

JOAN MCKOWN – ORAL HISTORY

With Dr. Harwell Wells

February 8, 2019

[Harwell Wells:](#) We are here with Joan McKown at the Washington DC offices of Jones Day on February 8th, 2019, talking about her long and distinguished career at the Securities and Exchange Commission in an interview done for the Securities and Exchange Commission Historical Society. Thank you for talking to us Joan.

[Joan McKown:](#) Well, thanks for the opportunity.

[Harwell Wells:](#) The way we like to start some of these interviews is to ask if you could talk a little bit about your background, where you grew up, how you wound up getting interested in law school.

[Joan McKown:](#) Sure. Well, I'm truly a product of the Midwest, born in Ohio, raised in the St. Louis suburbs and wound up going to Vanderbilt Law School, but then I went to Drake Law School in Des Moines, Iowa because I was so certain I'd be headed back to the Midwest after graduation. And I did have a clerkship in the eighth circuit, but I after that I came to DC and I've been here ever since.

[Joan McKown:](#) In terms of why I decided to be a lawyer ... Actually, the era when I was growing up was the Watergate hearings and I watched those day after day on TV one summer and was really fascinated. That was probably the thing. I don't come from a family of lawyers. I'm the first woman in my family to go to college or law school, so not a family of lawyers or anything like that. But I would say that was when I first got interested in being a lawyer.

[Harwell Wells:](#) What led to the interest, if you had an interest, in securities laws before you actually came to DC?

[Joan McKown:](#) One of the summers, during law school, I worked for the Iowa Securities Division and I became interested in the securities laws then. They encouraged me to someday apply to the SEC. I took, of course, a few classes in law school, but no law school at the time had a huge securities program, though some had very good professors in the Securities Law corporate space. Then, I clerked for a judge in the eighth circuit and there were a number of clerks, former clerks from the eighth circuit that worked at the SEC at the time. That made me interested. I interviewed at firms as well in DC, but not coming from a family of lawyers, coming from the Midwest, I really didn't know the East Coast law firms, so I decided to go to the SEC for two years. That was my game plan.

[Harwell Wells:](#) Okay, so you went directly from the clerkship to the SEC?

[Joan McKown:](#) I did.

[Harwell Wells:](#) Okay. Can you talk a little about how you got hired, what the process was?

[Joan McKown:](#) The SEC at the time sent letters to various judges on the federal appellate level. At least that was my experience. The letters asked their clerks to apply for a position, and there were other government agencies that did that at the time as well. I don't know that my path actually exists anymore because I know the SEC hires a lot of people who have been at law firms for several years, but I did go straight from a clerkship and they were one of the agencies that I interviewed with, along with a couple of law firms. But I decided I really didn't know the law firms, but I knew people that were former clerks that were at the SEC. So I guess the rest is history, but that's certainly how I got started there.

[Harwell Wells:](#) Okay. If I'm correct, you actually started in the office of the general counsel and then moved to enforcement after a year.

[Joan McKown:](#) Right.

[Harwell Wells:](#) How did you wind up getting hired in the general counsel's office? And why make the move to enforcement?

[Joan McKown:](#) The general counsel's office was the group that sent the letters to the various judges and I loved it. It was a great opportunity. I learned a lot that year, but I decided that enforcement was where I wanted to go. And now of course, there's much more process around hiring. When I first was hired at the SEC I was interviewed by many people, one of whom was former commissioner and chair Elisse Walter. Colleen Mahoney, and a number of luminaries of the SEC bar interviewed me...Jake Stillman. I met a lot big names at the time I interviewed.

[Joan McKown:](#) Of course, I went through interviews there. At that point in time, which was the mid 80s, it was much easier to move, if you were a staff attorney, from one division to another. I actually told a friend of mine in enforcement, Liz Gray, who's now at Willkie, that I was thinking about making a move and I was interested in enforcement. The next day her supervisors, Kathy Kalinowski and Tom Ferrigno gave me a call, asked me to come down and after speaking for a little bit, offered me a job on the spot. So very different now. There's much more process around it, but at the time, there was a lot of turnover and so there was constant hiring.

[Harwell Wells:](#) Why a lot of turnover?

[Joan McKown:](#) A lot of opportunities I think that were opening up. People were coming to the SEC. They were there for a couple of years and then they went out. The defense practice was growing, as the SEC was starting to grow in terms of the cases that they brought, the number of cases, so growing opportunities in the defense bar and in house. That was part of what ultimately led to pay parity and efforts to achieve better pay so that there would be more retention, but there was a lot of turnover at the time and I was a beneficiary.

[Harwell Wells:](#)

What was attractive about enforcement out of the different divisions? I won't ask you to compare the other divisions perhaps. What was attractive about enforcement?

[Joan McKown:](#)

Right. For me, I loved the activity. I loved that things were going to happen by a certain point in time, not that they don't happen in other divisions. But for me, it was the exciting place to be.

[Harwell Wells:](#)

I know this was a time in the late 80s when enforcement had a series of extraordinarily high-profile matters and there was a lot of coverage of enforcement. What was the image of enforcement, if I can ask, when you went there?

[Joan McKown:](#)

The image of enforcement: it was very interesting. It was aggressive, yet thoughtful. Gary Lynch was the director at the time. You're right, it was a time that they were starting to bring cases that really burnished the reputation of the SEC and raised the profile. It was an exciting place to be. It was full of energy. My image of the SEC when I first came in though ... The SEC had just had their 50th anniversary and so they had a contest for a motto. As I recall, it was "good people, important problems, workable laws," which is probably not going to sell soap anywhere. It's not great advertising, but it really was the embodiment, I think, of the place at the time. It really was good people and important issues and an effort to make the laws very workable. For me that was the overall place and enforcement was the place that attracted me the most.

[Harwell Wells:](#)

I should ask because I eventually will get to your work on the enforcement manual, the modern enforcement manual, but when you first entered, what kind of training did lawyers receive? How did you learn the policies that eventually were put into the enforcement manual?

[Joan McKown:](#)

There were very few policies that were in writing. Over time that certainly changed. More and more were put into writing, and we will talk about the manual I know later. But a lot of it was that I had really great mentors. Colleen Mahoney was certainly a mentor and someone who taught me what was expected and what the agency was looking for in the Enforcement Division then. As I mentioned Kathy Kalinowski and Tom Ferrigno were my first supervisors and I learned ... Phil Parker was the chief counsel at the time. I learned a lot from all of them.

[Harwell Wells:](#)

You mentioned mentorship from people, which leads me to my question. At the time, I don't know what the experience of a woman joining the SEC was. Clearly in 20 to 30 years before, it would have been very unusual though. I believe the SEC did have something of a record of employing women, but it was still within a decade of Roberta Karmel being the first female commissioner, and I'm curious about what your experience there was.

[Joan McKown:](#)

It varied depending on where you were within the agency. There were many women in senior positions -- Linda Quinn, Elisse Walter, Linda Feinberg, Colleen Mahoney certainly were very senior. And I'm sure there's many others. Kathy McGrath was head of investment management. There were many senior women, but very few of them were in enforcement. So enforcement was a division where there weren't a lot of women. I was very fortunate though. My timing was great. Gary Lynch and Bill McLucas, who followed him as division director, were very interested in expanding and having more diversity as part of that.

[Harwell Wells:](#)

I should ask as well. In another interview, Emily Gordy mentioned you as providing mentoring to her. Maybe this is a point at which to ask how did you intern and try to provide mentoring for young attorneys, who eventually served with or under you at the SEC?

[Joan McKown:](#)

Emily Gordy is someone that I worked with for many years and it was hard for me when Emily left, because I really had gotten so used to her. I think we could finish each other's sentences, but I don't know that I consciously thought of being a mentor. I'm thrilled if people viewed me that way, but I certainly did try to be someone that had an open door that you could always come in and ask a question of. There was never any stupid question. I always said the only stupid question is the one that's not asked. Since we attended every commission meeting in the group I was in, we really had the opportunity to talk about where the commission was headed, how we should be internalizing what they were doing and helping people with their cases to be consistent with that. I think a lot of it is, for a mentor, is really just to have an open door. That would be the biggest.

[Harwell Wells:](#)

The group was the chief counsel's office?

[Joan McKown:](#)

Yes. Right.

[Harwell Wells:](#)

Which actually leads to the next question, because you joined in, I believe, 1986.

[Joan McKown:](#)

Right.

[Harwell Wells:](#)

And had what seems to be-

[Joan McKown:](#)

As a staff attorney.

[Harwell Wells:](#)

As a staff attorney, but you had a very rapid rise. Branch chief, assistant director and then I believe in 1993, became Chief counsel. To what do you attribute that pretty rapid successful career?

[Joan McKown:](#)

In part it was the turnover. I was fortunate in that regard, that the opportunities opened up. Very often I would feel like I was just learning the ropes, learning

what was expected of me. Then another opportunity for advancement arose, which I did always apply for. I will say one of the first steps of a new position is applying for and I think that sometimes people lose sight of that. I certainly applied for opportunities and I was fortunate to get them, but I also work very hard. I remember when I applied for branch chief, I had a conversation in the hallway with Jerry Eisenberg, who was an assistant director in another group, and he was a mentor to many people, a great leader.

[Joan McKown:](#)

And he said, "Are you going to apply for that branch chief job?" I said, "I'm debating," because other people I felt had maybe more knowledge of the securities laws and that sort of thing. They'd been out longer. Jerry just said, "You should apply," and I did and I'm glad I did, but a lot of it was being there at the right time, applying and working hard and thinking about ... I think the key to advancement with any organization is getting things done, moving a case along, moving an investigation along. If you're in another division, the rule-making. Your supervisor becomes so dependent. They want someone they can rely on. If it's a report that needs to be done, the key is to figure out how to get it done, not to raise a million questions.

[Harwell Wells:](#)

I want to get to the chief counsel's office in a second. Are there any particularly memorable matters you worked on before you got to the chief counsel's office or issues perhaps that you faced before you took that position?

[Joan McKown:](#)

I was in the chief counsel's office the entire time, starting as a staff attorney. The good thing about being in that group is you had the opportunity to work with every division, because they all have liaisons and they have input on the enforcement matters. I had a great opportunity to work with all the different divisions, people, of course, in the home office, but especially the Regional Offices as well. Two-thirds of the enforcement staff, at least at the time, I don't know about today, although it's probably still pretty close, two-thirds of the enforcement staff are in the regions. I had the opportunity to work with them. It was a time of certainly big cases, but there was also a lot of penny stock type cases, which might be called micro-cap now. That was what I would call a high-volume business for the SEC. There was a lot of work, a lot of regulated entity, broker-dealer, investment-advisor type work, but especially in the broker-dealer space, because that was where a lot of the penny stock cases resided.

[Harwell Wells:](#)

Okay. You bring up a good point, which is about the Regional Offices. How did they interact, in your experience, with the enforcement staff of the division enforcement in Washington? Did the attorneys in the Regional Offices, as best you could tell, see themselves as being part of the Enforcement Division, or would they have identified more with the office? How did that interaction work?

[Joan McKown:](#)

Well, I always viewed them as part of the division. I guess they could answer better the question of whether they view themselves as part of a region. They certainly were part of a region, but I certainly made every effort I could, especially as branch chief or assistant director and certainly as Chief counsel, to

... The regions are a very important part of the SEC, certainly from an enforcement standpoint and exam standpoint, because so much of the staff is out in the regions.

[Joan McKown:](#)

The key is communication, making sure that people understood where the commission was headed, because especially prior to current technology, where the staff in the regions can watch the weekly closed commission meetings where enforcement matters are considered. At that point, they couldn't, so the key was how to get the information out to the regions so that they understood where the commission was. Fortunately, people would call a lot throughout the course of the investigation. You certainly interacted with them at the formal order stage, and as they were receiving Wells submissions or settlements and working through that with them so that they could be successful when they went up to the commission.

[Harwell Wells:](#)

As a follow-up, would you actually go out to the offices? How did you make sure you kept those connections?

[Joan McKown:](#)

Part of it was you're on the phone a lot. That was a big part of it. Remember this is pre email. In fact, the first email connection for the SEC was between the chief counsel's office and the Denver Regional Office. It was developing that. How are we going to do that, that sort of thing. It really wound up developing more naturally. Certainly, your ability to communicate grew dramatically with email and that sort of thing, and also just teleconferencing being better. Then of course video conferencing was the ultimate ability to have meetings, but in the earlier days, it was a challenge. There was an annual chief enforcement attorneys conference. That was important, of course, and the one-off conversations.

[Joan McKown:](#)

Also there was a period of time where there would be the senior heads of enforcement ... At that point there were only five regions and the five heads of enforcement from those five regional offices and I would get together at least once a year. You had meetings, you had phone calls, but it was a challenge.

[Harwell Wells:](#)

Quick question: you say chief enforcement attorneys. Who would that cover?

[Joan McKown:](#)

Well, the chief of enforcement attorneys conference that would be held annually included ... One of the things that Bill McLucas did was he expanded it from the very senior level to include down to branch chiefs.

[Harwell Wells:](#)

Okay.

[Joan McKown:](#)

It included accountants too. I should say that, yes.

[Harwell Wells:](#)

Oh. Before we go further to talk about chief counsel's office, can you explain what the responsibilities of the chief counsel's office of the Enforcement Division are?

[Joan McKown:](#)

Sure. well, my view is you're counsel to the enforcement staff and you help them make certain that their cases are consistent with commission and division policy, which again, a large part of that is communication. You should be communicating throughout the life of their investigation with them. Certainly when they have a memo that goes up to the commission and, of course, the chief counsel doesn't act alone. There's a whole team. You've been great about saying the chief counsel's office. It's a whole team of people review all the matters that go up to the commission. They review them to make sure that they are legally sufficient. From an evidentiary standpoint. They are sufficient and from a policy standpoint, they are consistent with what the commission is going to be looking for.

[Joan McKown:](#)

Also part of that is when the other divisions were doing rulemaking. They would come to the chief counsel's office to make certain that the rules that were being implemented were workable and think about how we would enforce those particular rules. How would they impact cases that had already been filed? You don't want to undercut something that's already been filed. Then of course if there's any legislation, you worked on that.

[Harwell Wells:](#)

Oh, so legislation related to enforcement, you would actually have a hand in?

[Joan McKown:](#)

Right.

[Harwell Wells:](#)

You've already answered part of this question. But when an enforcement matter would come to you ... As you said you'd be interacting with the attorneys almost from the beginning.

[Joan McKown:](#)

Right.

[Harwell Wells:](#)

But still, what kind of questions would you ask of them? What did you view when let's say you're talking to ... an attorney's actually handling an enforcement matter. What would your actual interaction be like? What kind of questions might you ask? How would you try to communicate those concerns?

[Joan McKown:](#)

Well, and of course how you communicate the concerns is very important. I used to say to my group that how you say the question isn't so important as the question itself, because you want to be working together as a team and not sitting in judgment, because you are part of the same team. The one thing that you have and you can provide is experience -- you've seen other similar cases go up to the commission. You've seen what the questions are that the commission asked and you can say, "Why do you think one year out is appropriate versus a permanent bar? Why do you think that this is the appropriate officer and director bar versus time out of an industry." Tom Ferrigno, one of my first supervisors in enforcement, would make us sit down and say, "Okay, as section five in securities registration, these are the elements that are for 10B. These are the elements you need to meet." Sometimes you would have say an insider

trading case where it was clear that the person traded in a very suspicious time period, but where did they get the information from.

[Joan McKown:](#)

It's very easy to look at a case that's been filed, but bringing all the various pieces of the investigation together, deciding what is needed to make the case is not ... It's not always easy. You really would be asking questions about the evidence. What is the evidence to support certain things? Then if there was an issue, explain. The commission has just rejected this theory in another case. Now, hopefully you've been communicating all along what those potential issues are, but that's a large part. Then you'd be working with the other divisions as well. For instance, securities registration, the Division of Corporation Finance, their liaison would have probably had comments on that as well.

[Harwell Wells:](#)

I want to get to the commission a bit later, but I will ask a question which is as the composition of the commission changed, did you take that into account when you were actually preparing a particular matter to go up in front of the commission realizing that this commissioner is going to have different approaches, or was it pretty standardized?

[Joan McKown:](#)

Well, you said this commissioner and, of course, it's a five-person body.

[Harwell Wells:](#)

No, I understand.

[Joan McKown:](#)

No, no, but it does come into play. There are changes with usually the chairman. There's usually three things that impact how the enforcement resources are spent and they're not spent in the typical dollars, but how they're utilized. First, there's the core program areas. You're always going to maintain a presence in the core program areas, if you're the SEC issuer-disclosure, broker-dealer, insider trading and that. Secondly, it's the view of the commissioners. What are the areas that they're most interested in? Because there's limited resources. You can't do everything. When Arthur Levitt came in, initially he was very interested in, as I recall, derivatives and how those were viewed and cases such as that. Then of course third, there's what happens in the market, because any chairman can come in with a particular vision and have that completely disrupted by what happens in the market.

[Joan McKown:](#)

You certainly are conscious of that. The various commissioners and especially the chairman would have particular areas they were interested in. Sometimes there were commissioners that believed there had to be certain things in a case. What you would see is there would be the initial meeting where they would express that view. Then you would see what the support was of the other commissioners. Eventually, you would understand where the consensus was of the commission. Were there three votes or a majority of the quorum voting? Of course, that's why a four-member commission can be very difficult, because you can have a split vote. That means the item doesn't go forward, so you had to look for where the consensus of the commission was.

[Harwell Wells:](#)

I think that answers part of my next question, which is how changing policies were communicated to the Enforcement Division, I assume the other divisions as well, but whether it was a new chair coming in with public pronouncements, whether it was testing the waters or seeing how meetings went with the commissioners. How did you decide or how did you figure out what new policies were being communicated from the commission?

[Joan McKown:](#)

Especially if you're in DC ... Sometimes the regions, by the way, would come in when they had a particularly important matter. Your meeting with the commissioner is not just at the commission meetings, but in advance, you're hearing from their staff and you're also sometimes meeting with the commissioners themselves. You would hear from the commission and an example would be something that really has been a challenge since 1990 for the commission, and that is issuer penalties and how that changed over time. It's a question that the commission has grappled with and is, I think, still assessing.

[Joan McKown:](#)

When Chairman Cox was the chairman, he certainly had people ... He developed a penalty guidance that came out. My recollection is it was 2006. There, you could see that there was an effort to have this guidance, and have it be followed. I think that some future commissions followed it and some haven't. You can have something like that where there's a written policy, but it can also just be orally communicated to the staff that this is what we expect to see. Also, with disgorgement, there was a meeting where the commission decided that they wanted to start charging interest on disgorgement.

[Joan McKown:](#)

That was a very difficult meeting, because they wanted it in that manner and the problem was, you had settled it without interest on disgorgement. Of course, now people are so used to it. They can't imagine that. That was a commission meeting. Then you had to go back with that item. If the party wanted to settle, there had to be interest. Then you then communicated to the staff that henceforth there had to be interest on disgorgement.

[Harwell Wells:](#)

That actually leads up to a question, which is, I know you were very involved with both settlement negotiations and with the Wells submissions that you had received from ... The Wells notice would go out and then the Wells submission would come back. If you could tell me a little about how ... What role the chief counsel's office played in those settlement negotiations?

[Joan McKown:](#)

Certainly. Because you're hearing from the commission every week, what they're looking for in terms of settlements, and you're reading so many Wells submissions. I think I've probably read more than anyone just through sheer longevity in the position. You start to understand which are the arguments in the Wells submission that are going to bear fruit. What is going to catch the attention of the commission? You discuss that with the staff. Remember, you're dealing with all the enforcement staff at a certain point in time once the technology changed and the regions could see. In part that was it, but there are other reasons. The chief counsel's office now deals with the entire enforcement staff, not just the regions.

[Joan McKown:](#)

You would see what was helpful in the Wells submissions. You would also have heard from the commission what they were looking for in terms of time out for officer and director bars, from industry bars. There were times that defense counsel for regional office matters, and I was also involved in meetings with home office staff as well, where they would want to meet with senior staff. They had worked with the staff doing the investigation, but they wanted someone more senior. I had the opportunity to be at a number of those meetings where you would discuss what was necessary.

[Harwell Wells:](#)

Did they want someone more senior simply because they thought of it as a way of trying to go over the heads of the enforcement attorneys? Why would they escalate?

[Joan McKown:](#)

Well, they hadn't received what they wanted at that level [inaudible 00:29:37]. One thing that's interesting too to keep in mind is there were times that the senior staff in the regions would say to me, "Joan we'd really like you to meet with defense counsel on this," because they knew it was a set of facts that would look egregious and we'd be wondering why there wasn't a permanent bar, and they felt there were some more nuances to the case. Sometimes they were affirmatively ... It wasn't just defense counsel. I very much remember heads of offices saying, "I want you to have this meeting, so you can hear what the issues are with the case." Those were always very helpful.

[Harwell Wells:](#)

I guess your current practice involves Wells submissions.

[Joan McKown:](#)

Sure.

[Harwell Wells:](#)

What made a Wells submission persuasive?

[Joan McKown:](#)

In part, it's telling your client's story. It's the opportunity for defense counsel to speak to the commission, because while they can come in and meet with the senior staff, they can't meet with the commission. There's many audiences for Wells submission, certainly the investigative staff, the more senior staff that's supervising and then on up to the commission and their counsel. The big part is to tell succinctly your client's story and to not have something that causes the eyes to glaze over. That's what you hope to achieve.

[Joan McKown:](#)

I believe that you have to have a very strong executive summary, because you have to think about the commissioners consider over a thousand items in the course of a year, because they're not only hearing every enforcement matter but they're hearing settlements. Many settlements have to go to them. They're working on rulemaking. They're considering a number of matters. So if you cannot grab their attention early on and explain in a few sentences or paragraphs in your executive summary what the issue is, it's probably not going to be persuasive. If I can give one plug, I remember that there were times that people would ... Under Chairman Levitt, they limited Wells submission to 40 pages, which I would not go over that page limit, by the way, even though it's-

[Harwell Wells:](#) Even today.

[Joan McKown:](#) Even today. People used to send in appendices that would fill up a banker's box. There is no way that a senior person has the time to go through that banker's box. It's certainly not a commissioner.

[Harwell Wells:](#) I was about to ask what makes a bad Wells submission, but I feel like you just ... Perhaps you answered some of the question.

[Joan McKown:](#) Yes, I would not have lengthy appendices. I always say it's human nature. If you have a Wells submission that's about a half an inch thick versus one that's about 5 inches thick, human nature, you're going to read that skinnier one first and see if you can get it. For some commissioners, the Wells submissions are very important. I know of one commissioner who used to read the Wells submission first, and if they believe there was still a case, they sometimes didn't bother reading the staff's action memo that went up to the commission.

[Harwell Wells:](#) It would have been ... The process then Wells notice, Wells submission. Then there'd be a discussion about appropriate ... with the response to it.

[Joan McKown:](#) Right.

[Harwell Wells:](#) Then in many cases action memo went up.

[Joan McKown:](#) That's right and a Wells submission can impact, of course, not just the decision to bring the case overall, but it can have a real impact on who gets sued and also what the charges are and also what are the potential terms of a settlement.

[Harwell Wells:](#) Did you also receive Wells submissions that, at the end of the day, you decided it was sufficient to simply dismiss the case?

[Joan McKown:](#) Well, it's not dismissed of course in the court.

[Harwell Wells:](#) I'm sorry. Yes.

[Joan McKown:](#) But that's fine.

[Harwell Wells:](#) Decide not to proceed.

[Joan McKown:](#) But decide not to proceed. Oh yes, there's definitely Wells submissions that convince the staff not to pursue.

[Harwell Wells:](#) One thing that has come up more recently as the discussion of ... That most settlements had neither admit nor deny provisions. I know that was longstanding practice dating from before your time at the staff. Was that something that was considered? Was that just something that was automatic or

was it was something that you actually went back and forth and people talked about?

[Joan McKown:](#) You mean whether to have neither admit nor deny or [crosstalk 00:33:56].

[Harwell Wells:](#) Or the impact of neither admit nor deny, pardon me.

[Joan McKown:](#) It wasn't questioned for many years. Issues were raised regarding whether it was appropriate, whether there needed to be admissions. At that time, the chief counsel's office did an analysis of other Civil Regulatory Agencies and what we actually found was that the SEC's language was the strongest. There are some civil regulatory agencies that allow denials, actual denials. We found that the SEC's language was much stronger than other government agencies. I will tell you my view is it's largely a political issue. Their-

[Harwell Wells:](#) Meaning?

[Joan McKown:](#) Meaning it's an issue that ... It gets raised outside of the agency, but I think that there's far more important issues to really be thinking about and whether someone ... Settling is very hard for the defendant or respondent. I will tell you they don't feel great about even a neither admit nor deny settlement. It's not that they feel they're getting off scot-free by any means and I think there's really little to be gained by forcing an admission. Eventually the commission did, after analyzing, decide that when there had been a criminal case, that there should be an admission. Because at that point, if the party had admitted, based on the same facts, had either plead guilty or been convicted, that there should be an admission. I think it's far better for the SEC to settle five cases on an neither admit or deny basis then litigate one case and take up the [inaudible 00:35:47]. In large part, it's resources. To settle a case and get the message out from that case, I think it's far more important than to do fewer cases and litigate more.

[Harwell Wells:](#) It seems like right now we've brought your career through the 1990s and I wonder if we can ... At one point, I think you said if they were penny stock. Perhaps you refer to it as the penny stock era. If you could talk about what were the major issues facing the commission up to about 2001? We'll talk in a little while, but that seems to mark a bit of a break in what was going on. What did you think of as the important issues the 1990s? You've already mentioned, by the way, that clearly external factors like the markets themselves would make some issues salient.

[Joan McKown:](#) Oh, absolutely. Absolutely. The penny stock cases were largely fraud cases, but there were manipulation claims, certainly insider trading was an area that the agency was still sorting out, what were called 2E's when could the SEC sue an attorney or an accountant and bar them from appearing or practicing before the commission. The constitutionality of that was being questioned. That was settled, of course in Sarbanes-Oxley when it became statutory, but also officer and director bars. A lot of the 1990s was the implementation of the remedies

act as well. Sarbanes-Oxley and Dodd-Frank get a lot of the attention, but the Remedies Act was huge. That's what gave the agency the ability to seek penalties against issuers. Actually beyond insider trading cases, prior to that point in time, there weren't penalties, beyond insider trading.

[Joan McKown:](#)

Also opening up, so now there were cease and desist actions and there were commission meetings where the commission considered when should they seek cease and desist proceeding. Could it only be after an article 3 judge had decided the law in the area? Could it be a case of first impression? Could cease and desist proceedings be used against attorneys? So how to implement those provisions, how to seek penalties. Officer and director bars, that became statutory. It was a time of growth for the division and how to implement. But with that growth, a recognition that there needed to be more remedies and so the division worked very closely with actually John Dingell.

[Harwell Wells:](#)

Oh, okay. Who just-

[Joan McKown:](#)

Who just passed away [crosstalk 00:38:31].

[Harwell Wells:](#)

Just died yesterday or today yesterday. That's right.

[Joan McKown:](#)

Yesterday. John Dingell was a big part of the remedies act and getting that through. He really, as I recall, was a major part of that.

[Harwell Wells:](#)

I should ask then, because you mentioned legislation. Did you ever actually deal with Congress? Was your work on that mainly within the commission or did you do actually have to deal with Congress people and their staff?

[Joan McKown:](#)

With their staff, with Congress people with their staff. I certainly went to meetings up on the hill. I guess a more modern version of that, because I was there so many years, would have been on the Whistleblower Provisions that were ultimately in Dodd-Frank. We met with hill staff on that. And so yes, you would, and you would explain the need for it and why it was necessary.

[Harwell Wells:](#)

We just discussed a little implementation of the remedies act. Can you talk a little about how you think that actually changed the way enforcement was done, if enforcement attorneys suddenly had this richer array of tools at their disposal?

[Joan McKown:](#)

Now you see cease and desist actions almost in every 102E action against an accountant. Certainly during that period of time, there was a robust discussion about whether that was appropriate, whether that should be included. That was more the implementation period. I would say where I saw the bigger change was post 2001. In terms of prior to that point, I would say that enforcement was largely reactive. A problem would come to their attention through various sources. I don't want to steal probably a question of yours.

[Harwell Wells:](#)

No no, please.

[Joan McKown:](#)

But post Worldcom, Enron, that era, the commission and the staff certainly, and it was not just the enforcement staff, but the staff throughout the agency, thought much more about how it could be proactive. Prior to that point in time when I was a baby lawyer growing up, it was explained to me that the SEC did not get into corporate governance. They just did not, but post 2001, very much. There was a focus on not just how you could respond to an issue that came to your attention, but how could you proactively attempt to change the way behavior happened? Could you have gatekeepers that were more responsible for what happened? Sarbanes-Oxley, of course, was the first time that there was a Whistleblower Provision, which of course grew. It was a real effort to be proactive, which is very difficult and it drains a lot of resources, because you will go down a hole that winds up not bearing fruit. [crosstalk 00:41:34].

[Harwell Wells:](#)

I actually really want to continue with this. I want to continue this question. Let me ask one last question to wrap up. The 90s, which is you were working under three different enforcement directors, Gary Lynch and then Bill McLucas and then Dick Walker. Can you talk a little about your interaction and relationship with each of them?

[Joan McKown:](#)

Sure. Well when Gary was division director, I was a baby lawyer. I was very junior, although the division was much smaller, everyone knew everyone. I certainly did interact with Gary and then Bill McLucas is who I rose up through the ranks under. He ultimately promoted me to chief counsel. I did interact with Bill at a much more senior level. I could see much more of the workings of the division from a more senior perspective. Both Bill and Gary, they definitely oversaw a ramp up in the division, both in terms of growth of the staff and also the types of cases that were being brought, and really very much important cases to the market.

[Joan McKown:](#)

I should say I loved all the division directors I worked under. Dick, certainly he ... that the division had ramped up, and I would say that he really was thinking about how, so we've ramped up. We've got this great reputation, how to carry that forward. A large part of what Dick was focused on I think was technology. Technology was starting to become very important and the internet. Under Dick, there was a recognition that the internet was going to be very important and that was how people were going to communicate. It's hard to believe, but there is ... I remember having discussion at one point about whether you were going to allow the staff to have access to the internet on their computers at their desk, which now, of course, you can't even comprehend. There was a discussion about that at one point, using technology to assist, which the SEC has done a lot of the data analytics to find issues. That was certainly started under Dick.

[Harwell Wells:](#)

What drove the growth? I do want to get to 2001, but what drove the growth that you mentioned in the late 80s and the 90s?

[Joan McKown:](#)

In terms of division? Well again, it was the interest of the commission and the growth of the markets, the globalization of the markets. I think all of those things came into play, and also having very strong ... All three were very strong directors, who are very focused on making the cases. They interacted with the staff even though, like I said, I was very junior under Gary, I was still in meetings with him. The discussions were should we be bringing this case? If yes, then how are we going to make the case?

[Harwell Wells:](#)

Going up to 2001, you just made a really fascinating point, which it sounds like a real sea change in the way enforcement saw itself.

[Joan McKown:](#)

Right.

[Harwell Wells:](#)

That must have been, in some ways, been disorienting, if you had gotten into one pattern of a very reactive approach to be market developments, technological developments, what have you.

[Joan McKown:](#)

And-

[Harwell Wells:](#)

How did you deal with that?

[Joan McKown:](#)

And some people were more adept at that than others, of course and it's important to have people who can react and bring a case really well. But there were some people who were also very good at finding the cases and figuring out where the issues would be. There was a lot of thought about how to make that happen. There was certainly the [C Board 21A 00:45:16] Report, although it's not actually titled [C Board 21A 00:45:19], but it was the first effort at getting people to cooperate. It was viewed through the prism of how do you help investors? One way to help investors are you have whistleblowers, you have the information coming in earlier. You don't wait to react until the problem has become full blond.

[Joan McKown:](#)

But how can you nip it in the bud earlier? One way is to encourage issuers to self-police, self-report, cooperate and remediate, of course. Then also, if that's not going to happen, encourage whistleblowers to come in, so those were certainly ways in which you were trying to do that, think about ways to analyze the new data boom that was coming about. Then also not to underestimate the effect of 9/11 on the SEC. Fortunately, no staff, no lives were lost by the SEC, but the New York office was destroyed and all the documents that were in it. We were, at that point, aware of how do you store documents and how do you think about continuity in a situation like that? I remember there was someone on the phone for, as I recall, a week trying to reach the various staff members to confirm that, in fact, everyone was okay.

[Harwell Wells:](#)

The documents in New Yorker were actually paper?

[Joan McKown:](#)

Yes.

[Harwell Wells:](#)

And they weren't backed up online. That's ...

[Joan McKown:](#)

In large part, no. I remember there was one case that the SEC was still able to make because the staff from New York had actually been in DC. It was a commission meeting day, and the commission meeting of course was canceled and when we walked into the room there was a TV there and of course it was showing the twin towers. My recollection is only one of the towers had been attacked at that point. Of course, it was a dramatic event. It had a real impact on the staff. Anyway, the staff was down. They had the documents with them, and so they were able to make that case and there was a real effort. Harvey Pitt, who was chairman said, "We're not going to lose one case because of this," and there was a real effort made to follow through on that.

[Harwell Wells:](#)

2000-2001 saw a series of events fairly rapidly, internet bubble, quick growth of the internet, popping of the internet bubble, then in 2001 911, two months later, Enron and followed by Quest Worldcom. It might be difficult to ask, but breaking out which of those really drove the changes and I understand they all probably contributed to the changes you're discussing.

[Joan McKown:](#)

From my perspective, I would have to say the Enron, Worldcom. The tech bubble was a ... You've seen from the tulip ...

[Harwell Wells:](#)

Yes.

[Joan McKown:](#)

... bubble popping, hundreds of years ago, bubbles pop. But Enron, Worldcom, those were dramatic. It was not just them. I don't mean to pick on those companies, but it was one company after another and how the auditors interacted with those companies. That was, in my view, what caused people to sit up and take notice and think about what had to be done differently

[Harwell Wells:](#)

And move from the, as you just mentioned, more reactive to a sense that perhaps there should be a proactive approach as well. Pardon me. One of the big events following shortly after Sarbanes-Oxley, obviously a direct response to especially Enron. I know you're responsible for implementing many of its measures within enforcement. We could list them, but perhaps which of the measures did you think actually had the greatest impact or took a great deal of your effort, took a great deal of work to implement?

[Joan McKown:](#)

It probably didn't take a lot of my effort. Obviously, the creation of the PCAOB was enormous and actually working with the new staff there and how to interact with them and when to bring a staff a case with SEC staff, when to bring it with the PCAOB staff. That was certainly big. Sarbanes-Oxley had so many provisions, obviously. It settled the question on what are now 102E actions. The 304 clawbacks, I think have actually ultimately wound up being a very big part of that. We actually wrote internal memos about how to ... Steve [Cutler 00:50:07] had us work on ... write memos regarding when should you use these? When should you not? The increased penalties and the FARE funds ... FARE funds are a

great thing, but they created a logistics issue. How to distribute that money became really the big issue.

[Joan McKown:](#)

It's hard to pinpoint one thing. There were some hidden things that ... Not hidden. In plain sight, I guess. As I recall, 305 has a provision that doesn't look like anything big and it just says courts have the authority to achieve through equity what they need to. It's not that exact language, but that caused courts and the staff I think to be more creative in terms of the sanctions that they sought. There started to be more monitors, independent consultants and also conduct-based injunction, you're enjoined from being a penny stock promoter. That's not a good example, because there was already a bar, but you're barred from doing something that was otherwise legal. But as an attorney, you were barred from working on certain types of IPOs and that sort of thing, which otherwise you probably wouldn't have been barred from. Courts were much more willing to engage in terms of equitable jurisdiction.

[Harwell Wells:](#)

Very interesting. You mentioned FARE funds, so that's a nice entree to the question. You also clearly see a great deal of increase in the penalties and disgorgement and related ... We'll call them penalties, penalties imposed on firms after 2002. There have been commenters who said that that perhaps changed the orientation of the SEC enforcement from more perhaps forward-looking to a more punitive sense. I guess my first question is do you think that the imposition and the rapid rise in those penalties did change what the enforcement staff was doing or the perception of what the enforcement staff was doing?

[Joan McKown:](#)

To me, it did not change the focus. Because the focus is how does it help investors? Certainly you want to be forward-looking when you think about that. Has the organization changed? Is there new management? Do they have internal controls in place over financial reporting, like they should? Is the audit committee robust? There was more of a focus on that. The commission though definitely was continued ... From the 1990s on, when they first got this authority, it did ... Of course, having these large events, large issuer disclosure and fraud events certainly did energize the discussion on what should be issuer penalties and how to implement those. There was a large focus by the commission.

[Joan McKown:](#)

The staff wasn't the impetus for the increased penalties. They were reacting to what the commission was wanting. I wouldn't say the enforcement staff changed, but certainly the commission itself was very focused on that issue. Of course some commissioners did not believe, and still don't believe, that there should be issuer penalties.

[Harwell Wells:](#)

Yes, so that brings us to the Sarbanes-Oxley and I'm curious about what you saw. Sarbanes-Oxley, while it's very important, clearly leading up to 2008, there were other major issues [inaudible 00:54:07]. There were market timing, late trading cases, for instance. Before the financial crisis, what you saw as the priorities of the Enforcement Division at this time.

[Joan McKown:](#)

Well, you're right. There were groups of cases and market timing like trading was certainly a very important one. I should have said in the 90s, there was also Orange County. There's always big market events that take up the focus of the division. Certainly a focus on advisors, there started to be a growing. Prior to market timing and late trading, there had not been ... It was a very clean industry, a very fiduciary oriented. Certainly at that point, there was a far greater focus on certainly The advisory space. That continues to today.

[Harwell Wells:](#)

Let me ask a quick question in connection with that, because I am curious. You mentioned the interactions you clearly had with the other divisions, the need to coordinate both rulemaking and enforcement. It's something like moving, but something like new activity with advisors. How did you interact with say investment management in terms of bringing those cases, in terms of them thinking about new regulations or not?

[Joan McKown:](#)

Right. One thing that helped was Steve Cutler had the chief counsel's office divided. He changed the structure of the office so that there was an investment advisor group, broker-dealer group, and issuer accounting group. The cases were going through a group that became more specialized. That group worked closely with, it really was a great change, worked more closely with the division of investment management. Of course, they were always reviewing cases, you met and work carefully with them to think about what were the issues we're ... and starting to try to develop expertise within the division. Of course that grew and I know we'll talk about it later, but that grew division wide, but at that point it started in the chief counsel's office.

[Harwell Wells:](#)

You said it came from Steve Cutler. Why was there a sense that you wanted to reorganize the office in '04?

[Joan McKown:](#)

Why he wanted to?

[Harwell Wells:](#)

Yes.

[Joan McKown:](#)

Steve was very much forward-thinking in terms of ... Again, it was part of not just going from being reactive to proactive, but what else can we do. It was really the beginning steps of whistleblowers' cooperation, which have only grown. How could the division itself be reorganized? What other reorganizational type steps could be taken? That was one of them so that instead of having anyone in the chief counsel's office work on an investment adviser case, it would go through one group who ... It was great because then you could, again, remember you're trying to achieve a nationwide ... And it's a large part of what the chief counsel's office is trying to do is have a nationwide program so that when you're dealing with the Boston regional office or the home office, the outcome of the case is going to be similar for similar conduct. It was very helpful for one group to start to see all of those cases and to be able to understand not only what should the sanctions be but, "Oh. Hey, there seems to be a problem over here that the the division and the agency should be focused on." In other words, "Boy, we're seeing a lot of cases involving 12b-1 fee cases.

Maybe this is a bigger problem than just these couple of cases," and to think about should there be a sweep or something like that?

[Harwell Wells:](#)

You've brought up whistleblowers in a couple of points. I think of the big break as being in 2010 with Whistleblower Provisions. But it sounds like that in fact, there's a much longer history of that. Where did you see the whistleblower program developing during your time at the SEC?

[Joan McKown:](#)

Certainly, of course, there were always whistleblowers before that point in time, but there was an effort to encourage it through Sarbanes-Oxley from that point. After 2008, after the financial crisis, and think about what and ... And other events, I'm sure we'll talk about, how to handle whistleblowers. Obviously now the SEC has the office of the whistleblower to handle that, but the staff actually worked very hard and looked at other whistle blowing provisions in other statutes affecting other ... Department of Justice and other statutes, other laws, and to figure out what are the best parts? What do you need? There was an obvious need for a carrot that ... the financial benefit. Also in looking at other agencies, there was a real need for very clear protection for retaliation, because people weren't going to come forward if they thought that they would be retaliated against.

[Harwell Wells:](#)

Moving forward to 2008, I actually want to talk about the enforcement manual first, because I know that is something that you worked on. I'll ask you to explain its history, because it became public as I understand in 2008, but the back story of what existed before you assembled the manual and why the decision was made to develop an enforcement manual is something I'm not all aware of.

[Joan McKown:](#)

The decision to have a manual is actually the chairman and the commissioner's decision. They thought that there should be one place that there would be a compilation of all of the ... I believe that there was outside pressure as well ...

[Harwell Wells:](#)

From?

[Joan McKown:](#)

The hill. To have some sort of a manual. Certainly when I was a baby lawyer starting out in the division, there was very little that was written in terms of policy. Over time there has started to be, under Bill McLucas and then following it with other directors, there started to be more and more policies that were in writing, but they weren't compiled in one place. It was before you had an intranet where people could easily access the information. One of the pieces of writing was the red book that tells you how to take testimony.

[Harwell Wells:](#)

I've heard the red book reference. That's what the red book was-

[Joan McKown:](#)

It was a guide to taking testimony, basically. That's a shorthand way of saying it, but there was still a lot of policies that were not in writing. It was a years-long effort and was a huge effort. Initial drafts were written not just by people in the

chief counsel's office, but throughout the regions and the home office. There was multiple staff that were working on drafting various points. I was the senior person responsible for its ultimate publication and worked on various provisions of it closely. I of course had written a number of the previously written policies that went into it. It's turned out I think to be a very good thing. The commission was very supportive of the decision to have a policy. I know that one question that comes up is whether to publish it or not, make it public. It is intended for the staff. That is the the audience it's intended for, but there was a decision about whether to make it public or not, and we decided that since the Department of Justice's staff manual was public, that there was little argument to be made to not publish. It was a pretty quick decision, but it was thought out.

[Harwell Wells:](#) If it's really written for the staff, what's the advantage of having it public and available for everyone?

[Joan McKown:](#) To have transparency so that people understand. Actually I think it's a very useful document because the staff can point to it and say, "Well see, this is our policy," and the defense bar understands that they're not just making it up. It is in writing and it's helpful to the defense bar to understand what's expected.

[Harwell Wells:](#) While we're talking about 2008, it was clearly a busy year. There was also the biggest financial crisis would have started a little earlier, but clearly reached its peak in 2008, and at the end of the year really is a consequence of that. The Madoff Ponzi Scheme was exposed and that in turn, fairly or not, led to a good deal of criticism of the SEC. I'm curious to start off with what was the environment in the Enforcement Division when these things exploded one after another within a fairly short span of time?

[Joan McKown:](#) It was very difficult really up until that point. I mean it had been a continuation from what I'll call the glory years when the division was ramping up. At the SEC, we were not used to that level of criticism and it was not easy, but I will say that I'm also ... There's probably nothing I'm more proud of the staff on than that period of time, because people banded together. There was no finger pointing: "Hey, it was just those people over there. It wasn't all of us." It was a sense of we're in this together. What really impressed me was the ability to, even in a time that was not easy by any means ... The IG and others examined what happened, but there was a real internal focus within the division to look at, well, what happened? What were the red flags? What can we learn from this?

[Joan McKown:](#) One of the things was the earnings were too smooth. There was an analysis of well, who else has earnings that are a bit too smooth. I remember Scott Friestad and George Curtis, the deputies at the time, really reacting very well to all of it and figuring out how to move the division forward and think about what were the lessons to be learned. Also what was painfully obvious was that the right hand wasn't talking to the left hand and obviously there's been great effort put into that space .

[Harwell Wells:](#) By right hand not talking to the left hand, you are thinking specifically of ...

[Joan McKown:](#)

Well, so now there's an office of market surveillance that coordinates all the tips, complaints and referrals that come through. The office of the whistleblower is part of it. If there is multiple exams, if there's multiple complaints involving one organization, those are being put together and analyzed. Before that, what some people would call silos, people were off working in their silos and not communicating as well as they could. It was a very difficult time, but at a certain level I'm most proud of the division for continuing on the work too. There was also a re-examination of matters that had been closed. There were cases that were brought that had been closed that wound up being cases.

[Harwell Wells:](#)

You obviously are not going to name the cases.

[Joan McKown:](#)

No, I'm not.

[Harwell Wells:](#)

But what led something to be reopened at that point?

[Joan McKown:](#)

Well going back and analyzing, "Did we not follow through?" Because ultimately, in my view, Madoff was not following through to see where the money went and what was happening with the money and are there other cases like that?

[Harwell Wells:](#)

Okay, so Robert Khuzami became director in early 2009, and fairly quickly a series of reforms or a series of changes were made in the Division of Enforcement, reorganization, and so forth. I know you were very involved in those, among other things, specialized units, [inaudible 01:07:16] branch chiefs. I wonder if you could talk a little about the changes that happened in 2009, I guess leading into 2010.

[Joan McKown:](#)

Sure. Well, the division still has a specialized units, and through a couple of other division directors, so they obviously think they're working. When I started in the division in 1987, the division was a very small place. When I say division, I mean including the regions, of course. The region had grown exponentially in terms of number of staff and yet we still had the same structure, the same back office supporting the division. It was I think necessary to have attention focused on the key Program areas and having some specialization. You still have a lot of the staff that's not in the specialized units. They can work on any type of matter, but it was good I think to broaden beyond the chief counsel's office, the concepts of specialization. I think the division has since utilized that. They now have the fraud financial and auditing task force and working groups and that sort of thing that I think are very important to help focus and coordinate in those areas.

[Joan McKown:](#)

After the financial crisis and Madoff, it's inevitable that there will be change and I thought that Rob was very thoughtful even though he was new to the division. He was very thoughtful about how to do it. He listened to a lot of inputs. The decision was ultimately his, of course, how to structure. Branch chiefs, these

were not without controversy within the division. I think the branch chiefs are a good thing because it's a good way to see how someone is as a supervisor. From the outside, which is a large part of what I've had since that point, it seems to me that the division's functioning very well.

[Harwell Wells:](#)

All right. This was also [inaudible 01:09:26] time when not only Khuzami, but some other senior leaders of the division had been former federal prosecutors. That's been noted by other observers and I didn't know if you perceived any change that that brought to the Enforcement Division in terms of how it carried out its tasks, in terms of the image the Enforcement Division had of itself.

[Joan McKown:](#)

Rob Khuzami, he loves being a prosecutor. He is so energized when he's working on a matter. You can just see it. I think that having Rob and then, of course, eventually Mary Jo White and heads of the various regions be former AUSAs and, of course, Mary Jo is a US attorney ... You asked me before was there a change from a more forward-thinking versus prosecutorial and I think that some people have felt that there has, from that point, been more of a prosecutorial, how big can the penalty be type of thing. That always ebbs and flows and I think it's healthy to have a debate and a discussion about what should the sanctions to be, what should be charged, who should be charged.

[Harwell Wells:](#)

Okay. One thing I wanted to ask that I didn't realize before we spoke. Dodd-Frank came out in 2010, which was the year you left the staff. I did not realize, so did you actually work on development of Dodd-Frank? Were you involved with that?

[Joan McKown:](#)

Dodd-Frank, I left the division a few days after it was enacted into law. On rulemaking and the implementation at the agency, I was not involved, but I was involved on working on the legislation that led up to Dodd-Frank.

[Harwell Wells:](#)

What were the changes that you would identify in Dodd-Frank? You left the staff but then you came into private practice clearly involved with enforcement matters. What were the parts of Dodd-Frank that, either you at the time worked on or that in retrospect, you think were particularly important changes?

[Joan McKown:](#)

I speak to Dodd-Frank in terms of enforcement impact, not the many, many other provisions. Many of the enforcement provisions that came into being in Dodd-Frank that affect enforcement were things that were being discussed at the time of Sarbanes-Oxley. We're actually part of three reports that were done regarding enforcement that were required under Sarbanes-Oxley. Many of those recommendations were actually what ultimately became part of Dodd-Frank. I would have to say a couple things. One change of course was to take it previously a penalty could only become a FARE fund if there was disgorgement. You would have some cases where there was one dollar of discouragement in order to get around that.

[Joan McKown:](#) Fortunately in Dodd-Frank, Congress just changed it so a penalty could be a FARE fund. I would have to say that there was a growth from 1990, from the Remedies Act on, to the growth of enforcement remedies. The Whistleblower Provision does certainly stand out and I think has had the most change in term ... My understanding from some senior enforcement staff is many of the important matters that they were working on, there was a whistleblower and the whistleblower, interestingly enough, had often gone in-house first.

[Harwell Wells:](#) You left the SEC that year, as you said, a few days after Dodd-Frank. Why?

[Joan McKown:](#) Well, you know, I'd planned on staying only two years.

[Harwell Wells:](#) Yes, you've exceeded that.

[Joan McKown:](#) Yes, I did. I think almost 24 years. It was something I'd always planned on doing. I always felt a little guilty that I stayed in the chief counsels job as long as I did because I always felt it was the best legal job in DC. Obviously I got over that, because I did stay for a long time. For me, the timing was right personally and professionally, and actually it's been terrific. I loved my time at the agency, but I'm also glad to have had the opportunity to be in private practice.

[Harwell Wells:](#) Well, thank you. Let me move away from our timeline to ask some broader questions.

[Joan McKown:](#) Sure.

[Harwell Wells:](#) While we're talking about the 2000s, if you could talk a little about your work with the enforcement director during that decade, that is Steve Cutler and Linda Thompson and then Rob Khuzami, and how your perception of each of them as leaders and how you interacted with each of them.

[Joan McKown:](#) Yes, and again at this stage, of course, I was in a senior position the entire time. Steve was a very inspiring leader. All three of them are very smart individuals. When everything was exploding during Steve's era, I remember there was one day where he just called everybody into a conference room like this, not enough chairs. He stood up on top of one of the chairs and said, basically, nothing is going to stop us. We're going to keep going. The staff was very excited. That was unfortunately only the home office staff that was there, but he conveyed that to the regions as well. He was very focused on what cases would be brought and that sort of thing.

[Joan McKown:](#) Linda is a wonderful attorney. She was a wonderful director. She was handed by far the most difficult hand to deal with, because it was the financial crisis, it was Madoff. I would have to say that her strength and fortitude can be matched by no one, her ability to continue going forward. There were many blows she took that the staff never saw. She kept things moving. We really went forward without missing a beat, which is pretty amazing, considering what was going on.

Then Rob, I didn't work with him throughout his entire tenure as director, but he came in and he, very thoughtfully, made the changes that were inevitable. As I said, he's a very enthusiastic prosecutor. He loves it.

[Harwell Wells:](#) Moving on from that, because you also interacted with the chairs and the commissioners over the years and I won't ask you about every chair, every commissioner.

[Joan McKown:](#) There's over 30 of them during that timeframe.

[Harwell Wells:](#) I don't think we have enough time to cover all of them, but I did want to ask. My first question is do any of them really ... I'm sure all the chairs stand out.

[Joan McKown:](#) They do.

[Harwell Wells:](#) But are there particular individuals who really struck you during your service, who you had very positive interactions with or simply who struck you as very interesting people to deal with.

[Joan McKown:](#) Yes. Ed Fleischman ... Again, the agency was a much smaller agency at the time. I was a mere branch chief and I could go to his office and talk about ... ask him his view. He was a seasoned securities lawyer and he could be a harsh questioner at commission meetings, but I will say I never minded questions. My view was that tough questions are fine. You should be able to answer them, and I learned so much from him. Mary Schapiro, I had the opportunity to work with her when she was both a commissioner and as a chair, and that was a great opportunity. One of the things I learned from Mary was ... She was relatively young and new when she was a commissioner and she sat back, she learned, she listened and then she started asking probing, important questions.

[Joan McKown:](#) Then Annette Nazareth, Elisse Walter, I knew them both on the staff and as commissioner, so I especially enjoyed getting to know them. I would say Paul Atkins was one of the most effective commissioners I ever saw in terms of what he ... I still enjoy interacting with Paul. He definitely brought a perspective, but it was very interesting and kept us on our toes.

[Harwell Wells:](#) Maybe that's a lead off to the next question, which is asking about dealing with a commission when at times the commission was divided and there were commissioners who very much thought the enforcement priorities or the enforcement approach was heading in the right direction, others who really didn't believe that right. How did you as chief counsel navigate or did you see that as your job at all?

[Joan McKown:](#) Oh, yes. If they would raise issues at commission meetings, even if there wasn't ... I talked before, you would have to try to understand where the consensus was and that's ultimately where you had to head. I would go to their offices and meet with them and ask them questions. Some of them met with routinely,

more routinely than others. Steve Waltman, I should have mentioned him. He was a commissioner who was very interested in enforcement and how it got implemented. We would meet with him at least weekly. I would go to them. I would meet with them, if they had raised concern or question. Cindy Glassman. Again I can't name all of the commissioners, but there were a number that really raised good questions and I would go and meet with them and ask them, even if the vote hadn't gone their way, what was it that we could do? Sometimes there wasn't anything and sometimes you knew going in that they were not going to vote for something, which was hard. But you went forward and obviously you always understood it was the client, the commission's decision whether to bring a case or not.

[Harwell Wells:](#)

Okay, so turning from the commission to the staff, you've already in our interview named a number of people who clearly you thought very highly of and who you saw as really playing an important role in your career. Are there other people who come to mind because they were important perhaps. Many staffers work for many years and do wonderful work and don't get as much attention say as a commissioner or a chair does. Are there any other individuals who come to mind?

[Joan McKown:](#)

There's many, and of course, you're almost asking me like which of my children I like better.

[Harwell Wells:](#)

I don't mean to do that.

[Joan McKown:](#)

But certainly I would say that Colleen ... Like I mentioned before Colleen Mahoney and Linda Thompson were certainly mentors. Rich Levine, a long-serving senior person in the general counsel's office, he and I would communicate frequently. When both of us needed a reality check, each other was the one that we would call, most often and coordinate to make sure that we were speaking the same tune.

[Harwell Wells:](#)

Okay, so it's been almost a decade since you left the ...

[Joan McKown:](#)

[crosstalk 01:20:25].

[Harwell Wells:](#)

... staff. You've clearly had a prominent role advising people on the other side of the table. Well, I have two questions in succession. The first will be perhaps the easier one, which is after the years of being on the staff, how did you find it on the other side, suddenly dealing with then representing individuals and enforcement actions?

[Joan McKown:](#)

I can't imagine there's anyone that has gone to or from the SEC that didn't, in their new role, sit back and say, "I wish I'd known then what I know now," but I think that's really healthy. I think it is. Clients appreciate understanding. How is the commission going to, certainly in the counseling stage or if an issue has already occurred, how is the commission going to view this? What should you

be doing? What should you be doing to remediate? What can you expect in terms of an outcome here? You try to demystify it and make it not just a black box and then, of course, people that have gone from private practice into the agency I think are very helpful helping direct resources to areas where maybe some attention should be paid.

[Harwell Wells:](#)

I think as a follow-up, have your years in private practice changed your views of the commission or of what you were doing while at the commission?

[Joan McKown:](#)

No, not really. In fact, since I've left, I've had the opportunity to work with many alumni in private practice. Of course, you work with many members of the SEC defense bar. I know so many people that are alumni. I love having the opportunity to work with them. It actually reminds me of how much I enjoyed my time at the agency.

[Harwell Wells:](#)

Okay, and I want to wrap up by asking, because we really are trying to capture some of your history at the agency, are the things either I haven't asked about or are there other things that you would like to be recorded or let us know about in this interview?

[Joan McKown:](#)

Yes, I think we've covered a lot. We've covered a lot. And of course, there's so much more, so many more cases, so many more big cases that happened during that time period. It would be more time than we have. The one thing that I do note in the most recent enforcement report that came out, they noted the decrease in staffing. I will say that prior to 2008, there was also a dramatic decrease in staffing. The division was down, at least in the home office, at least three assistant director groups. I am concerned about staffing being down now. Staffing was down then, if there is a crisis. I think it's a problem for the agency and I will say that you cannot do more with less. You can only do less with less, so we'll have to wait and see. Hopefully, I'm wrong. Hopefully, they don't need those resources, but I think resources are a more driving force and a deciding force on enforcement than people understand.

[Harwell Wells:](#)

Can I ask one follow-up questions there.

[Joan McKown:](#)

Sure.

[Harwell Wells:](#)

Which is in looking over the history of the SEC, in some degrees, it's almost always been resource-constrained, except perhaps immediately after say the 2002 crisis. How do you deal with that on a day-to-day level? How do you set your priorities knowing that your ... It's a comment by one former enforcement director that the number of attorneys and enforcement is always going to be less than those simply employed by Merrill Lynch much less any of the other banks.

[Joan McKown:](#)

You do have to try to figure out how you leverage your resources. That is why, in case selection, doing an analysis while you're doing an investigation, is this

where you want to be putting your resources is so important. I don't know if you've ever had the opportunity to read the Wells Committee Report, not just the release, but the report talks about how enforcement was on a starvation diet. Of course that followed another perceived crisis. It's never going to be what the division director wants. There's always going to be a need for more. There probably shouldn't be a decrease where you are. It should probably at least be level.

[Harwell Wells:](#)

Well, thank you so much for taking time.

[Joan McKown:](#)

Thank you.

[Harwell Wells:](#)

Very much appreciate it and it's been a very interesting interview.

[Joan McKown:](#)

Well, thank you for the opportunity.