Stephen M. Cutler - Oral History

With Dr. Harwell Wells

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Harwell Wells: This is an interview with Steve Cutler, taken at the New York offices of Simpson Thacher for the SEC Historical Society, on December 6, 2018.

Harwell Wells: What we like to do to start off is get a sense of your background. If you could perhaps tell us a little bit about where you grew up, where you went to school?

Steve Cutler: I grew up in Los Angeles. I ended up going to college on the East Coast, at Yale. I stayed at Yale for law school. After law school, I went back to the West Coast, first to clerk for a judge on the 9th Circuit, Dorothy Nelson, and then to work for a public interest group called the Center for Law in the Public Interest.

Harwell Wells: Okay. What drew you to law school?

Steve Cutler: I guess my friends would say I was always going to go to law school. Both of my parents had gone to law school and were practicing lawyers. And, I just think I always ... I probably had a predisposition to legal analysis and the like.

Harwell Wells: When you were in law school, did you have any special interest in securities, which obviously your career eventually led you to? Or what did you study, because it's interesting that you went to law school, clerked, and then spent a year in public interest law.

Steve Cutler: Right. The answer is no, I never took securities regulation. I may have taken ... I think I took the requisite corporations class. I think, in law school, if you'd asked me, "Could you imagine practicing in the securities regulatory arena?" I would've said “no.”

Steve Cutler: When I was in college, I'd spent a summer working on Wall Street. And, at that time, I had thought, "Do I want to go to business school? Do I want to go law school?" And, at that time, I said to myself, "I really want to go to law school." And, if I wanted to part of, or around, the securities industry, I would more likely do it as a principal than as a lawyer.

Steve Cutler: So, the best laid plans went awry.

Harwell Wells: Sure. So, you came back to DC, and you joined Wilmer Cutler & Pickering, and you spent a number of years there before you joined the SEC. Can you talk a little about your career at Wilmer Cutler?

Steve Cutler: Yes. That really is how I came to be a securities enforcement lawyer. I ended up doing a lot of work, not particularly by choice, at the outset, but soon came to really love it, with, in particular, Ted Levine, who'd been an associate director in the SEC's enforcement division, before he joined Wilmer as a partner.

Steve Cutler: And, Wilmer had a significant practice built around, in those days, Ted Levine and Art Mathews.

Harwell Wells: Okay. Can you tell me a little bit? You mentioned Ted Levine and Art Mathews as well. What did you learn from them?

Steve Cutler: It's hard to know where to begin, because I learned everything from them. I spent probably two years working almost exclusively with Ted. And, it was a very different kind of practice, I think, than what you saw in stand-alone litigation departments of law firms.

Steve Cutler: Just the way that they taught you how to deal with the government. The way they thought about the SEC as an agency, and indeed even as an enforcement agency, was, I think, a product of the way they had been trained at the SEC.

Steve Cutler: And, we'll probably get into this. For me, it was a little bit about how the SEC was unique, as a Washington agency. I think in their minds, and certainly soon in my mind, it was the gem of Washington agencies. But, it was also different in the way it went about its prosecutorial or enforcement business.

Steve Cutler: And so, that was, I think, a very large part of what they communicated to me, by osmosis and otherwise, when I was working with them.

Harwell Wells: So, that might answer a little bit of my next question, which has to do with your decision to leave the firm, and go to the SEC. So, you'd been over a decade at the firm, you were a partner by that time, I assume?

Steve Cutler: Right.

Harwell Wells: How did you wind up suddenly moving from that to be deputy director? Or maybe not suddenly.

Steve Cutler: It was pretty quick. I think what happened was Dick Walker, who was my predecessor as the head of the enforcement division, was looking for a deputy. I think he had decided to look outside. One of his close colleagues of the division said, "If you're looking on the outside, I've been across the table from this kid," 'cause I was a kid, “Cutler, you may want to think about him."

Steve Cutler: I think Dick picked up the phone, talked to Bill McLucas, who had joined Wilmer probably a year earlier, from the enforcement staff, and, maybe six months earlier, I can't remember. But, Bill called me and said, "Hey! Would this be of interest?" And, I said, "You bet it would."

Steve Cutler: I mean, I came to Washington, in part, because it was a place where you might be in the private sector, but duty would call, and you'd go work in the government on behalf of the people of the United states. I mean, that's how I thought about it.

Steve Cutler: So, this was, in my view, this incredible opportunity. I think I immediately picked up the phone and called Dick, whom I didn't know. I think I'd been introduced to him once. And, I said, "When can I start?" And, it took off from there.

Harwell Wells: So, it's an interesting transition, because you came in as the number two person in division with a good knowledge of SEC enforcement. But, of course you hadn't been on the staff before. Did that create any unusual challenges for you? How was it?

Steve Cutler: Sure. Yes, because the agency, particularly I think back ... So, this was in 1999, when I started. So, this would've been '98. I think the agency had a long proud history of promoting from within, and rightly so. I mean, the talent at the place was astoundingly good.

Steve Cutler: So, yes. It was a challenge. I think there were people who thought, "Gee! Why are we going to the outside? What does he know? He hasn't done it from this side of the table. And by the way, is he is captured? Is he part of that defense bar, and can he make the transition to become an enforcer?"

Steve Cutler: So, I think I had to deal with that skepticism. And, on the part of some people, I think, disappointment that they weren't in that job. So, sure. I think that would be the case whenever anyone came in from outside of an organization, and was appointed to a senior level position.

Harwell Wells: Sure. So, the end of the 1990s was an interesting time for the SEC. But, there were also challenges going on, many stemming from what seems to be the perennial under resourcing or the unwillingness of congress to provide perhaps the resources the SEC would like. Also there's high turnover, in part because government salaries are much lower than what was in the private sector.

Harwell Wells: How did you find the staff when you actually joined the enforcement division?

Steve Cutler: I mean, first and foremost, and maybe this is first and last, just incredibly high caliber and really knowledgeable, savvy, and good at what they did. Good at what we did.

Steve Cutler: And, I quickly learned ... I actually still have this incident seared in my head, because it was a real lesson to me. I think I got to the place, I had my own ideas about the insider trading program, and one plus one, disgorgement plus a one-time penalty.

Steve Cutler: And so, I remember I put out a memo. And, I drafted a memo on how we were going to address certain kinds of insider trading cases, and I sent it to all. And, within about three minutes, I got back, "Have you thought about this? Have you thought about that? What about this other thing?"

Steve Cutler: And, I remember saying to myself, "Never again. I've got this incredible reservoir of knowledge and talent. And, I better talk to people before I try to do anything." That's important. And by the way, that was a lesson that I learned as a young lawyer from Ted Levine and Art Mathews, and who always used to consult with each other on important issues. And, I'd forgotten it when I got to the SEC for that moment.

Steve Cutler: But, I promised myself I would never make that mistake again.

Harwell Wells: So, what did you ... I understand you entered as obviously deputy director. Did you have certain issues you thought you either wanted to address, you thought you should bring to the fore, that perhaps hadn't been considered before?

Steve Cutler: Yes. I don't think I thought of it that way. There were certainly issues that the then director Dick Walker wanted me to focus on. I did not have a line of people that reported to me only, and then I would report to Dick. Maybe there were a couple.

Steve Cutler: But generally, the way I thought about it organizationally was that Dick and I were in a box. And, that senior people reported to the two of us. So, my role was more of, as deputy, more of an assistant role to Dick than it was, "Gee, I've got ... These eight people report to me. And, these other eight people report to Dick."

Steve Cutler: But, there were a couple of issues that he said, "Hey! I really would like you to focus on." So, this was the early days of the use of the internet to tout and market stocks. So, that was an issue that was very much on the forefront of our minds at the SEC back in '99, 2000, part of the internet bubble.

Steve Cutler: Dick had put into place a real focus, and you might say, one of the original task forces on financial fraud. And so, he wanted me really to focus on how are we going to get these cases from start to finish. They're really complicated cases. They require a lot of care. But, it's taking us too long.

Steve Cutler: How can we develop a method to bring these cases, instead of four years after the fact. To do what he called then real time or more real time enforcement. Actually, that may have been a phrase coined later.

Steve Cutler: But, that was how Dick thought about it, and how Arthur Levitt at the time thought about it. And so, I'd say financial reporting was a focus, and internet was a real focus, when I was the deputy.

Harwell Wells: So, I'll ask a little more about several of those things. I wanted to ask a quick organizational question, which is, you said you didn't ... So, the traditional organization would be the attorneys, branch chief, assistant director, associate directors. Did they then report directly to Dick? Sounds like you didn't see yourself as them reporting to you, and then you reporting to Dick.

Steve Cutler: Right. We didn't set it up so that it was a violation of protocol if people went directly to Dick, they had to go to Steve. That wasn't how we set it up.

Steve Cutler: So, I think the way I thought about it, at the time, was that my job was to make people want to come to me, not that they had to come to me. And, in that way, I was going to make their lives easier, as well as my boss's life easier.

Harwell Wells: Okay. You mentioned real-time enforcement. And, that's a phrase that seems to ... Has shown up from other interviews and other sources. What did you understand that to mean?

Steve Cutler: I think it was pretty simple. We want to try to bring cases close in time to when the underlying conduct happens. The further ... The more you separate those two, the harder it is to, I think, communicate what you want to communicate about the case. The harder it is to make it relevant. The harder it is to make it something that has a deterrent effect, which is obviously a very important part of an effective enforcement program.

Steve Cutler: If the event happens in year one, and you don't bring an enforcement action until year six, seven or eight, it's hard to get people's attention. And, it's hard to make them think this is really important. Why did you wait this long?

Harwell Wells: What kinds of steps did you take to try to speed things up?

Steve Cutler: Yes. That's a good question. So, I think part of it was ... This is before the days where I think we had what I would consider great visibility and great tools, data tools, to do that. It was almost a very manual process of what are our 50 most important cases, and we're going to keep a list of those. And, we're just going to keep on going to the people who are working on those and saying, "Hey! What are you doing on this now? What's happened since the last time I talked to you?"

Steve Cutler: But, it was, I would not say it was a methodical, automated process that I think it is much more of today at the SEC lots of reports are generated, and the like. I think we were just beginning that, probably through the time that I was director. A much more robust electronic reporting process, for example.

Harwell Wells: And, you mentioned financial fraud taskforce. And, I find that interesting, because you're talking about 1999. And, that period, when I would think of the great financial frauds of the period you were at the SEC as starting at end of 2001. In other words, a couple of years afterwards. Do you know why?

Steve Cutler: Yes. I think it dated back to Arthur Levitt, who really, I think, saw something that maybe others didn't see, which was ultimately captured in his famous numbers games speech. And, he thought that there was a lot of shenanigans going on in financial reporting.

Steve Cutler: And, I think under his leadership, and Dick was the director at the time, there was a real focus on, "Gee! We better bring these cases. We better focus on this as an area for us to devote resources to." And, I think the idea behind this financial reporting, or financial fraud taskforce is, "We want to show that we're serious about it. And, we want to develop the expertise so that we can bring these cases in a way that's faster than we might have done them in the past."

Harwell Wells: Okay. And, you also mention the internet cases. And, it seems you joined at such an interesting time, which is just at the peak of the internet bubble. But, as you suggested, also a time when criminals and fraudsters were realizing how useful the internet would be for their work.

Steve Cutler: Right. So, I think during my time as deputy we brought some of the early internet “touting” cases, or the first internet touting cases. I remember we had this case against this infamous internet touter named Tokyo Joe, or code name Tokyo Joe.

Steve Cutler: And, we were also thinking about, what are statutory tools that we can use to go after this that we might not have used before. And so, we actually looked really carefully at what are potential legal hooks that we could use to address this. And, was he getting paid and disclosing what he'd been paid, and finding hooks to make sure that we were addressing and appropriately cabining wrongful conduct in this area that was doing a disservice to investors.

Harwell Wells: Okay. So, after about two years as deputy director, Dick Walker left the SEC. And, I believe you named acting director before you were named permanent director.

Steve Cutler: That's right.

Harwell Wells: So, how did the transition, how did it work from you becoming deputy director to you becoming director?

Steve Cutler: Yes. So, I think I have this right. I think Laura Unger was named the acting chair when Arthur Levitt left. I think Laura appointed me to be an interim or acting director. That was prior to Harvey Pitt being named as chairman.

Steve Cutler: Harvey starts, I want to say, in the summer of 2001. And, I would consider it a very public audition that I was doing. I certainly knew Harvey. No one in the securities enforcement area wouldn't have known Harvey. But, we didn't know each other well. And, I think Harvey wanted to see, "Is this going to work?"

Steve Cutler: And, fortunately for me, I think he decided probably three months down the road that, "Yes. This will work." And, he named me the permanent director.

Harwell Wells: Okay. How did your relationship with Harvey Pitt ... What was your relationship with Pitt like? And, one reason I ask that is because in, I believe, October of 2001, after he had become chairman, he gave a speech suggesting that there would be a kinder, gentler SEC going forward. And, I didn't know what it felt like as being director of enforcement when you heard that.

Steve Cutler: Yes. Obviously that ended up getting a lot of attention. Probably even more so in light of events that transpired. So, I think in some ways, it was really unfortunate timing that you had the top cop for Wall Street talk about kinder, gentler, and then probably within months, if not weeks, you had Enron collapse.

Steve Cutler: So, I don't think I took it as a call to disarm the SEC. I think around the edges, Harvey was thinking, "Hey! There's stuff that he had seen." And, let's not forget, Harvey was a long time veteran of the SEC.

Steve Cutler: But, there are things that he had seen as a defense lawyer that he didn't think were quite right, and he wanted to a little bit of recalibration. But again, I never thought of it as a wholesale laying down of the enforcement arsenal. Not in any way, shape or form.

Harwell Wells: Okay. So, did you ... Did you feel that your goals for enforcement were in line with his?

Steve Cutler: I don't know that I ever thought about whether my goals were different than his. I mean, my goal was to have a strong and really professional enforcement program. And, I never thought of those as somehow different than Harvey's own goals.

Steve Cutler: But, Harvey was thinking about things that I think to this day people would say were probably worth thinking about. Like, what became known as the Seaboard 21(a) Report. How are we going to communicate to the issuer community, the regulated community, to defense lawyers, that there is value in being cooperative? What do we mean when we say we want you to cooperate?

Steve Cutler: And so, I thought that was a very useful exercise. Again, I had spent a good part of my professional career, to that point, also on the defense side. And look, I understood that being able to give some clarity around what it is the agency meant when it said "we're going to reward cooperation," I always thought was a useful thing.

Harwell Wells: Okay. Did you think Seaboard had a useful effect?

Steve Cutler: That's an interesting question, because I think almost immediately upon the issuance of Seaboard, we had Enron collapse. I think the world changed a little bit. And so, I think one of the challenges we had as a division was, as we were changing or recalibrating how the SEC was going to think about sanctions, and penalties, and it's use of its arsenal, at the same time, you had Seaboard saying, "We want to clarify our approach to cooperation."

Steve Cutler: So, one of the reactions we had, I think from the defense bar was, “What do you mean I'm getting credit for cooperating. You're imposing the greatest fine that anyone's ever heard of.” And so, one of the challenges we had, was convincing people, "Well, it would be worse if you weren't cooperative." Because it was hard for them to see that, if all they were looking at was past precedent, because we were setting new bars, I think, in the aftermath of Enron and thereafter.

Harwell Wells: And, I suppose that's a nice transition to what must've been a very dramatic period during your time at the SEC, which was the exposure of Enron at the end of 2001, WorldCom very early in 2002, and then a series of other scandals. Global Crossing, Qwest and others that immediately followed it.

Harwell Wells: So, how did that ... I suppose I want to ask you a little bit about some of those particular things, but as a start, how did those series of exposures coming so close together change your work, or change your perception of what was going on for the job at the enforcement division?

Steve Cutler: Yes. I think certainly it did result in a different mindset around penalties and sanctions generally. And, I guess you have to remember the commission's penalty power, outside the regulated entity world, was relatively new.

Steve Cutler: And, if you really look back at the agency's history, and if you talked to the people who trained me as a securities lawyer, like Ted Levine and Art Mathews, I don't think they thought of the agency as first and foremost an enforcement agency in the sense that we probably do today, which is we're going to penalize. I think they thought of enforcement as we're going to induce good conduct going forward.

Steve Cutler: And, I think one of the things that Enron did, is it really accentuated a look back, if you will. And, part of that look back was, “We're going to start getting a lot tougher when it comes to penalizing this conduct. This isn't just enjoining you going forward, or having you put in place a whole new set of policies and procedures. We are going to try to make this painful, because we think that's an important part of the Commission's role in deterring this conduct.”

Harwell Wells: Okay. So, I'm actually going to ask ... I want to return to these cases in a second. But, the first case in which a penalty really appeared to be very large, and get a lot of publicity was actually Xerox in, I believe, 2001. And, looking back, of course, the penalty imposed was $10 million, which seems quite small compared to what came over the next couple of years.

Harwell Wells: What people's ... However, Xerox at the time, provoked really quite a strong pushback from people.

Steve Cutler: Yes, certainly in the bar, I think it did. I remember going to a small bar function and getting pilloried by the defense lawyers about Xerox. I would've thought it was earlier than 2001, because I have in mind that Dick was the director.

Steve Cutler: Look, it wasn't a crazy thing that the defense bar was saying, which was, "Look, the focus of this agency has never been on penalties per se, and particularly in cases where the victims are arguably the shareholders themselves. So, where are you getting that penalty from? You're getting it from the company's coffers, and ultimately that's being paid by the shareholders. And so, does it make sense?" So, that was one.

Steve Cutler: And, two was, "Is there any penalty that you could impose that is really going to have deterrent effect?" So, if you think about $10 million, I think it falls into that category. Is $10 million really going to deter? Or does it deter because of the reputational impact that imposing a penalty of $10 million, when in the past you hadn't, is going to have? Is it going to have that reputational impact?

Steve Cutler: Well, if that's the reason, then aren't you saying that $10 million is not going to be enough for the next one. The next one's going to have to be $20, and then it's going to have to be $50, and then it's going to have to be $100. And, I think some of the defense bar around the 2000, 2001, 2002 era would say, "That's what happened. That you got into the spiral because you had to convince the world that this was important, and one of the ways to do that was to say it was higher than the last one."

Harwell Wells: So, where did the push for ... Because it really was quite dramatic. And, within a few years the penalties just increased enormously. Where did the push for that come from? Internally? Externally?

Steve Cutler: I would say both. I recall being in meeting with the director at the time, and I was a deputy, Dick, and our chief accountant Walter Scheutz, he was the chief accountant of the enforcement division. And, Walter, in his stentorian voice said to the room of assembled people, and this was all internal enforcement folks, "I think the penalty in this case should be $100 million."

Steve Cutler: And, we all were just taken aback. I mean, at the time, I think Xerox was the highest penalty in a financial reporting case, at $10. And, Walter was saying 100. And, I think Walter beat us to the punch a little. He was saying, "For this to matter to companies, it has to sting. And, it has to be significant."

Steve Cutler: And, in the world of Xerox, I think what Walter was saying, he didn't say it exactly this way, 10 million is just not going to feel that significant. So, certainly there were people inside the building, and then as the commission changed over time, and you had new leadership.

Steve Cutler: And then, I do think Enron and WorldCom really changed the calculus. I think there was a lot more of a clarion call inside the agency. But, at the same time, you certainly had people outside the agency saying, "Is the SEC a tough enough regulator. If it has the tools to impose significant fines, why isn't it using those tools?"

Steve Cutler: And, I think that was a challenge for us. I don't think we wanted to become another DOJ. That we did think of ourselves as a different kind of enforcement agency than stand-alone enforcement agencies. We had other tools. We were concerned about the integrity of the markets.

Steve Cutler: And, if we could make the markets better going forward, that was still going to have to be the focus. So, it was a challenge for us to find that right ground between not looking backwards and penalizing in that sense at all, to being only focused on that. And, we didn't want to do that either.

Harwell Wells: Okay. As you mentioned, there was some outside criticism of the SEC in 2001, 2002, after the series of crisis. Did that ... I suppose you must've been aware of it. Did that necessarily change the approach you took? How did it affect people?

Steve Cutler: Yes. I mean, we should probably get more specific about what the criticism were, and where they were arising from. But look, I like to say, "No one does a job in a vacuum." And, was the SEC mindful of outside criticism? Yes.

Steve Cutler: And, I think particularly in the wake of the Enron collapse and WorldCom. The SEC went from being a business section agency to being a front section of the newspaper agency. That was a very different thing, at least in my lifetime as securities enforcement lawyer.

Steve Cutler: And, the place I think in some ways became very interesting to politicians, to Congress in a way that it hadn't been at least as interesting before. And, I think that played a part in how the agency went about its business, from call it, 2001 on.

Steve Cutler: I mean, in the mid-term elections in 2002, I'll never forget TV ads that had photographs of president Bush, vice president Cheney, and Chairman Harvey Pitt. I mean, that was astounding. The SEC's part of a campaign ad? And so, does that have ... Invariably, I think ... Inevitably, I think that has an impact.

Harwell Wells: Okay. And, I know it's been suggested that in fact a round table law back, this might actually been a result of much greater media coverage of business in general. For instance 1999, 2000, constant coverage of the rising stock market, and rising Nasdaq in a way that simply hadn't occurred say 10 years before, that the internet business as a whole suddenly became front page news in the rapid growth of these business.

Steve Cutler: Yes. I think that's fair. I mean, you saw the rise of CNBC. And, I think, in some ways, covering markets became, for at least a large part of America, a little bit like the sports section. It was interesting in a way that maybe it hadn't been before.

Harwell Wells: So, getting to the enforcement division and the activities 2001, 2002, and financial fraud, what role does the director play when you have multiple investigations? I think by late 2002, someone had commented, literally, a company was restating its financials every day. What did that actually mean for your work, since you obviously weren't running a particular investigation?

Steve Cutler: Right. I think a lot of it was making sure that we had the right resources devoted to the cases that we were pushing aggressively to get them investigated and done. That we were trying to be innovative in the way we went about investigating cases. Maybe instead tying up every loose so that we could get the Nth defendant, think, "Gee! Let's focus on the company and the top three defendants, and think about it that way." I should say prospective defendants or possible defendants.

Steve Cutler: So, you're right. You're thinking about the division programmatically. Do I have the right people working on cases? When Enron broke, I went to the deputy, my deputy director, Linda Thomsen and said, "I want you on this like every day."

Steve Cutler: And so, you might use different approaches on different cases. Certainly, I wasn't involved in the actual investigations. But, I was getting briefed and re-briefed very frequently on these big, high profile, important matters to make sure that we weren't letting balls drop. And, always with the question in mind. Where are we going? When are we going to be finished? What do we think this involves?

Steve Cutler: Look, I will forever give Harvey Pitt credit. When WorldCom broke, Harvey said to me, "We're bring this case tomorrow." I mean, the day after WorldCom announced they had misstated their financials. And, my reaction at the time was, "We can't do that." And, I think that was my out loud reaction. And, Harvey said, "Yes, we can. You can do it."

Steve Cutler: And, I went back to the staff that I'd assigned to the case and said, "Can we bring this case tomorrow?" And, I think I got the same response. "Are you crazy? That's not the way we ... We can't do that." But, we could. We could.

Steve Cutler: So, I think bringing that 'we can do this -- it doesn't have to be exactly the way we did it in the past' sensibility to it was part of my job. And indeed ... Excuse me. I think going back to Dick bringing me into the agency, I mean, I think he would've said, I think that's what he would've wanted, is, "Look, I want people who can think about this differently because they haven’t spent the last 20 years here."

Steve Cutler: And, I think you know, everybody knows, it's harder to think about doing things differently if you're the one that's been doing them that way for a long, long time.

Harwell Wells: So, that actually raises an interesting question, which is, what was your approach to managing the fairly, and sophisticated, and very talented staff, enforcement staff?

Steve Cutler: Yes. Well, part of it is, do you have the right people in the right places, and letting them do their thing? A lot of really good management is finding the right people. And so, certainly, that's a part of it. And, part of it is going back and wanting accountability.

Steve Cutler: You told me last time we'd be done with X, Y and Z by now. We're not. Why not? And, asking those question, that are going to be uncomfortable. But, that's what a manager does.

Steve Cutler: But, yes. It's a challenge. You've got, I think at the time, you had 1000 people or 900 people spread out over probably a dozen offices, and a tradition within the regional office structure of a lot of independence.

Steve Cutler: And so, again, I would say, part of ... I mentioned that part of what I considered my job to be as deputy was, I want people to think of going to Cutler as adding value. And I hope I didn't lose that mindset when I became the director.

Steve Cutler: And, my hope would've been that other people would be able to reflect on this, that they'd continue to find value in that, not just because I was their boss, but because I could help, "Hey! Let's think about this differently. Let's find a way to get this done. Let's find a way to bring this case. Let's think about using this statute or this regulation. Or, we haven't brought a case like this in X years. It's time we brought one. Let's do this. Let's go with this approach."

Harwell Wells: Okay. There's a quick follow up. You mentioned the regional offices. What was your relationship to them?

Steve Cutler: It was very good.

Harwell Wells: Okay.

Steve Cutler: Yes. I would say it was very good. Look, some of them, at the time, I think, it was better with some than with others. The agency had gone from a ... This is before I got there. But, where regional heads were reporting directly to the chairman, to regional heads then reporting to Bill McLucas, who was then the director, certainly for enforcement matters.

Steve Cutler: And so, I think we were still probably experiencing, when I go to the agency as deputy, some growing pains around the switch, because I think a lot of the regional directors liked the notion that they were answerable only to the chairman.

Steve Cutler: But, I think ... Look, one of the things that we wanted to do, and one of the things that I was certainly focused on when I was the director was, we want a national program. We don't want it to be the case that if you bring a matter in Los Angeles, it going to look really different from a matter that's brought in the home office, or brought in New York.

Steve Cutler: We wanted there to be consistency. Consistency of priorities, consistency of approach, knowing that geographical differences were going to create difference in priorities. There were going to be more broker-dealer, cases in New York, than there would be in Denver.

Harwell Wells: Okay. So, one of the things that you seem to focus on as director, was a resurgence of attention to gatekeepers, which is always obviously been a concern going all the way back to Judge Sporkin. But, in 2003, I believe you actually gave a speech, speaking of a new enforcement model. Maybe even early than 2003. I'm sorry. Speaking of a new enforcement model and focusing especially on holding accounting partners, as well as ... I'm sorry. Accounting firms, as well as individual partners of accounting firms, to task for violations.

Steve Cutler: Right. So, this is in the throes of some of the big financial reporting cases that you mentioned. And, as I began to think about this, in every other walk of SEC life, we seem to think about both individuals, and entities. And, we didn't have any blanket policy that said, "We're only going to sue the individuals, we're not going to sue the entity."

Steve Cutler: So, if these was problem at investment advisor, we think about the people who caused that problem, and we think about the advisor itself. And, in the broker-dealer world, the same thing. The people who cause the problem, and then the broker-dealer entity.

Steve Cutler: And, I guess the thought I had is, “why are treating audit firms differently?” And, not making the mistake that I made when I started as deputy, when I sent that insider trading memo, I talked to a lot people around the division, around the agency. And, I never felt like I had a satisfactory answer, other than this is the way we do it.

Steve Cutler: And, to the extent that you think that entity cases are an important way to archive deterrence, I thought, "Gee! Entity cases involving audit firms maybe could be that too." And, in an era where we thought, "Gee! Financial reporting and the auditing of financial reporting really needs more attention," that was the thinking.

Steve Cutler: So, I talked to the chairman of the SEC, and then I ended up delivering that speech to the, I believe, it's to the AICPA.

Harwell Wells: And, how did the AICPA handle, respond to your speech?

Steve Cutler: I don't remember getting rousing cheers from the audience when I delivered that one. Let's put it that way.

Harwell Wells: And, if I can ask one question, to follow up to that, which is, obviously Arthur Andersen got into huge trouble over Enron, collapsed within a year or so of Enron. Did the collapse of one of the big five accounting firms change your approach at all? Make it seem more desirable, less desirable?

Steve Cutler: I don't think so. I mean, we shouldn't forget that that collapse was arguably the result of a criminal prosecution, not a civil enforcement case. And so, I didn't think, and the experience that we had going forward, when we did bring cases against audit firms themselves wasn't, this is going to imperil the life of the audit firm.

Steve Cutler: And look, you can say this in lots of different ways. The more of it that you did, the less you'd worry about it being one of these imperiling acts.

Harwell Wells: Okay. So, in 2002, obviously in the wake of Enron, WorldCom, Global Crossing, Sarbanes-Oxley was passed, and created new requirements ranging from CEO, CFO certification, establishment of PCAOB, I believe a budget increase for the SEC. Did you perceive the effects of Sarbanes-Oxley? Did that change ... Did you see the environment in which you were operating change? What effect did that have on enforcement work?

Steve Cutler: I'm going to say it didn't have a direct impact on enforcement work that I was doing at that time, because it was going to take years for Sarbanes-Oxley to effect meaningful change. And, in the enforcement division, you wouldn't see that for years down the road.

Steve Cutler: But, do I think it ended up creating a meaningfully different environment for financial reporting? Yes, I do.

Harwell Wells: Okay. As a quick follow up. Fair Funds was obviously a significant element of Sarbanes-Oxley. And, since we're already talking about the very high penalties that wound up being paid, do you think fair funds made it ... Did it make it easier to impose penalties? Did it encourage people to support higher penalties?

Steve Cutler: I think if you could return penalty money to harmed investors, I do think it gave another ... I think it made the imposition of penalties something that would have better effect than the money just dropping into the treasury of the United States. Look, I think that there's an interesting question about what role the SEC should have.

Steve Cutler: And, I think prior to Fair Funds, you could return disgorgement amounts to investors. But, the focus wasn't on the agency as effectively a plaintiff in a civil lawsuit, where you were thinking about damages, right? And, of course disgorgement and damages are not synonymous.

Steve Cutler: I think there's a legitimate question to be asked about whether penalty money going to harmed investors, when you're creating a billion dollar fund, or just huge funds for moneys to be returned to investors, you've changed, again further changed, I think, what the mission of the enforcement program of the SEC is.

Steve Cutler: But, I think we were already beginning to walk down that path. And again, walk down that path in the sense of, this isn't just about changing the policies, changing the procedures, changing the structure, improving things going forward. It is about sanctions.

Steve Cutler: And, I think once you got to that place, you were thinking more about what should we do with the sanction? What should we do with this money? And, would it be a good thing, rather than dropping the money into the treasury, to get it back to the victims. On balance, I think it was a very positive development.

Harwell Wells: Okay. So, shifting gears a little. Your time was very eventful. There were quite a few major topics to cover. And, I want to move on to a couple of things that came up in 2002 and 2003, which were, first of all the conflict of interest, analyst conflict of interest, and Wall Street, and then mutual fund, both late trading and market timing. But, perhaps we should start our discussion of that with your interactions with then New York Attorney General Eliot Spitzer, since, I'll put it this way, the media reports suggested there a bit of contentious relationship between him and the SEC.

Harwell Wells: So, could you talk a little about your relationship there?

Steve Cutler: Yes. I think we actually had a reasonably good relationship. I always thought that if then Attorney General Spitzer told me he was going to do X, I could trust that he was going to do X. Obviously there was tension, I think, between us, and between the SEC and the New York Attorney General, because he was bringing cases involving the markets.

Steve Cutler: And, not only was he bringing cases just to use some of the vernacular that I used before, that were backward looking. He was thinking about, "Well, should I change the way this is done." Or the very fact that he was bringing a significant case, was going to change the way that something was going to be done, because sitting in New York, he had jurisdiction over all the big brokerage firms.

Steve Cutler: And so, one of the things I think the agency had to contend with was, the SEC needs to be setting policy, if you will, when it comes to how the markets are governed. But, now you have someone who's bringing some pretty cutting edge cases that is effectively having that impact as well. And so, I think that created tension.

Harwell Wells: How did you wind up ... Actually it's a good place to move on to, the research analyst cases, which were the first of the major cases he brought. And, if you can talk a little about your interaction with the New York Attorney General's office during that period, because as you said, you've got two agencies, both very proud of themselves, both very cognizant of their responsibilities, really trying to share a space that it might be easier if one agency or the other was occupying by itself.

Steve Cutler: Well, I think the genesis of our relationship came in the aftermath of Mr. Spitzer bringing a case against Merrill Lynch. And, I think he ... I remember him calling me up. And, we had a bunch of mutual friends. I don't know that we had met previously. And, he had just brought the case, and went into court seeking a temporary restraining order against Merrill Lynch. And, he got it from the state, the New York state judge.

Steve Cutler: And, he called me up, and he introduced himself, and said, "I'm being told by Merrill Lynch's lawyers that I've just put them out of the mutual fund business." And, I knew a little bit about the securities laws, and I said, "Well, in fact, if you've gotten a TRO, that’s exactly the effect of what you've done."

Steve Cutler: So look, he wasn't a securities guy. He was the New York Attorney General. He was a state enforcer. So, we had different orientations. But look, I think to his credit, I think Eliot recognized pretty early on in that research case that he couldn't do that himself. He couldn't do that case, nor should he do it himself. That it was important to get the SEC involved, because it was going to have an impact on how the securities markets worked, how research was done on Wall Street.

Steve Cutler: And, we had, frankly, more resources to deploy. I do think in the course of that, I think he recognized that politically, he had done something really, really interesting, which is he was able to say, "I did this. The SEC didn't." And, in some ways, politically, that was more effective than being able to say, "I did this. I went after this bad guy."

Steve Cutler: And so, that probably heightened the tension, because it enhanced the criticism, I think, that the agency was getting, because it didn't see the research analyst problem. And, when I thought about that in retrospect, I think part of that is because the SEC was in a way too close to the evolution of research on Wall Street. That it saw it…that it saw what research looked like in 1975, when brokerage commissions were deregulated.

Steve Cutler: And, it was there every step of the way, from 1975 to 2000. And, I always say, when you're in the middle of something, when you're in the weeds of something, it's much harder to actually look at it anew.

Steve Cutler: So, if you were able to look at the practices and research on Wall Street in 1975, and then look at them in year 2000, you would've seen an incredible change in how that worked. You would've seen research analysts that had been part of, in some ways, a back water on Wall Street, to research analysts being rock stars, being on CNBC, making investment banker type salaries, being evaluated by investment banking.

Steve Cutler: I think these were all things that happened so incrementally that it was hard for an agency that was actually seeing those things happening incrementally to see the bigger picture. And so, in some ways, the fact that the New York Attorney General's office wasn't part of the oversight of regulated entities, may have helped them to see that in a way that the agency didn't.

Harwell Wells: Okay. Quick question, what did you ... So, you said it was beneficial politically to point to the SEC. Politically for the cases he was bringing?

Steve Cutler: No.

Harwell Wells: Politically for him personally?

Steve Cutler: I think for the Attorney General personally.

Harwell Wells: Okay.

Steve Cutler: Yes.

Harwell Wells: So, roughly, a year later you reached the Global settlement, which actually had both a backward looking and a forward looking element. Backward looking $1.4 billion paid in various ways-

Steve Cutler: By maybe 10 firms.

Harwell Wells: Yes. But, not an individual firm. By 10 firms. But, also restructuring of how analysts work was done. And, I'm curious how did you ... And, this was obviously the Attorney General's office, the SEC, might have been a couple of other agencies as well. But, you were clearly the big agencies in that.

Steve Cutler: Actually, we ended up working with the NASD, with the New York Stock Exchange, with the state securities regulators, through NAASA. So, there was quite a large number of regulators at the table.

Steve Cutler: I would say that the SEC took the lead on the forward looking prophylactic piece. How are we going to prevent this from happening again? How are we going to think about where research analysts sit within Wall Street firms? That's where, I think, we had the expertise.

Steve Cutler: And, I think the enforcement staff used to make fun of me. They'd walk into my office, and I had on my computer screen, for weeks on end, the appendix that served as this template for how this is going to be done going forward…that all the firms agreed to.

Steve Cutler: And, part of the reason why I was personally involved in that is, that was my area of expertise. Before I came to the agency, when I worked in private practice, I did enforcement stuff, but I did broker-dealer regulatory stuff too.

Steve Cutler: So, I understood the stuff. And, the agency, more broadly, obviously with market reg and with OCIE, had the real expertise.

Harwell Wells: I think that was going to be a question. How did you ... Who within the SEC came together to design that forward looking-

Steve Cutler: So, I would've said, it was within the agency. It was OCIE, it was Lori Richards, who was then running OCIE. And, it was Bob Colby, and Annette Nazareth in Market Regulation.

Harwell Wells: Okay. And, I don't know if this is the best place to ask. But, I'm curious thinking about the interaction of enforcement and regulation. There are phrases used to describe ... The phrase regulation by enforcement is occasionally to describe somethings the SEC does. Sometimes descriptively, other people have used more critically.

Harwell Wells: And, I'm curious about your view of how enforcement played into regulation. You've suggested a bit already. But, if you could expand on that a little bit.

Steve Cutler: Yes. Again, I mean ... Look, I think regulation by enforcement means different things to different people. If what you're doing is calling something unlawful that you don't have statutory basis or a regulatory basis, or rule basis, I should say, for calling unlawful -- and that's what people mean by regulation by enforcement -- I think that *is* problematic.

Steve Cutler: And, no one should forget that a lot of the agency’s enforcement docket is resolved through settlement. And so, there's a lot of agency made law, if you will, through the cases the agency decides to bring and settle.

Steve Cutler: And so, you have to be very careful that you do have a proper statutory or rule basis for any enforcement action. And look, I hope I recognized, sufficiently at the time, and certainly I've been sensitive to this in my life on the defense side, is a lot of times you get particularly entities, that don't feel like they're in a position to litigate.

Steve Cutler: And, I think it's incumbent upon the agency, it's a part of what you have to do to do the job well, to make sure that you're not unduly taking advantage of that. And, not bringing cases, and settling cases that you don't have a good basis to bring under the law. So, that's very important.

Steve Cutler: When it comes to relief, and is the relief creating enforcement ... is it creating law by enforcement? Maybe that's in the eyes of the beholder. I would've said, one of the strengths of the agency, and I mentioned this at the outset, as an enforcement agency was that it wasn't all about the fine, or the backwards looking stuff. It was, what are we going to do going forward?

Steve Cutler: I mean, you do have to be careful that what you're not doing is you're not substituting for rulemaking for the industry as a whole, and the like. And, I think you have to be careful about that.

Harwell Wells: When you were dealing ... One follow question, which is thinking about the different divisions within the agency. When you were bringing cases that ... Global settlement is perhaps extreme example. When you were bring cases that would likely have real forward looking implications for future behavior, to what extent did you coordinate with the other divisions who might have responsibility over a particular industry or a particular topic?

Steve Cutler: You always had to coordinate. First of all, you weren't going to get a case to the commission table without the relevant divisions weighing in. So, that was always an important part of the job. And, it was incumbent upon the enforcement division to make sure that it had the right folks, from the right divisions, participating, weighing in, consulted on cases, that were going to involve those program areas.

Harwell Wells: Okay. Coming back to your interactions with New York AG's office, can you talk a little about the mutual fund cases that came up in 2003? Because they occupied a lot of media attention, both market timing and late trading cases. Not only mutual funds, but some hedge funds and other entities got drawn in as well.

Steve Cutler: Right. So, I won't forget this. So, we had gotten through the research analyst issues, and brought that case. And, I think I'd developed a pretty good working relationship with the Attorney General at that point. And, I don't know how much later it was, but months later, I'm in a staff meeting with then-Chairman Donaldson.

Steve Cutler: And, Bill's secretary comes into the meeting and says, "Steve, it's Attorney General Spitzer on the phone." And, I said, "Well, I'm in the staff meeting." And, she said, "I told him that, and he said you'd want to be pulled out." And so, I looked at Bill, and Bill said, "Go take it."

Steve Cutler: And, I took the call. I went out and took the call. And, the Attorney General said to me, "I'm doing a press conference at 10:00 AM. It'll get coverage on CNBC. This is not going to be a good day for you guys. And, you may want to watch it."

Harwell Wells: So, this was ... As in, it was already the morning when you took it?

Steve Cutler: It was the morning of. That was the first I'd heard about it. And, this was what became the late trading scandal. This was the case against, I think it was, Canary was the name of the hedge fund, and it's principal Eddie Stern.

Steve Cutler: And, yes. The Attorney General was bringing this case involving the mutual fund industry. And so, we were in a similar position, where somehow we didn't see this. This was a case where I would say, unlike the research analyst thing, which you could argue was in broad daylight, but incremental. I think this was a case that I think wouldn't have come to anyone's attention, didn't come to his attention, absent a whistle blower.

Steve Cutler: And ultimately, I think my concern as the head of the division was, "why did the whistle blower go there, instead of coming to the enforcement staff?" I actually picked up the phone and called that whistle blower once her name became public, and said, "We want to get better. This is what we do. Why did you go there?"

Harwell Wells: And, what did she say?

Steve Cutler: I think she was too polite. And, I think I told her she was too polite. And, I think she said, well, her sister had ... It had something to do with her sister. And, her sister had seen the Attorney General. And, it wasn't a very satisfying explanation.

Steve Cutler: At the same time, I also decided to explore what it would be like to be a whistle blower trying to navigate the SEC, to get to the right person. So, I remember calling up. This is in the days before caller ID, and saying, "I have a complaint about ... I think I've seen some misconduct. Can you help?"

Steve Cutler: And, it was really hard to get through to the right place, the right division, the right person. And, I think it had us rethinking what was that process. But, yes. I think, for us, that was the big deal.

Steve Cutler: Again, with mutual fund market timing and late trading, we now had a little bit of a template from the first one, which was, okay. Well, now it isn't just Canary. We have got to make sure that this isn't happening more broadly. And, working together with my colleague, Lori Richards ... I think Lori sent out, immediately, letters to a hundred different mutual fund complexes. We want to understand your policies, your practices. And, indeed we saw this happening at a lot of different places.

Steve Cutler: Ultimately, this didn't result in like a single big bang global settlement. This was case, after case, after case.

Harwell Wells: So, once perhaps Attorney General Spitzer announced the initial cases, did you ... After all that occurred, did you manage to work better with him in this case?

Steve Cutler: I mean, I think ultimately we worked pretty well with him on the research analyst case. Yes. I think we worked reasonably well with him on this case. There were all these hiccups along the way. But, I recall at the end of the day, it was fine.

Steve Cutler: I think, again, from a public perception, politics, perspective, he accomplished what he needed to accomplish by bringing that first case.

Harwell Wells: Okay. Another matter that was prominent during your time was IPO allocations. And really, obviously these would've occurred in 2000 and 1999, the top of the boom. But, the enforcement matters came about under your watch. The various spinning of hot IPO allocation.

Harwell Wells: and, I'm curious how those ... Because eventually the charges that resulted were very high profile. And, I'm curious how that came to your attention, and how you pursued it.

Steve Cutler: Yes. So, that was ... My recollection is that came via an anonymous letter. That did come to us. That didn't go to the New York Attorney General. And, I think it actually came to the head of the exam program in New York, Bob Solazzo, or at least came to his attention. And, he collaborated with the head of the New York regional office, Wayne Carlin.

Steve Cutler: And, they did a cause exam of a firm, and found, at this particular firm, that there were some problems in the IPO allocation space, in a particular ... I think previously people had been focused on, where IPO shares being allocated to those who paid the largest commissions.

Steve Cutler: And, from a legal perspective, that was a challenging case. This was ... What we were seeing now was something different, which was, are IPOs being allocated to the CEO or the CFO of another tech company that's still private but is going to go public, and now we'll have a better chance of doing that underwriting if we allocate this hot IPO to the officers, or in some cases directors of a prospective client.

Steve Cutler: And, I think it was that anonymous letter, and then the cause exam that followed, that ultimately resulted in some pretty important cases.

Harwell Wells: Okay. One issue that you raised during your term was a conflict of interest program. And, I think you actually gave a speech in 2003 to suggesting that conflict of interest that a variety of firms under SEC's watch needed to pay much greater attention to conflicts of interest. And, I wonder if you can talk a little about why you decided ...

Harwell Wells: First of all, why did you decide that was an important issue to address?

Steve Cutler: Yes. I mean, I think in part because of things like the IPO allocation practices. But also, clearly because of the research analysts stuff. And, we'd just seen a number of problems.

Steve Cutler: And, the answer didn't have to be let's do it in enforcement, after it happens. The answer should be from a markets perspective, let's get this cleaned up so that there doesn't have to be an enforcement case. It's always hard to measure the effectiveness of an enforcement program. And, if you bring a lot of cases, well, why was there so much misconduct out there? If you're not bringing cases, are you not catching stuff?

Steve Cutler: I think part of the idea here was, let's improve conduct, so that we're not constantly chasing misconduct. And so, I gave the speech, encouraging regulated entities to do their own review, top to bottom. Where do we have conflicts, and how are we addressing them? And, I don't think I expected in any way the reaction that we got, which was a ground swell of, we're going to do this. We're going to do this. We're going to do it too.

Steve Cutler: And, firm after firm came in and presented to, not just enforcement, but also representatives of market reg, and OCIE, "Here's what we did. Here's what we found." Unfortunately, I left the agency ultimately before it was all completed.

Steve Cutler: But, I actually thought it was time for the agency, and in particular the enforcement division, not just to use the traditional enforcement tools, the penalties and the injunctions, and the sanctions, but to use other, I think, tools as well, including firms doing their own look.

Steve Cutler: What we didn't do, and this was the challenge. This was what was challenging, I think, for Wall Street firms that were doing this review, I think they weren't used to coming in and talking to enforcement about problems, without getting rapped. And, we didn't want to make a blanket promise. If you come in and tell us, no matter how bad it is, no matter what it is, we're not going to bring a case.

Steve Cutler: So, we left that open. We said that's not our objective here, but we're not going to give an iron clad promise that if you bring us the equivalent of first-degree murder in the securities realm, that we're not going to go about punishing you.

Harwell Wells: So, they weren't just bringing in, here's a new program we ... They were in fact bringing problems they had identified.

Steve Cutler: Issues.

Harwell Wells: Issues.

Steve Cutler: Let's put it ... They would've said at the time, "Here are issues that we've identified." Yes.

Harwell Wells: So, why do you think so many firms got on the band wagon?

Steve Cutler: Part of it may have been that other firms loudly announced that they were doing it. And, they didn't want to be perceived as not doing it. I think part of it is, look, they didn't want ... They wanted to get ahead of this stuff too. I think, they had seen some pretty serious sanctions levied on them, and it was not pleasant.

Steve Cutler: And so, maybe those had the deterrent effect that had, which was, at least in this context, making these firms more amenable to, let's look ourselves. I don't know.

Harwell Wells: Okay. I'll ask about one other area that is a perennial with the SEC, which is insider trading. There are times in which, 1980s, or perhaps around 2010, when a lot of attention is paid to insider trading. Otherwise, it seems to be a much smaller part of the overall enforcement portfolio.

Harwell Wells: What happened with insider trading during your time. And, I'll mention there was obviously a very famous case, which was the Martha Stewart case.

Steve Cutler: Right. Look, it will always be ... It is perennially a part of the SEC enforcement docket, as you suggest. I think, taking that as a given, it is going to ebb and flow. Part of that's going to be a function of what's going on out there. And, do people remember the lessons of Bosky, and Milken, and so and so forth. And, more recently, do they remember the lessons of Raj, and so on and so forth.

Steve Cutler: So, I think that's always going to result in a different level of activity that you're going to go get. And, the other is obviously where is the agency most focused. And, it will always be focused on insider trading, but is it also focused on financial reporting? Is it focused in today's world on cyber security? Is it focused on retail investors? Whatever it is.

Steve Cutler: And, you have a finite body of resources when you're running the SEC's enforcement program. And so, that's going to have an effect on how many cases.

Steve Cutler: So, I would say, during my tenure, it remained one of the perennials, and there were a bunch of cases. But, it wasn't like the '80s. And, it wasn't like the last few years, where we've had a rise in the level of insider trading cases again.

Harwell Wells: Okay. If I could ask, I know we're sensitive for time. But, I want to ask a little about the individuals you worked with. You've already talked a little about Harvey Pitt. And, I wanted to ask a little about Arthur Levitt, and William Don ... You can add more about Mr. Pitt. But, about Arthur Levitt and William Donaldson, as well, and both your interactions with them, and your sense that how the chair sets a particular tone or direction for the agency.

Steve Cutler: Yes. So, Arthur was in probably year six of an eight year tenure when I came to the agency. I was the deputy. So, while I had a bunch of interactions with him directly, I also had a bunch of interactions through my boss, Dick Walker. He was a great chairman. And, I would say, he's one of the best managers I've ever seen.

Steve Cutler: I think it didn't take more than a couple of words from Arthur to, I'll use the word persuade, persuade someone that he or she should be doing something. So, he was, I'd say, very effective as a manager. Someone who had vision. We talked about the numbers game speech. And, politically, very savvy.

Steve Cutler: And, I guess I should say, he put all that in a package together, with this, I think, relentless focus on the investor. So, he was a great chairman.

Steve Cutler: Bill Donaldson, I worked for directly. And, I think he was exactly the right person, at the right time for the agency. I think the agency was listing some. And, Bill had this pull up your socks mentality. He also, I'd say, was very savvy, and understood Washington quite well, at a time when I think that had become more important. Was able to, I think, get along with the rest of the commission, which was something that was very important. Focused on the right issues.

Steve Cutler: Look, I think both Arthur and Bill, and I'm not trying to leave Harvey out, but you asked me about those book ends, understood the value of an enforcement program for the SEC, almost instinctively, almost intuitively. Neither of them is a lawyer. And, they brought the managerial and business acumen to running a pretty complex agency. Each of them did that, I thought, quite extraordinarily well.

Harwell Wells: Okay. What's your interaction with the other commissioners? Certainly, by the time you left in 2005, there were reports that there'd been increasing numbers of split votes by the commission with various matter. I think some debates over the size of penalties that had been levied by that time.

Steve Cutler: Yes. I'd say that the commission became a little bit more acrimonious in my latter years there. That probably has only become more so today. But, certainly in the 2001 to 2005 period, more than it had been 20 years prior or 10 years prior, when I was starting out as a lawyer. That acrimony, a lot of times, the fault line for it, was political affiliation.

Steve Cutler: And, I don't think you'd seen that before. And again, I think as the agency became more important politically, as it became front page news rather than just business page news. I do think there was a focus on the agency by politicians. And, a sense that if you were a Democrat, here were the positions. If you were a Republican, here were the positions.

Steve Cutler: There were obviously exceptions to that. I actually think Bill Donaldson, in particular, was able to navigate that quite well, and probably would've defied, in a number of instances, categorization like that. But, I think there was more of that, in my latter years at the SEC, certainly.

Harwell Wells: Okay. What about any other individuals at the commission? And, I ask because so much attention is paid to the commissioners, the chair, perhaps people in very high profile positions like director of enforcement. Are there individuals who really stay with you or that struck you during your time?

Steve Cutler: Well, certainly the people I worked with in enforcement, and Linda Thomsen, who was my deputy, and then my successor. The folks who headed the trial unit, David Kornblau, and Peter Bresnan, and heads of the regional offices, and some of the associate directors. And, we talked earlier about the focus on the internet, and John Stark started that office up.

Steve Cutler: So, there are plenty of people in the enforcement division. I mean, sometimes when I go back and think about the consummate professional ... The Market surveillance unit of the enforcement division was led by Joe Cella, who did it for years, and years, and years. And, not one of these celebrated ... the outside world didn't really know who he was. Boy, was he good.

Steve Cutler: So look, there were plenty of people. Outside the division, I would've said my closest confidant was Lori Richards. And, we collaborated quite closely. But, the two general counsels that were there when I was there. Actually, there were three of them. Harvey Goldschmid, who was a commissioner during my time. And, David Becker. And then Giovanni Prezioso.

Steve Cutler: I mean, the three of them were just three spectacular lawyers. And, I probably would've gotten myself in a lot more trouble without having their advice on a frequent basis.

Harwell Wells: Okay. So, in closing, I'd like a little reflection from the position you're in now. And, one of the reasons I wanted to ask this is you left in 2005, and after a short period of time in a firm, you wound up at JPMorgan Chase for many years, which while a giant financial firm, and regulated by a lot of people, certainly there's plenty of units that are regulated, or several units that are regulated by the SEC.

Harwell Wells: Having been there over a decade, looking back, did that change your opinion of enforcement? What did it ... I suppose it gave you a different ... Coming to New York, taking that position, would've given you a different perspective on what the SEC actually does.

Steve Cutler: I don't think it gave me a different perspective on what the agency does.

Harwell Wells: Maybe it's impact.

Steve Cutler: I think I did have a perspective on how it was doing what it did. Not necessarily in ways that I was always about, when I was on the receiving end of enforcement inquiries and cases, in a couple of cases.

Steve Cutler: What you have to remember when you do this as a lawyer, and you do this on the defense side as well as on the enforcement side, is the agency has a job to do. And, how that job gets done does change over time. And, that's not necessarily a bad thing. In fact, I would say, generally it changes for the better.

Steve Cutler: And, my hats are off to the people who are running the enforcement division. I think they're doing an incredibly effective job. And, they're not doing it exactly the way their predecessors have done it, and all the more power to them.

Harwell Wells: Okay. And, looking back at your time, is there anything you'd identify as something you're particularly proud of? And, are there any regrets? Anything that in retrospect you wish you'd done differently, or been able to address?

Steve Cutler: Yes. I think I'll address the regrets piece first. Look, I think we were thrust into a world that was exploding on the securities side. And, we've talked about Enron and WorldCom, and the financial reporting scandals. And then, you had the research analysts stuff, and the late trading stuff, and the IPO spinning stuff.

Steve Cutler: There wasn't enough time to be as forward looking as I would've liked, in terms of, are we structured the right way? Are we deployed the right way? Do we have the right units set up? Do we have the right organizational structure to succeed? Because I think we had so much incoming. So, that's one regret.

Steve Cutler: I think in terms of what I'm proud of, I think we brought some incredible cases, under a lot of stress, and a lot of strain. And, always did so, in my mind, in an incredibly professional way. And, while I mentioned earlier in this conversation that…"Are you mindful of what's happening in the press, and the criticism?"

Steve Cutler: I don't think we ever lost our bearings. And, we never got away from the process protections that have been a hallmark of the agency. And, while another regulator or prosecutor could go, "Yes. I'm bringing that case. And, there's no Wells process here. And, I don't have a commission." We never lost sight that one of the strengths of the agency is all the protections it brings to bear.

Steve Cutler: One of the strengths of the agency is that it isn't just about the size of the fine. It's about improving markets. And, I think we always hewed to that mission. And, I'm proud of that.

Harwell Wells: Well, thank you so much for your time. We really appreciate it.

Steve Cutler: Thank you. My pleasure.