles, and we had a great start with that group.

Over time, the bank acquired a large asset management business that was located in the United States, so I think the decision was made, given my background—I was well-suited to provide legal support to this group, not just the investment bank but the asset management part of the business, so my duties expanded. And then, when the other person, who was a senior legal officer for what we called the corporate center and for our retail business, which was German-based, retired, then the entire responsibility for the legal department came under my remit.

WT: I've spoken to a couple people at the Commission about negotiating the differences between international accounting standards in particular, but also regulation. I'm curious what that looks like from the inside, if you can speak in general terms about that.

RW: Look, outside the U.S., there isn't a process like the process that exists at the Commission. I think enforcement is not something that has been a sort of mature process at many regulators. This certainly has changed over the last year, and you're seeing a lot more international enforcement than you did ten years ago. But I think the Commission has always had the virtue of a well-defined process, well understood and recognized, no

surprises. People know how to engage with the Commission, they know what the protocols are, they know about the Wells process and the rights that you have for that, and that just wasn't nearly as well defined outside the U.S.

I think the Commission is widely feared. It is recognized that they are an aggressive and vigorous enforcer, and so oftentimes I think my colleagues outside the U.S. would be rightfully fearful of what was happening at the Commission. But then, of course, given the emergence of local regulators like the Eliot Spitzers and others of that ilk, the fears were soon transferred, not just to Commission Enforcement, but to some of the other more local enforcers that existed.

But it certainly was an interesting phenomenon, looking from the eyes of foreign clients back into the United States, and trying to assess the fairness of our process. A lot of times people outside the U.S. say, "Well, that's just highway robbery. That's extortion. It's a stick-up, and this is unfair." So there was quite a bit of explaining as to how the process worked, and trying to rationalize it. There are some things that, frankly, were unfair that I couldn't. But it was interesting to also see the reactions of other regulators to what was going on and happening in the US, as well, because I think the US has always been deemed as being quite aggressive when it comes to enforcement as compared to enforcement in other parts of the world.

WT: At the SEC, of course, you mainly just have to be concerned with things within the ambit of the SEC, although that's become more complex since the year 2000. But you have to deal with this patchwork of regulators when you're—

RW: That's the biggest difference, is that you've got this concurrent jurisdiction, and it is impossible to rationally explain the U.S. system in which at one time I think there were seven federal bank regulators, fifty state regulators. Now there's a consumer protection bureau, there's CFTC and SEC, which in no place else in the world is that jurisdiction divided. The multiplicity of regulators with overlapping and concurrent jurisdiction in the United States is singular. There is no place else—most places have the two-tier system where you have a prudential regulator and then a conduct regulator, and no opportunity for the pile-up of three, four, five, six different conduct regulators piling on for the same set of facts. That's unique to the United States.

WT: Now, we're speaking in the shadow of the LIBOR settlement here.

RW: Not necessarily in the shadow, yet. I think the sun still is a feeling very much on my neck.

WT: I expect so, yes. Well, one thing I'd like to ask you in general—I'm sure your ability to speak candidly about details is somewhat limited.

RW: Of course.

WT: But what does compliance look like in general? How is it structured within an entity of this sort?

RW: Compliance has become an enormously challenging role at all of the banks. I think there is a gap between what's expected of compliance, what they can reasonably and effectively do, and what they're held accountable for doing, which I think has got to be bridged somehow. I think compliance, they're in the unenviable role, when something goes wrong, there is almost a kneejerk reaction: well, why didn't compliance stop that? That can never be, and cannot realistically be the function of compliance. Compliance can do many things to help wrongdoing, but it cannot be the first that's accountable when something goes wrong. It cannot be because of a compliance failure. It's first and foremost a failure in the front line, the first line of defense, the business.

So compliance has become a very challenging role, a very specialized role. I think what we're seeing increasingly is the splitting apart of compliance and legal. It used to be that legal and compliance were all housed under one roof, but increasingly I think the duties are now divided so that compliance has its delegated, designated duties, and legal has its delegated, designated duties. There's close partnership between the two, but an evolving model.

WT: In this time, technologically speaking, how much of this takes place through technology surveillance of people working within the company? How much of it is dependent on people?

RW: I think it's both, and certainly technology is vitally important and can be so useful in terms of looking at patterns and activity, and exception reports, and things of that sort. But, by the same token, the human touch, the analytical insight should never be lost track of. I think several years ago, we tried very much to (what we call) operationalize our compliance department by having it run, just like when you get your physical these days, you say to the doctor, "How am I doing," and he'll say, "Call me on Thursday. I'll get seventeen blood tests, and then I'll tell you how you're doing, because all the numbers will tell me how you're doing." I think we made some mistakes in thinking that you could run a compliance program by the numbers, and by the reports, and by all of the informational types of things without kicking the tires, getting to know the people, doing some human interface and interaction, as well. I think there's been a movement back to some combination of both, certainly trying to use technology to the fullest extent, but also trying to have human interactions, too.

WT: I'm just curious, speaking generally, having been ten years in public service and then being in this position—but not only in this position, but in the center of this huge whirlwind of a scandal—what are your general impressions, your, I guess, emotional reaction to all that?

RW: It's painful. I think I see a lot of things that I think I and the bank just deeply regret. It's just bad conduct that, rightfully, is a subject of enforcement and has to have consequences with it. It's shameful, some of the conduct, some of the excesses that existed. It's just a sad period. By the same token, there has to be some positive energy and momentum in moving forward, and our bank, and I think every bank, is an enormous construction site these days. People are trying to fix as rapidly as possible, improve systems and controls, make sure that nothing that would trigger a financial crisis of the like that we've seen ever happens again.

So there's enormous dedicated work going on to try to make things better and improve things, but certainly it just doesn't feel like the piñata being whacked and whacked and whacked is at an end. It just seems like the price continues to go up and up and up and up. So hopefully, we'll work our way through.

WT: The German regulators, I believe, have called for your head personally.

RW: They have. That's very painful to go through that, yes.

WT: All right, well, let's end with maybe something a little bit more positive. Could you discuss, having been in a law firm, having been at the SEC, and having worked for a private corporation, can you tell me about how those different perspectives have meshed, I guess, in your performance of your different jobs as you accumulated them?

RW: I think that there are certainly valuable things you learn in each of those things that contribute to making you a better and better-rounded lawyer. The ability to listen to what someone with a different point of view has, to have been in the position where you might have shared that point of view, or you might have understood what led to a different point of view, helps immeasurably kind of narrow some of the gaps that exist in the discourse and the dialogue between the regulated and the regulators and things of that sort.

I think also from the private sector, when I moved to the government, I knew the kinds of things to look for. I knew the kinds of games that existed in litigation. I knew how to deal with some of those effectively, because I'd been on the other side, and on the defense side, and that I think informed my views on how to be an effective prosecutor.

And then certainly the whole period within the Commission, so many valuable lessons that you learn that hopefully you bring back with you to a new role like I now have at Deutsche. I've had many, many opportunities to talk about tone from the top and important value-based things, which frankly, are very well received by people at the firm, including people at the most senior management levels. I think I have the ability and the credibility to be able to give thought provoking talks about what people need to do to improve the culture and to improve the tone from the very top, because that is quintessentially what it takes to build a strong culture. It has to come from the top of the organization and be pushed down, and I'm a firm believer of that and sort of a tireless champion of trying to help people do that and reach the right notes.

WT: All right, well if there's anything else you'd like to mention, please do. Otherwise, I think I'm to the end of my list of questions.

RW: Great, well thank you very much for your time. I've enjoyed our discussion.

WT: Thanks, I have, too.

RW: All right, thank you.

[End of Interview]