

Oral History Interview - Robert Khuzami

With Harwell Wells

February 15, 2019

Harwell Wells: This is an interview with Robert Khuzami for the SEC Historical Society. I'm Harwell Wells, and we're in New York City on February 15th, 2019. Thank you so much for taking the time to talk to us.

Rob Khuzami: Great. Looking forward to it.

Harwell Wells: We like to start off our interviews with a little background on the people we're talking about or talking to, where they grew up, where you went to college and law school. If you could talk a little about where you grew up and went to university?

Rob Khuzami: Sure. I grew up in Upstate New York or outside of Rochester and went to high school there. Took a little time off to paint houses and tend a bar. Then spent my first two years at a small State University of New York school, SUNY Geneseo, south of Rochester. Then transferred to the University of Rochester, where my mother was a secretary there and, at least in those days, they gave a significant tuition waiver for the sons and daughters of staff. I spent my last two years there and then took another year off to save money, and then went to Boston University School of Law.

Harwell Wells: Why go to law school?

Rob Khuzami: Law had always been an interest of mine. I think partly I was probably influenced by people who used to say that my father would have made a great lawyer, who immigrated from Lebanon and never got past the eighth grade, but he was very analytical and loved the law and politics. I think it was that and I think it was also, oddly, Watergate, which I as much of the nation were fixated on, the televised hearings with the house judiciary committee and people like Sam Ervin and others. Watching that process unfold sparked my interest.

Rob Khuzami: Of course, most of the people who had violated the law were lawyers, but at the same time those who were vindicating the system and pursuing justice, conducting the investigations were also lawyers. That got my interest as well.

Harwell Wells: When you went to law school and during the law school, were you interested in investigations and public service?

Rob Khuzami: I was interested, I think, generally in public service, but probably like others, I went into law school without a whole lot of insight into what lawyers actually

do. No one in my family had been a lawyer, and I don't know that I even knew any lawyers personally, but I was open. I think as time went on, I became more interested in public service, but I can't say that it wasn't a dominant thought in my mind while I was in law school.

Harwell Wells: After law school, I gather you clerked for a year and then spent a number of years in a private firm?

Rob Khuzami: That's right.

Harwell Wells: Why take that particular path?

Rob Khuzami: Well, I was interested in clerking and stumbled onto a clerkship in the Eighth Circuit through a very odd set of events, primarily that I wasn't such a great law student that I could get a clerkship in New York or Boston or any of the more prominent courts. I papered the country with my application and I ended up getting a call from a judge in Kansas City, who said, "Well, over here I hire three clerks, one from the west coast, one from east coast, and one from my alma mater, the University of Missouri, Columbia."

Rob Khuzami: He said, "I have my west coast clerk and my Columbia clerk. All I need now is one from the east coast." I said, "Well, that's one qualification I can satisfy." He hired me and, oddly enough, I then realized, because he said he had three openings, that I had applied to him when he was a district court judge, but he had been promoted to the Eighth Circuit in the middle of my application process.

Rob Khuzami: I ended up with an Eighth Circuit clerkship that I didn't even really apply to, but, in any event, I had a great time in Kansas City. Then went to a firm ... Look, money was a pressing concern. I needed to pay off loans. I stayed at Cadwalader for nearly six years, lived on a \$300 a month studio in Park Slope, paying off my loans. Then was able to take the salary hit should I choose to go into public service.

Harwell Wells: I believe you joined the US Attorney's Office in the southern district at that point.

Rob Khuzami: That's right. That's right. On my second try, I got in. The first time I was turned down by Rudy, Rudy Giuliani, who was then the US Attorney, but made it the second time around. I joined around September of 1990.

Harwell Wells: Was he the one who hired you the second time or had he moved on?

Rob Khuzami: He had moved on. He had moved on. That change benefited me.

Harwell Wells: Why a prosecutor's role if you wanted to leave private practice and go into public service?

Rob Khuzami: Well, look, that's an office that has a very rich history and a real culture of excellence and very significant and impactful cases. The people who've worked there have gone on to be luminaries on the bench, in the bar, and in further public service. It attracts very talented and eager folks who come in for only five, six, seven years, work extremely hard to make cases, because it's in New York. It's the place that if you want to prosecute crimes and criminals, New York is the best place to do it because whatever the category, be it organized crime or terrorism or white-collar crime or public corruption, there is a very significant challenging cases that go on within New York. I was attracted to all of that.

Harwell Wells: Okay. I know eventually you moved to become head of the Securities and Commodities Task Force within the US Attorney's Office, but it's my understanding you had a fairly wide range of cases before then. You didn't focus on that area initially.

Rob Khuzami: No. You do rotations in that office. I started out in the usual rotations of general crimes, which does a smattering of bank fraud and immigration fraud and credit card fraud and a little tax fraud and firearms and low-level narcotics. You're there in that first year, a year and a third to gain trial experience, just to understand the process. Most people go to narcotics unit and then to one of the senior units, terrorism, public corruption, money laundering, securities, etcetera.

Rob Khuzami: I skipped narcotics and went to what's called the major crimes unit, where I focused a lot on money laundering -- did a very large money laundering case involving the laundering of drug proceeds through New York's diamond district, taking in drug money and then transacting in gold and precious metals to clean the money and disguise its origin.

Rob Khuzami: Then in February of 1993, the Trade Center was bombed for the first time, and I was assigned to what was the follow-on case to that. The first case charged the four individuals who were charged with actually planting the bomb in the Trade Center, but there was a subsequent plot to that, spawned really because four individuals have been apprehended, a retaliation plot that the group had planned to blow up the FBI headquarters to Lincoln and Holland Tunnels and the United Nations. That's was led by Sheikh Omar Abdel-Rahman, and I did that case for three years.

Rob Khuzami: It ended in a 10-month trial, the largest terrorism trial in the history of the US at that time, convictions across the board. Then when I finished that case, I went to the securities unit, and then eventually stayed long enough to become chief.

Harwell Wells: Was there a special interest in the securities unit? Was it just the next step to take at that time?

Rob Khuzami: No, I was attracted to white-collar crimes. Some of them was because I had done that at my law firm, some of it was because, candidly, it holds a little bit of

a special place of personal outrage and animosity for those who have many advantages in life, be it education, job opportunities, stable families, who nonetheless choose a life of crime. After you'd spend a lot of time doing other violations where you see people who come from such difficult backgrounds and upbringings, I really wanted to pursue white-collar crime.

Rob Khuzami: Also, intellectually, it's very challenging because you're dealing often with questions of intent and knowledge, and you're engaged with some of the most sophisticated defense lawyers. You're engaged in crimes and investigation where people are often preparing their defense at the same time they're committing the crime.

Rob Khuzami: A bank robber doesn't really think so much about the alibi when they go in to rob a bank. Somebody who's engaged in insider trading, however, may very well pull some research down from the internet, put it in a file and say, "Well, the reason I bought IBM was not because I got a tip from my friend who works in the HR department there, but because I've been doing my research." They point to the file and they say, "Here's my research to prove it." You get in various ways targets of those investigations who are preparing their defense at the same time they commit the crime, and that makes it challenging.

Harwell Wells: That is actually fascinating. It did not occur to me before. Obviously, at this point, you must have been interacting with attorneys from the SEC. I don't know whether it'd be the New York office or the Division of Enforcement in D.C. At that point, we're talking in mid 1990s, what was your impression of them? How did you work with them?

Rob Khuzami: I was there probably late 1990s and early 2000s. Look, there's a long and strong and very fruitful relationship between the SEC and the US Attorney's Office in New York. The US Attorney's Office had the first securities fraud unit in the nation. It started really in the '60s, and had been working closely with the SEC for, at that point, 40 years.

Rob Khuzami: A lot of the kinks had been ironed out and we each understood each other's concerns and considerations and imperatives, but all with a joint approach to prosecuting securities crimes. There can be some complicated issues obviously involving parallel proceedings and grand jury secrecy and the like, but we've been working together long enough that a lot of those things have been ironed out.

Rob Khuzami: I will tell you that the SEC folks are critical to the criminal securities law enforcement mission because, quite honestly, criminal prosecutors don't understand the nuances of Title XV and the particular statutory violations that exist there. There's a whole regulatory framework, there's a whole regulated industry and how it operates that criminal prosecutors, they haven't been studying ...

Rob Khuzami: Even those that are in the unit are there for maybe two or three years and might have done some work in the area before that, but they really come in as criminal prosecutors who look at everything with a lens of "Did they lie? Did they cheat? Did they steal?" They understand wire fraud statutes and mail fraud statutes and conspiracy statutes, but they don't understand the nuances of the regulations or the Title XV prohibitions. We used to make a joke about how it's the securities and commodities fraud task force, but we really didn't understand little about securities or commodities. We relied on the SEC and the CFTC to educate us.

Rob Khuzami: The SEC played a very important role, and that's when I first spent a lot of time with both the New York office, the home office in Washington, as well as members of the regional office, because New York did cases with the offices across the globe. We also hired SEC folks to come work in the US Attorney's Office, either as a special AUSA for particular cases, and a number of those folks later became full-time AUSAs in the office, one of which later led the securities fraud task force, Bill Johnson, but there were three or four or five during my time there who came and worked, and they provided great value.

Harwell Wells: Terrific. It must have been an extraordinary period at the southern district, or the US Attorney's Office southern district, but you chose to eventually leave and go back to the private practice of law, but you didn't go to a law firm. You went to Deutsche Bank.

Rob Khuzami: That's right.

Harwell Wells: Why leave the US Attorney's Office and why make the turn to Deutsche Bank?

Rob Khuzami: Well, first of all, I've been in the US service at that point 11 years, give or take, maybe close to 12, which was longer than the average tenure, and probably longer than I had planned, but the World Trade Center bombing case took up three years. Then there was a path to possibly becoming chief of the frauds unit. Once that happened, you want to and you need to spend a couple years in that job.

Rob Khuzami: It was time to leave. As far as my next step, I was always interested in part because of the securities. I was very interested in the business side of law and being an in-house lawyer, working closely with the desks in the front office, in all sorts of financial transactions or the financial business -- that attracted me.

Rob Khuzami: Also, I teamed up with Dick Walker. Dick had been head of enforcement when I was chief of the securities fraud unit. We had known each other from Cadwalader, where we had both been earlier. We both left at the same time and we decided maybe we would join together and offer our services, he as the civil enforcement authority and me as the criminal securities authority to law firms or others.

Rob Khuzami: We were looking, talking to various law firms, but then Deutsche reached out in part because Deutsche Bank was expanding very rapidly in the United States. They were really just a New York branch of a German commercial lender for the most of its time in New York. But in rapid succession, it had bought Bankers Trust, which itself had just bought Alex Brown, a regional broker dealer. They bought Scudder. They bought Morgan, Grenfell. They bought RREEF. They made a number of acquisitions.

Rob Khuzami: What they had was a legal department that consisted of pockets of lawyers whose real allegiance was to the former entity rather than to the new combined Deutsche Bank entity. What Deutsche wanted was a lawyer or lawyers to come in and build a legal department, and that was of great interest to me.

Rob Khuzami: Dick became global general counsel and I, for the first two years, served as the global head of litigation and regulatory investigations, handling regulatory or criminal inquiries to the bank or internal investigations. Then after two years, Tim Mayopoulos, who had been the general counsel for the Americas, who had come in with Dick and I, moved on to Bankers Trust. Then I took his position and, for the last five years or so, was general counsel of the Americas.

Harwell Wells: Okay. I do want to get us off to the SEC, but because I know that Deutsche Bank potentially influenced some of what you did at SEC, can you talk a bit more about what you did? I think you said global counsel for the Americas for a number of years?

Rob Khuzami: General Counsel for the Americas for five years.

Harwell Wells: I'm sorry, general counsel.

Rob Khuzami: Look, you're the general counsel, so you are responsible not just for the litigation and the regulatory work, which I had been doing, but you are supervising the legal department that consists of lawyers who ... transactional lawyers who service all the businesses, and Deutsche had many fixed income, equity, lending, structured products, asset management, private wealth management, and many businesses. The lawyers who service those businesses were in the legal department. Then you had the litigation and regulatory lawyers, you had the HR lawyers.

Rob Khuzami: Then you were part of a global legal department. You thought a lot about structure and organization of the global legal department, how do you manage that, how do you structure that on a regional, but also on a global basis.

Rob Khuzami: Then, of course, then the financial crisis hit in 2008 when I was still there. The last part of my tenure was very much spent focusing on dealing with the financial crisis, how the bank was going to deal with transactions, deal with the increased oversight, deal with the fallout, unwind transactions, and things like that. It was a challenging time.

Harwell Wells: Okay. By the end of 2008, now we can turn to the SEC. Clearly, the Enforcement Division had taken a couple of public relations hits. First of all, there was complaints about financial crisis and then, more specifically, the Madoff Ponzi scheme came out in December of 2008. You joined the SEC as director of enforcement in January of 2009, I believe?

Rob Khuzami: That's right. I think I signed up in January. I started in February or early March.

Harwell Wells: Did people reach out to you? How did you get connected to the SEC and how was that job offered?

Rob Khuzami: Well, Dick Walker showed up in my office one day and said, "I think Mary Schapiro is going to give you a call." This was probably a month after Madoff had confessed and we're still in the turmoil generated by the financial crisis. Just to fast-forward ahead, I think Mary's thinking was ... And she was the newly appointed chairperson. In fact, I think she had been maybe the second or third appointment that Obama made, reflecting the importance of that position and the critical nature of getting a chairperson in that role who could start to deal with the crisis situation.

Rob Khuzami: I think she may have been sworn in in December, within a month or six weeks after Obama had been elected. I think maybe the treasury secretary had been appointed before that, but not many others. Mary, I think, was looking for someone who, one, had a prosecutorial background. I think she very much wanted to send a message that we were going to take a hard look at financial crisis-related misconduct.

Rob Khuzami: Two, I think she was attracted to somebody who had worked in a financial institution and understood some of the markets and the products and the transactions that were implicated by the financial crisis. The SEC did some work in those areas, but primarily was equity sales and trading-focused through the Enforcement Division.

Rob Khuzami: They did other work, don't get me wrong, but the products and the markets at issue now were derivatives, structured products, fixed income, credit products. I think she was looking for someone who had experience in those as well. Dick was right. She reached out to me and I met with her, and she eventually offered me a job.

Harwell Wells: Did you have any qualms about taking it at such a time when there was so much turmoil, both, I should say, probably where you were working and where you were about to work?

Rob Khuzami: I didn't. I will say that, look, it's a job that I had always looked upon with great admiration, and desire even, frankly. I didn't think it was a job that would ever come my way. But the people who had served in that position, Steve Cutler and

Dick and Bill McLucas and others I knew, and it seemed like such a fascinating opportunity.

Rob Khuzami: Two, to take the position at that point in history really only increased the attractiveness for me. Once I got over the hurdle of moving the family to Washington ... Because you couldn't do the job from New York. Mary wanted people there in the office by her side in order to do the job. I think that was very much the right call. You couldn't commute to that job. It was very attractive to me.

Rob Khuzami: I must say I don't know that I fully appreciated the crisis nature of it. I mean I was in New York and, of course, I knew about Madoff and I knew very much about the financial crisis. But the political fallout and the particular ramifications for the SEC were not obvious to me until one day I was walking down the hall at Deutsche Bank, and I think somebody had a television on and I happened to glance in.

Rob Khuzami: It was congressional hearings, I think, by maybe in the House oversight committee. I think the five division directors were there testifying, as well as the general counsel. It was a very, very inflamed and antagonistic interrogation, highly critical of the SEC folks by the congressmen. I saw that and I thought, "Oh, my gosh. Do I really know what I'm getting into here?" At that point, it was too late. I wouldn't have turned back anyway. But that was the first realization that things were ... It really hit home that things were hot in Washington.

Harwell Wells: Okay. I want to talk in a minute about some of the particular changes you made. But at the time you walked in the door, what was your sense of the morale of enforcement, what people at the SEC were thinking in the aftermath of certainly a huge amount of public criticism, and I think self-reflection over Madoff?

Rob Khuzami: Well, I don't think I had a sense of that when I first walked in, but in a pretty short order, I think it was pretty clear that the institution had taken a hit. There were highly critical comments and statements coming out of Congress, including threats to cut the funding of the SEC, even some threats to cut out big pieces of its jurisdiction, maybe cede it's authority to the CFTC or the banking regulators. It was a real challenge to the existence, an existential challenge to the institution.

Rob Khuzami: There was obviously highly critical commentary in the media and the journalists, and, look, rightly so, at least in terms of raising questions, given Madoff and the financial crisis. I think my sense was that the individuals at the SEC, and the Enforcement Division in particular, were ... Look, they were professionals who, in many cases, have spent their lives working at the commission and making cases, took great pride in what they did. To be working in that environment caused people harm and hurt, and embarrassment even.

Rob Khuzami: It used to be said, I think, that people would go to dinner parties or the like, and they would say with great pride that they worked at SEC. Now the commentary was that when they went now, they didn't say what it is that they did because they were afraid of the questions that would come their way. Within a short period of time, I realized that the institution really was not only under attack, but I think looking for some direction and a path and some leadership as to how to deal with this situation.

Harwell Wells: What path did you want to set the SEC on, or I should say Enforcement Division?

Rob Khuzami: Well, look, a couple of things. I had some ideas about specialization and organizational structure. I was the first enforcement director who never worked at the SEC and the first one who ever worked at an in-house job. I think being an outsider, under some circumstances, isn't necessarily an advantage in an institution or a private company.

Harwell Wells: Sure.

Rob Khuzami: Succession planning, you often maybe want to recruit from within rather than bringing in from the outside. But there are times, I think, when it's beneficial. This happened to be, I think, a time when it was beneficial because I was not beholden to any particular structure, any particular personnel decisions, any particular path. I had the advantage of being able to look at things anew and perhaps take some steps that would have been more difficult for someone who had come up through the ranks to take.

Rob Khuzami: Two, I had the advantage of really a great appreciation for the complexity and challenges of some of the products and markets and transactions that were really the heart of the financial crisis. As the general counsel at Deutsche Bank, when I had to make some risk decisions about some structured mortgage products or some complicated derivatives, I'd go into a conference room with three of my lawyers and five of the folks who worked on the structuring desk and we'd get the whiteboard and map out the transaction, every box and every dollar flow, and flush through that in a way that allowed you to understand what was really going on. It gave me a great appreciation for the expertise. I think it's that idea that eventually spawned the decision to go forward and create specialized units in part of the Enforcement Division.

Rob Khuzami: Third, I was a great beneficiary of Mary Schapiro and the commissioners, and really everyone, including the staff, who were open to the idea of change. They didn't like what had happened and they were sensitive to it. To their credit, they recognized that there were some things that they could do better.

Rob Khuzami: Rather than resist or fight back against the accusations, we adopted an approach of we will listen to any idea, we will learn from it, we welcome the criticism and the observations, and we will go forth with the restructuring and

reorganization plan that will address those concerns and will make us better going forward.

Rob Khuzami: People bought into that vision, and that's not an opportunity you get very often. Private industry, yes, even more so, I think, in my experience in public institutions. To use the overused cliché, it was the perfect storm, but that we used it to really launch some changes that I think were beneficial.

Harwell Wells: You didn't find significant pushback from the staff with innovations or the fact that someone who's entering, who had not been on the staff before and had a different career path-

Rob Khuzami: Look, people pushback against particular aspects of it. By pushback, I mean ask questions, for the most part, that were the right questions to ask. But they didn't challenge, overall, the need for some initiatives and some programs. We had a great deal of debate about what the right package of those reforms were, but ultimately the status quo was not something, I think, that most people were thinking should be maintained.

Rob Khuzami: Some of these ideas, quite honestly, I had some of them, but some of the ones that we eventually raised were ideas that had been laying around in the shelf at the commission for years. I mean, to some degree, it's the staff who labored under certain processes or certain approaches, who could see better than anyone what kind of reforms might allow the commission to expedite the enforcement process or gain better expertise or become more efficient.

Rob Khuzami: They had those ideas, and so we encouraged people to take stuff off the shelf or go out and bring new ideas wherever we came from. A great source of some of the changes we made were from the staff themselves.

Harwell Wells: Okay. Let's talk about some of these changes. I think you've already led up to and you gave us some good introduction to them, but one thing that was observed is, fairly quickly, a wide-ranging reorganization that the Enforcement Division was started, especially the creation of a number of specialized units. If you can expand on your earlier explanation, why move to that level of specialization?

Rob Khuzami: Look, I think it was pretty clear to me the advantages of specialization. It's not to say that the SEC was not specialized, because it was and they had done task forces over the years to address particular problems, but there weren't permanent structures in the Enforcement Division to deal with the main categories of cases that the SEC had done.

Rob Khuzami: It was my view that if you're really going to investigate how a CDO is put together and be able to find the fraud, you need to be smart about those products. The way you get smart about them is to do a steady diet of them over time and to create these centers of competence within the division where we

could target training, where you could attract people who really wanted to do those kinds of cases, where you could hire from the outside.

Rob Khuzami: There were many folks who lost their jobs as a result of the financial crisis, or just people who wanted to wear the white hat for a while because they didn't like what they had seen. If you could point them to a particular place in the Enforcement Division that says, "We can hire you as a fellow and you're going to be part of the structured products unit," and you used to structure mortgage products at the desk unit, JPMorgan Chase, well, now you're going to be advising enforcement lawyers on how to find fraudulent ones.

Rob Khuzami: That was very attractive to people. You couldn't really do that if you didn't have a home for them in the division. I mean you could hire them in general and say, "You'll be working on structured product cases," but it was more attractive to them to really be linked to a particular entity.

Rob Khuzami: We did that, we brought in specialized training for these people. We consolidated cases within those units. They all went off and did off-sites for a couple of days where they got smart about the products and did the training, and went out and read the academic journals and surveyed the literature and met with experts in the field. They started looking at cases, and they could get to the heart of it much quicker. They were engaged, they were enthusiastic.

Rob Khuzami: It was, in my view, beneficial for targets of those investigations and defense lawyers. Well, you'd rather have a smart and informed regulator who will be able to see earlier on that the thing that looked so suspicious to them may, in fact, be normal market practice or has an easy explanation, or they've seen the same thing three times previously. They could shut down cases sooner as well. There were a great many advantages to it.

Rob Khuzami: It was a challenge because the SEC had historically only been organized regionally, the New York region, the San Francisco region, the Dallas/Fort Worth region, and each regional director was in charge of everything that happened in that region whatever the nature of the case. We laid over that structure with this regional structure, these specialized units which were across the country. They may have had a chief in New York and a deputy chief in Atlanta and staff in the unit in five of those regions. You had regional directors who no longer have full autonomy over their cases. In fact, people in their region will now be reporting still to the regional director for some cases, but to the head of the unit in New York.

Rob Khuzami: Well, that's the kind of organizational change that I'm sure you recognize can cause some difficulties. Completely understandably, people don't like to give up their autonomy and their authority, and they questioned whether or not structure worked. But at Deutsche Bank, I have seen these things work because there are ... Matrix reporting is the fancy organizational term for it, but it exists everywhere. You would have regional reports as a fixed income. At Deutsche Bank, you reported to the general counsel in New York or perhaps the head of

the fixed income, but you also reported to and helped the desk in Honk Kong do work. You had lines into those other regions as well. It's really just the same kind of thing.

Rob Khuzami: Look, it took some time to iron out the difficulties, but I give great credit to the regional directors. They eventually bought into that approach. I will say that one of the most satisfying things about these specialized units is that while I brought in a number of outsiders to the commission to fill regional head, regional director positions, for these specialized units, and there were five of them, I recruited solely from within the commission for the people to be the chiefs of those units and the deputy chiefs or the co-chiefs.

Rob Khuzami: It was a wonderful thing to see. These were not associate directors. They were not people who were already at the top of the management chain, if you will. I recruited mostly from the assistant director level. These are people who you gave them this mandate. These were people who typically had done these cases and were smart and well-regarded.

Rob Khuzami: You said, "Here's what we want to do. You're going to build it. We're going to give you 15 slots and you're going to hire a couple of fellows. Here's a bunch of cases to start out with. You build it. Here's the mandate." To see those folks react to that and the way they embraced that opportunity with eagerness and drive and enthusiasm was really very, very satisfying.

Rob Khuzami: Those units, they remain intact today. I think that shows that they've been a success. They were never designed to be static. They can shrink if that subject matter is no longer a significant priority for the division. They can expand. Not all the cases were of a particular type were done in the unit. We had an FCPA unit, but there were people outside of the FCPA unit doing FCPA cases.

Rob Khuzami: When we did that, you had the unit there as a source of competence and excellence and expertise that others could consult with, but you didn't want to vacuum up every case across the division because you didn't want to create a two-tiered system where somehow the specialized units were viewed as where the real action was and where the best cases were. You wanted everyone to share in that.

Rob Khuzami: In the bank, you became used to what's called implementation risk. Banks and private companies used to call it ... It's like the Mao Zedong theory of perpetual revolution. Some institutions are constantly restructuring. I wasn't confident enough to know exactly how this was going to play out, so I didn't want to start out by specializing 50% of the division, because if it was a great idea but you stumbled on the implementation, and the idea would be discarded and rejected and say it was never going to work, when it really wasn't the idea that was the problem, it was the implementation.

Rob Khuzami: We started with about 25% of the division specialized. I think that was the right way to go. Then, over time, it expands and contracts depending on the market situations.

Harwell Wells: Okay. Quick question. You were hiring experts from outside who were not lawyers, subject matter experts. Was that an innovation? Was that something that was being done before?

Rob Khuzami: I think it might have been done a little bit, but not to any great extent. These were ops guys or women, structurers, risk managers, and people who just understood the products of the transactions, and they were very helpful.

Rob Khuzami: The other thing the units did, I should say, is it created great cartilage across the division. You used to have people across regions working together, but not that often. Well, now you got an asset management staff unit in San Francisco working with somebody in Boston, who was in the asset management. You started to create real cartilage across the division, which was lacking a little bit in a siloed kind of structure. That was beneficial. People just got to know each other and worked together, and it was very helpful.

Rob Khuzami: The other thing they did is just ... It's knowledge management. It is fundamental to a private company. The SEC had such great expertise, but it existed mostly in the minds of the individual SEC lawyers who worked on a case. If you had this really complicated gap revenue recognition case in a Silicon Valley startup that somebody in San Francisco really knew, and then you got a similar case in Atlanta, you might stumble upon that person, you might find it quickly, but it wasn't obvious where it was.

Rob Khuzami: These units served as really reservoirs of knowledge so that not only would all the knowledge and experience be in one place, but for years going forward, that would be accumulated and carried forward, and people could tap into it. It's the knowledge and the expertise that's the greatest asset that the division has. This was a way of really collecting it, preserving it, and making it available.

Harwell Wells: You also flattened the structure a bit, I understand. You eliminated branch chiefs.

Rob Khuzami: That's right.

Harwell Wells: Why do that?

Rob Khuzami: Well, once again, at the bank, there was always all sorts of management shuffles, but what I learned was that two things. One, the US Attorney's Office has a very flat management structure. For the security fraud unit, there were probably 15 or 20, maybe 22, prosecutors and there was one chief and one deputy. For a long time, just one chief, not even a deputy. What's that ratio? 20 to 1 or 22 to 2.

Rob Khuzami: The SEC, when I got there, the first thing I asked for is, "Can you tell me what the staff management ratio is?" The information took a little while to accumulate, but when I got it, it was something in the order of three or three and a half to one. There was one manager for every three, three and a half staff members.

Rob Khuzami: That was just at the first-level management structure, the branch chief of it. Then beyond that, you had assistant directors, associate directors, deputy director, the director. You had five layers of total management.

Rob Khuzami: I looked at that structure and it didn't make sense. It got that way not because of any impropriety or wrong thinking, but in the government, how do you reward top performers? Well, you can't really pay them more. You give them a management role and a title. They became branch chiefs and they got a little bit more money, and they supervised three or four or five people. That makes sense from maybe on an individual basis, but if you step back and look at the structure that you had created, it's a management structure that looks like this rather than like this.

Rob Khuzami: The other thing it did, I think, inevitably, it just created inefficiency and bureaucracy. What that meant is, for example, in drafting an action memo, it went through five layers of review or more. What I wanted to do was I wanted more autonomy and more independence to be driven down into the organization at the staff level, give them more ability to pursue their investigations, but still sufficient oversight but not needless oversight.

Rob Khuzami: The challenge was that at the commission, to some degree, because so many of their cases settle, at the US Attorney's Office, the goal you're striving for in the end is really the actual investigation and the trial and the conviction. At the SEC, unfortunately, what happened is that the thing that the staff members ... To some degree, yes, they wanted the settlement, and that's very important to them, but the process of approvals became such a big part of the process that it disproportionately occupied their time and, to some degree, almost became like the goal.

Harwell Wells: You made approvals all the way up to the conditions of the first settlement?

Rob Khuzami: All the way up to the commission and just doing the perfect action because so many were looking. I will tell you anecdotally, and I actually looked at this, there was one action memo that I recall that we went back and looked at the electronic communications associated with it, and it went through nearly 70 drafts, 7-0, back and forth, back and forth, back and forth. You can't run an organization that way.

Rob Khuzami: Also, one of these branch chiefs, I wanted the thing to be the focal point of the division, the thing that people took their pride in, the thing that was really the

reason they were there: to be the investigations. I took the branch chiefs and eliminated the entire position. That was 120 people.

Rob Khuzami: Not something that went over all that well, particularly with the branch chiefs. Those 120 people, they didn't lose their salaries, because that was prohibited, but they lost their management titles and they went back to the staff level.

Rob Khuzami: Then we reinterviewed some of those of people, and of the 120, we hired back probably 20 or 25 to become assistant directors because we wanted to target a roughly 7 to 1, give or take, staff to manager ratio. Like with the specialized units, I didn't want to leap to 10 to 1 or 15 to 1. That may have been too much to handle. Plus it was flexible, so you could always change that over time by not replacing managers or adding staff.

Rob Khuzami: What resulted from this is a couple of things. One, by rehiring about 20 or 25 of the former branch chiefs to be assistant directors, you're able to pick the best 20 that you thought out of the 120. That gave you a chance to really enhance the quality of the managers because you're able to pick from amongst the series of experience managers which ones you really thought were the best for the job.

Rob Khuzami: Two, I think we learned that a lot of the branch chiefs didn't love being managers. They wanted to be investigators. That's why they came to the commission. They couldn't really turn down the branch chief promotion when it came because it's the standard of success, but once they got over maybe a little bit of the shock and hurt of losing that title, they went back to being investigators. They were emancipated from the manager responsibilities, didn't mind that, were back to doing it, kept their pay, and weren't necessarily unhappy with where it all came to rest. I thought that was helpful, and things, along with other changes, really began to make things move more quickly.

Harwell Wells: In the same vein, you also got, authority for ... formal investigation, I believe, was devolved from the commission. Was that something that was important to you, to bring that down? If you could explain that a little.

Rob Khuzami: That was important and that was one of the ideas that really came from the bottom up, I think, something that had been debated for a while within the commission. Look, I don't want to overstate how much time was spent getting approval of a formal order. It was typically done ... All the formal order requests were put on a summary calendar and voted on by the commissioners as a group. If any one was of interest to a particular commissioner or wanted to hear more about it, they could pull that off the list and it would be discussed at a commission meeting.

Rob Khuzami: But that process was still pretty quick. Of course, if there were any emergencies, like if I need an emergency TRO, you can get that approved immediately. But it

still required the writing of a memo, a two, three-page memo. It had to be reviewed through the process.

Rob Khuzami: As much as it was inefficient from the sense of the time it was spent doing it, delegating it down to the associate directors was just really psychological, a statement of faith, and driving autonomy and authority down into the division where I thought it more accurately belonged. Let the associate director or the head of the New York office ... If they think a case should be opened, well, we should trust them to be able to make that decision. They don't need that to be approved by me and Washington.

Rob Khuzami: The other thing we did is we did a study of how many of these formal orders have actually been turned down, as the decision was to whether or not it was really serving a purpose? Well, we went back some number of years, and I think of the hundreds and hundreds and hundreds, I don't think we found ... If we found three that had been turned down, that might be an overstatement. It was very rare. It's not to say that there weren't discussions about them. Maybe even some were amended in a way to satisfy the concerns of a commissioner.

Rob Khuzami: I also understand, look, there's an argument that, structurally, the commission just ought to be aware of what the Enforcement Division is investigating. The enforcement actions are brought in the name of the commissioners. They ought to know.

Rob Khuzami: There's also an argument that the smartest time to make a decision about a case is earlier rather than later, because once a case is in an investigation for six months or a year or two years, it becomes harder to shut that investigation down. By looking at things more closely early on, you can make better informed decisions about those cases that really aren't going to get traction and should be closed.

Rob Khuzami: But I think on balance, the way we did it was the right way. By delegating it, we created some summary reports every quarter where we let the commissioners know about what had been approved. There were ways to make sure they were informed, but I think it was streamlining the process and send a message of faith and confidence in the staff.

Harwell Wells: Okay. It's interesting you talked about looking back quantitatively as I'm trying to figure out what happened in the past, because I know that there was a different use of data analytics that I believe came about the same time that you became director of enforcement.

Rob Khuzami: That's right.

Harwell Wells: Was that something you brought from your private practice experience? Was this coming from a different direction?

Rob Khuzami: It really came from the bank. In the bank, you don't do anything without a deck, without a PowerPoint. It's just the oxygen of life in a financial institution in terms of management aids. When I got there, there were what you would expect. There were some priority lists and other types of management information that helps you run the division.

Rob Khuzami: But what I was interested in is more data analytics around evaluating how the division is operating. We did two things. One, we had a homegrown system called the hub, which was the repository of all case information. It took three or four months to just scrub that and make the data clean. We had to get all the staff members to review the cases assigned to them, close the ones that needed to be closed, update the ones that needed to be updated so we had clean data.

Rob Khuzami: Then we ran some simple metrics, the simplest of one being, for example, how long from the time a case is opened to the time that you file your first action. We created a bar chart and put every associate director's name on the left-hand axis and the timeline on the bottom. There in one second, I think, for the first time, you could say which associate director groups are moving their cases and which ones aren't.

Rob Khuzami: Now like any piece of data, it's just a starting point, because then you would bring those associate directors in and you would say, "Look, you're averaging 46 months. Somebody else is averaging 27. Why do you think the difference is?" There were times that there were explanations for that. For example, somebody who does a lot of TROs or Ponzi schemes is going to have a quicker gestational life than somebody who's doing FCPA cases with offshore evidence. There are explanations for it.

Rob Khuzami: But for the first time, the associate directors themselves, they were held to be responsible for the progress of their cases, and there were similar metrics like that. Then there were also quarterly revisions, where we'd get printouts from this hub of every case in every associate director group. We would bring them in every three months and we would start the back of the printout with cases that were still opened from the '90s or something and find out what's going on here, what's going on here, what's the next step. All right, take those two steps, report back at the next meeting. At the next meeting, you'd have notes about what had been decided upon. Then you would make a decision at that time.

Rob Khuzami: It's like anything else. If people know that their work is under observation and being looked at and they're going to have to explain why it is that something happened or didn't happen, they're going to be responsive. That was helpful from a data point of view as well.

Rob Khuzami: We also did data analytics really around risk analytics. This came out of Madoff, primarily. You read the IG's report and all the various reports about Madoff and the fact that the exam folks had been in Madoff's businesses and his locations. We're actually concerned about allegations of it being a Ponzi scheme. The Enforcement Division had opened one or two investigations on Madoff and

eventually closed those, because they ended up looking at things like whether or not he was running an unlicensed broker-dealer rather than a Ponzi scheme.

Rob Khuzami: Look, that is deeply troubling. Why is it that we couldn't figure out the problem? Of course, specialization is one answer to that, just being smart when you went in there. He always told the world he was running a split-strike option strategy. Had we known probably more about some of that and what that means ... And we got very close because people recognized, well, if he really has that much money that he's managing and that's his strategy, there should be a massive amount of options trading that goes alongside that strategy.

Rob Khuzami: We went to the banks, and this was before I got there, went to the banks and looked for the exchange traded options, and there wasn't the volume that would have supported it. The only other explanation was that it was over-the-counter options trading, which is what he said was going on. There were even phone calls to European banks to find out if there were over-the-counter options trading with Madoff's entities. You know what? Some of those phone calls just weren't returned or not followed up on. Had that happened, history might have been different.

Rob Khuzami: What we did around data analytics, though, is the SEC has only ... The Enforcement Division has 1400 people in it and probably 700 or 800 enforcement staff. Similarly, the exam authority doesn't have limited numbers of people. What you want to do is take ... There were thousands of registered broker-dealers and investment advisors. You can't look at all of them. The exam staff can't examine all of them.

Rob Khuzami: What you would want to do is take some risk criteria and apply them across the board and see if that reveals certain advisors or broker-dealers or others who start to have some of the characteristics of some misconduct or crimes for which there's a certain template.

Rob Khuzami: If you've got an investment advisor who is running a strategy that is year in and year out 5% above the benchmark, so that if they were running a long-short strategy, and every other long-short strategy across the globe has averaged 7% returns in the previous five years, but you've got somebody who's running 12% and it's pretty static, it's not volatile at all, that pops out of the system. You can say, "I'm going to take a little focus and look at them because that strikes me as potentially a little risky."

Harwell Wells: I have to jump ahead slightly because this is a question I was going to ask later. There was some media coverage after you were quoted, fairly or not, as saying that "anyone beating the market indexes by 3% steadily would be a target of investigation". I don't know if that was a fair quote or-

Rob Khuzami: Yes, that's not.

Harwell Wells: Okay.

Rob Khuzami: That's obviously ... You couldn't quite do that. But what it attempted to capture is the notion that you come up with some risk parameters, returns, volatility, and things like that and you run that through a large database of entities. Then whatever comes out of that, you just start to take a closer look at. There might be a perfectly good explanation for it. But that way at least you're focusing your limited resources on 20 entities rather than thousand, because if you're focused on the thousand, it's going to be a needle in a haystack.

Rob Khuzami: We did that in various areas, including the investment advisors, broker-dealers, and the like. That kind of stuff still goes on. Now I think even there's data mining that goes on with corp fin filings, so that if ... and some of this was automated through data crawling mechanisms where if every oil and gas exploration company in the sector is writing down reserves in a particular quarter, but there's one that isn't, you might want to know that to figure out whether you should go knocking at the door of the one to find out why is it they're treating it differently compared ... A lot of that really helps you be much more efficient.

Harwell Wells: It's interesting. I've now gotten in this interview a very clear picture of how your background at Deutsche Bank influenced some of the changes you implemented in Enforcement. But, clearly, there was attention to the fact that you were, I believe, the first federal prosecutor who was heading Enforcement. Your deputy, Lauren Riser, was also a federal prosecutor that headed the New York office. Later on, you named some former AUSAs to head regional offices. Do you think that aspect or that side of you on a previous career, how did you bring that to the Division of Enforcement, or did it change what the division did?

Rob Khuzami: Look, I know there was a fair amount of discussion about that, somehow I was turning the SEC into another arm of the Justice Department. Some people thought that the criminal perspective was inappropriate to bring to a civil regulator, and there's certainly validity to that.

Rob Khuzami: But I didn't look at it that way. For me, it was much simpler. One, I knew these people. I knew them to be highly talented lawyers. I knew them to be both prosecutors, but also defense lawyers. I mean every one of them, with the exception maybe of the Miami regional director I hired, were both former prosecutors, a number of whom I had worked with in the securities fraud unit, but had been defense lawyers.

Rob Khuzami: I wanted people who had seen both sides of it because as defense lawyers, they can also understand from the defense perspective what it means to be on the other side of an investigation. I liked the fact that they grew up in a system such as the US Attorney's Office, where again the real focus was on the investigation. The oversight in management was enough to provide proper oversight, but not more than was necessary.

Rob Khuzami: I liked the fact that they were on the outside coming in. Again, I thought that for this particular point in time for the division, that was a helpful and healthy perspective. I hired former prosecutors to be my deputy, to be the head of the trial unit, Matt Martens to be the head of the New York office, George Canellos to be the head of the Atlanta office, Rhea Dignam to be the head of the Miami office, Eric ... I'm forgetting Eric's last name. I think that was it.

Rob Khuzami: I did other hiring, but they were not former prosecutors. David Woodcock ran the Fort Worth office. He came from an accounting background, but not a former prosecutor. Then, like I said, all of the heads of the specialized units were recruited from within.

Rob Khuzami: The former prosecutors that came in, there was a number of them, and more than there had ever been before, but the place was not dominated with them. There was other hiring that was going on as well. But I like them because I knew and trusted them and they had a wealth of experience that I thought was helpful.

Harwell Wells: All right. You've beefed up the trial unit.

Rob Khuzami: Beefed up the trial unit. Look, the trial unit was ... It was strong, but I felt that it needed a more active supervision. It tended to be ... And I don't remember how many folks were in the trial unit in Washington. It might have been 20 or 30. They operated pretty independently, almost like solo practitioners. I mean they had supervisors, but I don't think there were regular practices of reviewing every submission that went to the court or what I thought were pretty fundamental aspects of managing the unit.

Rob Khuzami: Matt Martens came in and then Matt Solomon came in as deputy. Matt Solomon was also a former public corruption prosecutor in the US Attorney's Office in D.C. Matt Martens was a former prosecutor in the US Attorney's Office in North Carolina. They came in and I thought they did a great job of really just taking a close look at the trial unit and making some changes that I thought made the unit really strong, and better interaction between the Washington trial unit and the trial units in the various regional offices, which reported to the regional directors, but we created, again, some more cartilage in the trial unit across the division.

Harwell Wells: Okay. Let's now turn to some of the actual investigations and matters you dealt with while at the Division of Enforcement. But one way to start is to ask you about the coordination that ... Because, obviously, financial crisis cases were a concern across a great many agencies, and the particular focus the SEC chose to take. I know there were a couple of big task forces. You are on the financial fraud task force. Then the RMBS task force was starting, I believe, in 2012. I was curious what your role there was and how you've carved out a particular place for the SEC amid so many perhaps jostling agencies wanting to be involved with that.

Rob Khuzami: Well, the SEC had a leg up on this because we started looking at structured products, and RMBS, securities. I think some of that may have even started before I got there, but certainly really ramped it up in 2009 with the creation of a structured products unit. I mean that was really their focus, mortgage products, structured products, CLOs, and other instruments of that nature.

Rob Khuzami: We had an early start. Again, to bring in the experts and issue the subpoenas and collect the information and start to conduct the investigations. I think our first case was probably Goldman Sachs, the Abacus case, which I believe was filed in 2010. That was, I don't know, a year and a half, two years before the RMBS task force. We brought a number of other cases before the trial.

Rob Khuzami: When the task force was created, the financial fraud enforcement task force was chaired by ... I think Eric Holder is the attorney general, and had, I don't know, 60, 70 different federal state agencies. It was not so much a "We're going to collectively go out and investigate cases", but it was more of an information sharing and expertise sharing function.

Rob Khuzami: Plus, the SEC didn't really need to rely on a task force to be able to coordinate with other law enforcement partners who were going to be important to the effort. We had a 40-year relationship with southern districts, securities fraud office. We made relationships with other US Attorney's Offices. We have relationships with the CFTC and FINRA and others.

Rob Khuzami: We were already well-integrated with other agencies. We were off on our own already, in all candor. The federal financial fraud enforcement task force wasn't a big difference for us. They have helped others, but not so much for us. Although it did bring to us people from Fannie Mae and Freddie and some of the IG's offices. They were very helpful in some cases. It was beneficial in that regard.

Rob Khuzami: The RMBS task force was created after the first mortgage settlement, which involved really much more of the mortgage origination side and the documentation side, foreclosures. It was a big settlement, billions and billions of dollars across that bank. Then it was signed off on by the various state attorney generals.

Rob Khuzami: But one condition, I think, of that settlement, particularly for Eric Schneiderman and the New York State Attorney General's Office was he would sign off on that settlement as long as there was an effort at the federal level through a task force to look specifically at the securitization side, at the Wall Street side. I was co-chair of that along with him and Tony West of the Justice Department and Lanny Breuer, head of the criminal division.

Rob Khuzami: That was a group where the first thing we did was we brought all of the agencies in that task force to the SEC for two days of training by the SEC. We brought our structured products, people, the people in the unit, the outside

experts who we had hired, and we did a tutorial for two days. Then we coordinated on cases going forward across the board.

Rob Khuzami: The RMBS task force, I think, was helpful in that regard. Again, we were pretty much ... We were already in that direction and making the cases, but I think it was helpful overall.

Harwell Wells: During your time at the SEC, there were a series of major settlements reached with various banks and financial institutions. One of the questions I just wanted to ask upfront is they often would focus on a particular transaction, for instance Goldman Abacus. If at all, how did those particular matters come to the SEC's attention or come to be the ones that, at least in the public, it seems there was a focus on?

Rob Khuzami: Well, certainly for Goldman Abacus, not surprisingly, the Goldman name meant that it attracted a bunch of attention from the press. It was really the first significant credit crisis-related case concerning a bank. For that reason, it was also of great interest. There was a lot of, as you might imagine, media interest and commentary on why had there not been prosecutions of the banks and particular individuals at the bank, a narrative that continued throughout my entire time, ultimately more focused on the criminal authorities and why the Justice Department hadn't brought more criminal prosecutions in that space against individuals.

Rob Khuzami: But the Goldman case, because of the name, because of it being one of the first, and also it coincided with the bailout-related debates in Congress and then the passage of Dodd-Frank. Because it was 2010, I believe, it's still relatively fresh in the wake of the credit crisis. All that came together to really make it a focus of everybody's attention.

Harwell Wells: Okay. I guess there is similar ... The Bank of America matter in 2009, about the Merrill bonus payments also got a lot of media attention. Then a year later, the Citi settlement in 2011.

Rob Khuzami: Citi settlement. Countrywide was one of the first cases that we brought where Angelo Mozilo paid a \$60 billion or \$70 billion penalty in disgorgement for some of the disclosure-related issues at Countrywide around the status of the mortgages and default rates or delinquency rates that they were seeing and not being fully candid with their investors as to what was going on. But, yeah, there were a number of those cases. The Citibank case became well-known for the issue around the use of no admit, no deny settlements.

Harwell Wells: Yes, right.

Rob Khuzami: That was the reason for a lot of its focus.

Harwell Wells: Okay. Why do you think there was ... I don't want to say relative lack of individuals, but there was certainly a public perception. Mozilo was unusual, Goldman Sachs, one individual was targeted, but at least the public perception was there were a limited number of individuals being called to task for their roles in the financial crisis.

Rob Khuzami: Well, look, first of all, I mean I think there was a bit of a misperception across the cases, including the credit crisis cases. We brought cases against individuals in most of those cases. I think we actually looked at the numbers and, I don't know, there were maybe 70 or 80 or 90 cases that can be classified as credit crisis-related cases. I think all but a handful we brought cases against individuals. But by handful, I think under 10, maybe under eight. In some cases, many individuals. I mean we sued Fannie and Freddie and we sued six of the most senior officers, Angelo Mozilo out of Countrywide. We did sue individuals in Citibank and Goldman.

Rob Khuzami: I think the issue was, one, it's a little complicated. One, first of all, you've got to remember what kind of transactions we're talking about here. We're talking about structured product transactions that are typically being assembled on a desk of some nature, structured product desk of whatever it is. Then that's the bank's machinery that purchases the mortgages and packages them up and does the diligence and sends them out.

Rob Khuzami: These transactions are often not ones that are rising up to the executive suite level. When people would say, "Why wasn't Lloyd Blankfein or Jamie Dimon sued in the financial crisis?" Well, these transactions on an individual level were simply not elevated within the organization to those points. They were just unaware of them. They obviously were aware of the aggregation of the profitability of those banks and risks when it would show and things like that, but they weren't putting the deal together.

Rob Khuzami: Second of all, lawyers are crawling all over the deal. I don't mean to say that just because you have a lawyer in the conference room, that means that you're immune from liability. But what it means is the lawyers were there to make sure that the disclosures were accurate and diligence was being followed.

Rob Khuzami: Third, the disclosures on those cases were characterized in terms of conformity with underwriting guidelines. The main representation that would be the hook for an enforcement case, if there were to be one, is that the mortgages in this pool conform to underwriting guidelines, or they say conform in material respects to underwriting guidelines. Or if there were going to be deviations, they would say no more than 4% will deviate from underwriting guidelines. Or they will say either they conform to underwriting guidelines or they have other characteristics that, overall, make them acceptable for inclusion in the portfolio.

Rob Khuzami: When you're trying to hang a hook on a misrepresentation based on that kind of language, it's not easy and not obvious. You've got to be able to show that a certain nondisclosure or omission was contrary to that representation. Some

mortgages that didn't conform to the guidelines were okay and were disclosed, and some would not.

Rob Khuzami: You would have to show pretty high levels of nonconformity. That's just not a simple thing to do, and often, as we would look very deeply through these mortgage portfolios, you wouldn't find mortgages that didn't conform to the guidelines. Now that may be a function in how elastic the guidelines are, but it wasn't obvious that that was the case.

Rob Khuzami: Ultimately, these products, they may have gone delinquent for a while or have come close to cutting off payments to the equity holders, as the cash payments and the waterfall and how a structured product works, those at the lowest seniority may have been at risk of not getting their payments. But ultimately I believe all those transactions performed and performed as represented.

Rob Khuzami: I felt some frustration. As prosecutors and as enforcement lawyers, we and the Justice Department folks would like nothing better than to bring those cases. I mean, what possible reason would you not? I mean in my experience as a prosecutor, line assistance and staff want very much to respond to the public or to allegations of crisis or improper conduct by bringing enforcement cases to show that to be the case.

Rob Khuzami: There was no shortage of will or commitment. It was just very difficult for those cases to be brought. When they were going to be brought, they're going to be brought by the person who sat on top of the deal or did the deal, because what you have to show for a securities fraud case is to show that somebody knew both that there were misrepresentations being made in the offering materials, i.e., that the mortgages weren't conforming to the guidelines, but also knew that what the disclosure was that said something to the contrary.

Rob Khuzami: The number of people who are going to have both of those pieces of information, it's not going to be, again, the people in the executive suites. It's going to be the people who were putting the deal together at the front lines. That, in my view, explains why there weren't higher up individuals who were being charged or there weren't the number of cases that perhaps people wanted to see.

Harwell Wells: Sure.

Harwell Wells: What was your reaction when Judge Rakoff famously was not apparently happy with at least a couple of the very high profile settlements placed in front of him?

Rob Khuzami: Look, I don't mind the debate. You're a public agency, you have a responsibility to listen to all critics or hear new ideas or new approaches and re-examine what you're doing to see whether or not there's a better way. Sometimes that can be painful or sometimes you take it personally, but you have an obligation to do that. That's what we did through the whole restructuring.

Rob Khuzami: Also, it wasn't the first time somebody had made that suggestion. The division itself, over the years, had debated whether or not no admit, no deny was appropriate or should be modified or changed. We ultimately came out into view ... We did make some changes in it.

Harwell Wells: I believe with the criminal-

Rob Khuzami: With the criminal cases, that you would require admissions when the same party had already allocuted to a crime in a parallel proceeding, which is obvious that you should be doing that. But I think on balance, our view was that there was no real mystery when a company or an individual settles a case, pays a large fine, agrees to remediation, cannot deny responsibility as the policy required, because it was no admit but it was also no deny. You couldn't distance yourself from the resolution.

Rob Khuzami: Engage in a variety of reforms. Maybe you prosecuted the individuals, maybe you went to trial where a jury found liability. If you look at the whole package, there's not a lot of mystery that a company or an individual engaged in wrongdoing and is acknowledging it.

Rob Khuzami: I don't think we thought that the upside was that great to getting rid of it. The downside, with respect to stringing out settlement discussions, companies being much less eager to settle because of the civil litigation consequences of making those admissions, and other considerations, that balance wasn't really ... It wasn't something that I embraced.

Rob Khuzami: The Second Circuit agreed, obviously, with us and reversed Judge Rakoff. Ultimately, when Mary Jo White came in, they revised the policy somewhat. Although the number of cases was still small. We were also concerned about the arbitrariness of how you implement that policy. Either you do it across the board or you pick cases. If you're going to pick cases, how do you pick which cases to do?

Rob Khuzami: Under Mary Jo, the commission articulated some criteria that would be used. I mean I think observers would still say it was unclear why one case would qualify and another one wouldn't. But that was a concern of ours as well. I think, currently, they're back to much more even fewer and fewer uses of admissions and, ultimately, may go away altogether back to the way it was. It ebbs and flows.

Rob Khuzami: I guess the thing I didn't like about it is that ... This is just a personal observation ... at the time when the commission was really gaining traction and getting back up on its feet and driving reforms to the organization and listening to the critics and changing the way we did things and aggressively moving forward, that criticism stoked a second wave, if you will, of commentary critical of the commission and its staff with what I thought were unfair criticisms.

Rob Khuzami: Not Judge Rakoff's fault. It's just he's an influential figure, and for him to make those observations and people in the media and the press picked up on it, and there were unfounded allegations of revolving door issues or whatever it might be, or afraid to try cases. It just wasn't where the commission was at.

Rob Khuzami: It was a little bit of another body blow after we had picked ourselves up off the canvas and started standing up and fighting back again to have that come again just for morale purposes wasn't great. That's not Judge Rakoff's responsibility to be worried about that and not a reason not to raise concerns, but I did see it through that lens.

Harwell Wells: Sure. 2010, Doff-Frank passes. It's obviously a response to the financial crisis. It's also supposed to give the Enforcement Division some additional tools. I'm thinking of the whistleblower provisions especially. But did that significantly change, or did you view that as giving you substantial new tools to do what you do or changing the environment a great deal?

Rob Khuzami: Yeah, I think we did. We saw it as a very significant event, and we embraced it. Look, the whole point of the restructuring and reorganization was to make the Enforcement Division more nimble, more responsive, more informed. We didn't want to be bringing cases three years after the fraud had occurred, where there's no assets left to give to victimized investors and the evidence is stale and two of the defendants are in the wind. That's not a good enforcement template.

Rob Khuzami: All the tools that we had laid out were designed to make us quicker, more responsive, and smarter. The whistleblower was a big part of that for the obvious reason that the person best able to raise their hand early on in the fraud, when the money is still there and fewer victims have been victimized and the culprits were still engaged in the crime, is a whistleblower statute, or perhaps somebody, the junior accountant, early on in the scheme being asked to doctor up some revenue numbers, if they can pick up the phone and quietly call the SEC or go to the in-house lawyers, even if motivated by a financial interest, we were all for it.

Rob Khuzami: We embraced it, we endorsed it. Writing the rules was a difficult undertaking. Many people involved ... I left that to others, the writing of those rules, in people in the general counsel's office, in the Enforcement Division, in the chairman's office.

Rob Khuzami: Very difficult because there were issues about who can qualify as a whistleblower. Should it be somebody involved in the wrongdoing or does it have to be somebody who's not involved? What if they're criminally convicted? How do you decide how much money they get? Do they have to report in-house first, because you want the companies themselves to have the first opportunity to correct the problem, because they have fiduciary duties and they have an interest in learning about misconduct? Or do you require them to go to the SEC first because you're worried that if you go in-house, they won't follow-up on the allegations.

Rob Khuzami: Balancing these and many other issues, appeals, and how do you decide which cases are worthy? Very difficult. But I think that the program has gotten a lot of traction, cases have been made. I do think that there are tweaks and adjustments that'll be made as experience moves on.

Rob Khuzami: That's not to say there's not a cost to whistleblowers. Look, the fact of the matter is that that person's motivated in part by financial reward are sometimes not going to be candid and forthright about what they're complaining about. Sometimes they're going to use it as a defense mechanism. If they are faced with the loss of a promotion or disappointed by their raise or maybe they're in the threat of losing their job, and so they all of a sudden identify wrongdoing within the company. Those things impose a real cost on the company, and so how do you weed out those claims from the ones that are legitimate, is a real challenge as well.

Harwell Wells: Not exactly connected to that, but it seems in the same bucket, you also moved to cooperation agreements, what some people would call the Seaboard for Individuals. How did you decide to add that to your repertoire?

Rob Khuzami: Those are standard tools for the Department of Justice. We really wanted to do that for individuals. We wanted to allow individuals to be able to sign a cooperation agreement and be able to give them a reduction in some of their sanctions in exchange for providing evidence, because the best evidence that you can have is on an accomplice or cooperator who was involved in a wrongdoing, who can get up and testify.

Rob Khuzami: It gave us the witnesses to be able to take more cases to trial, which we wanted to do. It, again, allowed us to move more quickly, if you have a living, breathing person who can tell you about the fraud. You don't have to piece it together through bank records and emails in the same way, or be so dependent on those types of evidence.

Rob Khuzami: It was challenged because in the criminal law prosecutor's office, you can give a reduction off the jail time that's decided by the judge. In an SEC case, well, some things you really can't give them a benefit. We didn't want, for example, to give them relief from making restitution, because the victims needed to be compensated no matter what. You also wanted to be careful about giving relief in certain other areas like the injunction against future crimes. You had to find some things that you can offer as the carrot. That primarily is reductions of penalties and things like that.

Rob Khuzami: Also, there were some difficult issues about bars from the industry. If someone engaged in fraud, normally they might be deserving of a five-year bar, even a lifetime bar, do you give them the ability to come back to the industry sooner because they cooperated? Maybe, maybe not. An interesting issue.

Rob Khuzami: But we really wanted cooperators and then we wanted to be able to use deferred prosecution agreements and non-prosecution agreements for companies, a common tool on the criminal side in order to offer that as an opportunity for those companies who were going to engage in reform and had done all the right things in terms of self-reporting and disciplining individuals, etcetera.

Harwell Wells: Sure. I know time is short. I want to ask one more sensitive area, because the insider trading also got a great deal of new attention, that is those Rajaratnam case, the case against Mathew Martoma. I know SAC Capital was after he left, as I understand it. I don't know if the investigation was going on.

Rob Khuzami: The investigation was still going on.

Harwell Wells: I guess my question is why was there suddenly an uptick in insider trading cases? Was there more insider trading? Was there the different approach that you brought to the division?

Rob Khuzami: I think a couple of things. It wasn't an approach I brought to the division. One is practical and one is structural, I guess. The practical one is simply that the wiretaps that came off of the Rajaratnam case proved to be an incredibly fertile source of evidence. You have a wiretap up for a long period of time, you get a number of individuals who are detected on those wiretaps. Again, this was the Department of Justice's wiretap, not the SEC's. We don't have wiretap authority.

Rob Khuzami: Those wiretaps led to cooperating witnesses, who, in turn, give you more evidence, which, in turn, allows you to go up on more wiretaps or start to engage in face-to-face consensually recorded telephone calls. It's just the momentum and the new doors that are open when you have a particularly fruitful investigation that spawns more cooperators, more wiretaps, more evidence, and you follow those paths.

Rob Khuzami: Those wiretaps were in 2009, I believe. For the next two or three years, cases were being filed, that one way or another, finds their roots in those wiretaps.

Rob Khuzami: In addition, those raise the consciousness of people and more people come forward and potentially offer evidence about insider trading or other misconduct. People in the industry are more fearful about the prospect of getting caught, so they're more open to the idea of coming forward.

Rob Khuzami: Also, I think the evolution of hedge funds, there's a lot of things about how hedge funds operate that makes insider trading perhaps something that is more likely to occur just because of the nature of what they do and the importance of getting any edge in their trading strategies and other characteristics of things ...

Rob Khuzami: It used to be in the old days, insider trading was mostly a function of large-scale mergers or acquisitions. As it got to the 2009, 2010, 2012, 2013, it had to do

with how many iPhones were being shipped in a quarter or whether or not someone was going to hit their projected earnings or be a penny short, or more subtle nuanced microdevelopments in the markets, that through the vast amount of money that hedge funds control, they could make a large amount of money putting a very big bet on a relatively small piece of information.

Harwell Wells: Sure.

Rob Khuzami: All of that contributed to it.

Harwell Wells: I'll close with two questions. The first question is about your reaction to your service, because you had clearly been in the public eye before with your work at the US Attorney's Office, but as director of enforcement, you were dealing with Congress constantly, for instance. I believe you were called up to testify quite a few times, and how you responded to that level of scrutiny either personally or how the SEC responded to a new level of scrutiny.

Rob Khuzami: I didn't expect as much of my job, when I took it, to be involved ... Being outward-facing, particularly outward-facing to the many critics that were out there: Congress, the press, and others. I certainly didn't like what people were saying. I was frustrated when I thought it was wrong, and I thought a fair amount of it was wrong or at least its emphasis was inaccurate or, maybe more accurately, the story wasn't fully told, that there was a certain narrative that had taken hold, a pretty simplistic and high-level narrative, and it's hard to dislodge that from the minds of people across the country.

Rob Khuzami: There's probably nothing we could have done to do that. I understand why they had the view that they did. I mean, look, massive credit crisis, businesses are going under, people losing their jobs. A great deal of pain and harm. If I'm sitting on a bench in front of a pharmacy in the middle of Iowa, I'm wondering why there's not three new wings being constructed at the penitentiary to house all the white-collar criminals who should be in there doing time.

Rob Khuzami: I understand the perspective, but I was frustrated that we couldn't respond to that view in a way that let people understand better how hard we were working at what we were doing, but some of the impediments to what they thought should happen.

Rob Khuzami: I didn't mind doing it. I was also proud of what the commission had done and what the staff had accomplished. It got a little personal, frustrating at some point toward the end, where you just couldn't seem to move off that. But that was a small blip on the overall experience, which was very positive and rewarding and a source of great pride.

Harwell Wells: Okay. My last question is, we focused so much on the directors, on the chairs of the SEC. Are there other individuals you worked with who perhaps didn't get the kind of public attention or deserved to be remembered in some way that

perhaps is not going to happen if we keep the focus only on the very highest levels of the staff?

Rob Khuzami: Look, it's certainly true. In the Enforcement Division, the line staff are the ones that day in and day out are doing the job and cutting subpoenas and going through the emails and looking at the bank records and interrogating the witnesses. Those are the folks that deserve the credit, both building the cases as well as for the overwhelming part, being open to change, which is never easy. But putting sometimes their own personal interests second to the interest of the institution. That also was not easy. They deserve a great deal of credit.

Rob Khuzami: But really up and down the division. It was really a big effort to move in this director. The commissioners were very supportive. When Mary Schapiro was chairman, she was especially supportive, all others across the board. Really, it was an effort that everyone pitched in at and really, I think, a source that everyone associated with the institution could take pride in.

Harwell Wells: All right. Looking back, how would you evaluate your time there?

Rob Khuzami: I guess I'll leave it to others to evaluate whether or not I was a success. I certainly feel comfortable in saying that we didn't lay back and circled the wagons and ignore the criticism and put our head in the sand. We attempted to respond to it and to engage with it and do a lot of introspection as to how should we respond.

Rob Khuzami: I think what emerged was a new or was an improved Division of Enforcement that had better tools and better organization to achieve its investor protection mandate. Personally, it was just a wonderful experience to be able to be part of that. I left with a sense of accomplishment. I felt like I left the campsite in better shape than when we found it, I and everyone else. I really look back on the time fondly.

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

Rob Khuzami: My pleasure. Thank you.