

Securities and Exchange Commission Historical Society
Interview with Juan Marcelino
Conducted on April 29, 2015 by Will Thomas

WT: This is an interview with Juan Marcelino for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is April 29th, 2015, and we're in Boston, Massachusetts. Thanks very much for agreeing to speak with us today. We usually do a little bit of personal background to start things off, how you came to the career path that you found yourself on.

JM: Well, it's a pleasure and an honor to be asked to give my reflections on what was such an interesting time at the SEC. I hesitate in that I don't know how longwinded to get with respect to how I ended up at the SEC.

WT: Please take as much time as you like or need.

JM: In any event I think, like a lot of people, I always knew that I wanted to be a lawyer. And even when I left high school, went off to college, there was always that mind set: I'm going to keep going on to law school.

WT: And you grew up here in Boston.

JM: I grew up here in Boston, actually for the most part, outside the city in a small town out near Plymouth, Massachusetts. And with that as background, when I went off to law school, it was always my intent to return back to the neighborhood I grew up in. I had

pretty much set my sights on going to law school, getting a law degree, and going home and becoming quite the community activist. There were a lot of issues that I thought needed attention back then, and I saw a lot of my high school buddies who were having difficulties in the criminal justice system, and thought that I'd go home and be that local attorney and be supportive to the community.

A funny thing happened, though, along the way. Once I got to law school, my plans changed as the result of a corporations class I took. I had a professor at the time whose name was Urban Lester, and he was the closest thing both in spirit, and even his physical resemblance to the character Professor Kingsfield in the movie *The Paper Chase*.

He was such an exciting teacher, and I happened to be in law school, in his corporations class, at the time that mergers and acquisitions were just exploding and you had that whole lexicon of the law developing, and strategies with corporate raiders and white knights and Pac-Man defenses. And in his class, it caught such an interest in myself that, right from then on I realized that I want to be a securities attorney, and it kind of turned my whole focus around. I never ended up going home to be that community activist.

WT: To put a couple of signposts on, you went to Brandeis University and got a BA in '78?

JM: Correct.

WT: What did you study at Brandeis?

JM: I studied sociology. It was still a time of a lot of social activism, and Brandeis was an extremely activist campus, lots of student takeovers and demonstrations and that sort of thing, so once again my mind was ripe to go to law school and be an activist.

WT: And so then you went to Catholic University Law School, I see.

JM: Correct.

WT: And received your J.D. in '81?

JM: That's correct.

WT: That's in D.C., yes?

JM: Yes.

WT: What made you decide to go down to D.C., or Catholic in particular?

JM: Well, I was quite a provincial fellow in that I don't think I'd ever really gone outside the state of Massachusetts growing up, and just thought it was time to go and see a different part of the country, and it ended up being D.C.

WT: And then you got an LL.M., I see, from Georgetown in '84.

JM: What happened was, when I came out of law school I had that strong desire to be a securities attorney. And the year I came out, unfortunately, coincided with the year that Ronald Regan was inaugurated, and one of the very first things that he did was to put a hiring freeze on the federal government, which really had a large impact on the Washington, D.C., job market.

And as I came out of law school, I was having trouble lining up a job in the securities field, and as a result I was in the placement office one day at the law school when an alumnus from the law school was trying to interview somebody for his practice, which was down in St. Thomas. So I reluctantly spoke with him at the request of the placement director, but lo and behold, he made me an offer, and I wasn't doing anything at the time so I thought sight unseen, St. Thomas sounded like a pretty nice place to be, and off I went for a few years.

WT: And then you went from there to the SEC.

JM: I never lost that desire to want to work in the securities area, so as a result, as much as I enjoyed St. Thomas and had a great time where I was working, the practice that I was in down there was just so diverse and I was very much enjoying it, but I thought that in order to get into the securities area, a way of access might be to go the route of going back to school and getting an LL.M. in securities, which is what I did at Georgetown.

WT: Was the SEC just hiring at that time? Was it question of answering an ad, so to speak?

JM: No, it wasn't. There's always a story behind everything. When I went back to Georgetown, the LL.M. program—I think back on it with such fondness, it had such an incredible faculty at the time. People like Art Mathews, Harvey Pitt, John Huber, Ed Greene, were all faculty members, and they took a real interest in the students. And one of the professors there—his name was Donald Schwartz, he was a full time faculty member at Georgetown, and I do recall he was also a partner at Williams & Connolly—I had taken his course and was strolling the halls one day as it was getting close to graduation time, and he just pulled me into his office and said, "Juan, what are your plans, what are you doing, what have you lined up?"

And as I responded to him that I had not had anything lined up as of yet, as he pulled me into his office and sat me down in the chair, right in front of me he picked up the phone, called John Fedders, who was then the division director over at the SEC, and said, "John, I've got a can't miss kid here for you." And at the time I did have an application that had been pending at the SEC for a while; I had not heard anything one way or the other. But the end result was, I believe it was that next day, or maybe the day thereafter, I was back at the SEC being interviewed. I can actually recall speaking with I think it was Al Rush at the time, and then I ended up speaking with Gary Lynch, and that day or the following day I was hired.

WT: Into the Division of Enforcement?

JM: Correct.

WT: What was the work like when you got there? Were you put immediately onto case work?

JM: Yeah, I was assigned a case that was fortunate for me. It was a pending case that the staff attorney who had handled it had left so it was reassigned to me. It was still in its fairly early stages of investigation, but the case was obviously a priority case within the division. It was a matter involving Financial Corp. of America, a large bank holding company at the time, and it involved revenue recognition and loan loss reserve issues. And it was interesting from my perspective, because I came to the commission with no accounting background, and at the time being tossed on this case it literally was sink or swim.

But I think one of the great things about being at the Commission, when you're hired as a young staff attorney, you're in that learning mode, people don't let you sink. And I worked very closely with a staff attorney at the time, Frank Meek, and I think Frank was not the most patient with my lack of accounting and we struggled a bit at first with one another. But I think the interesting thing was by the time Frank and I finished this case a couple of years thereafter, we were the closest of friends. We really developed such a great relationship. But the case, as I mentioned, had a high profile so it gave me the opportunity to constantly be in the front office. It was meeting after meeting after meeting, so it gave me a chance to prove myself, so to speak.

WT: Had you thought about being in the litigation area when you were thinking about securities law, or were you open originally to being in any particular aspect?

JM: I was very much open, but like any young attorney, one of the things that I thought had a lot of appeal with enforcement, from my perspective, was that I knew their attorneys traveled a lot and I thought it'd be fantastic to travel all over the country and do these investigations.

WT: So you mentioned, of course, that there were a lot of very interesting things going on with takeovers, inside trading, and that sort of thing. Did that show up in your caseload in those early years?

JM: To a degree. One of the recollections I have in those early years was how popular proxy cases were, proxy battles, and it wasn't uncommon back then to find yourself on a Friday afternoon looking forward to the weekend and some proxy contests pop up on your plate which would pretty much fill up your weekends for you. Aside from that, I think most of the matters I handled were all accounting and insider trading cases.

WT: When you have a proxy contest case, how is that handled within the Enforcement Division? What sort of enforcement issues would come up?

JM: They were basically always disclosure issues, and there really wasn't any difference with respect to how you'd approach them. They were all handled the same way. You

basically undergo a thorough document review, and you start taking testimony and pulling the case together.

WT: I've looked through the newspaper archives and a number of times your name came up in association with certain cases, but I'm wondering if I should let you take the lead as far as any memorable cases you might have been on, while you were still in Washington at least.

JM: A couple of them. The FCA case that I mentioned I thought was pretty memorable for a couple of reasons. Halfway into the investigation—and this, as I had mentioned, was a revenue recognition loan loss reserve case—I happened to stumble across what I thought might be some potential insider trading, and it just so happened we developed three separate insider trading cases out of that matter. But one of the reasons why in particular it kind of stands out in my mind was, it was one of those events at the conclusion of that case that I think some of us still tell stories about, and talk a lot about.

The case ultimately resulted in the bank holding company backing down and restating their financials. But leading up to that there was a lot of resistance to them restating, and I can recall the events where there must have been a group of twenty of us from Enforcement in Corp Fin that were having the final showdown meeting with the company to tell them either settle or else. And they were represented at the time by John Olson, with Gibson Dunn, and I can remember the twenty of us then up in some conference room window upstairs at the Commission as we watched three limousines pull up.

And we had this meeting with a cast of thousands, and one of their more senior members at the time, Francis Wheat, a very well-respected member of the bar came in with John, and pretty much when the meeting concluded had taken over the meeting and made it clear to everyone that they were going to restate their financials as we had demanded. For whatever reason, over the years, that's stuck with me, as a lot of people were talking about that meeting for days thereafter.

WT: In the development of some of these insider trading cases, I know that, certainly back then, the legal terrain was somewhat difficult, especially when you're trying to build it out to multiple tiers, or generations I guess, of people who have been privy to information and traded on it; the *Chiarella* and *Dirks* cases, of course, is what I'm thinking about. How did those sorts of issues impact the development of cases?

JM: The one thing about being in enforcement, you by nature I think are very aggressive in terms of law enforcement and you're constantly trying to push and develop a case, and you're really trying to develop that case, and at the end you'll try to address the obstacles that are in your path to bringing the case from a legal perspective. But just in terms of the nature of tippers and tippees that you asked about, any of the matters that I do recollect, there was a case that we did in Cleveland at the time, it involved Revco securities.

WT: Yes, that's one of the ones that came up in the paper.

JM: Right, and an investment banker by the name of Glenn Golenberg, and I'm actually quite surprised that I remember the names after all these years, but at the time I'd be willing to bet that that had to have the largest number of tippers and tippees that we ever named. I mean, we could have gone on and on and on. The way the information had spread in that case—and I can't even recall what type of information it was, whether it was a takeover or news of some profits or whatever—but I do recall that the information had spread where there was no shortage of defendants in that matter. I'd never seen anything like it. And we brought a large number of defendants in that case, and we could have brought even more, but at some point you just draw the line and say enough is enough.

WT: So how is it that the decisions are made about whether or not to prosecute a case, and then when to settle, how much to ask for, that sort of thing, from, say, the division level and even the Commission level?

JM: I'm quite sure your tape recorder isn't going to reflect me smiling, but the questions that you asked have been a laugh to myself. Back in those days, in the '80s, late '80s, early '90s, there wasn't as much structure as people might think when it came down to determining the amount of penalties and how much money you would seek. And as far as the decisions, in terms of what cases you're going to bring, who to charge, I'm quite sure a lot of people would plug in the gaps, but there's a supervisory chain of command, and there's a lot of meetings as everybody's involved in terms of shaping the prosecutorial decisions.

One of the things that I felt really fortunate with respect to my career at the SEC was that I always worked with a group of people who were so encouraging of everybody participating in the decision and having their say. And with that, for the most part, people usually are in sync. Once the facts are laid out, you usually do have strong consensus. And the reason why I chuckle over that, I think it's a wonderful example of the supervisory staff at the SEC that does give people that they supervise a lot of room to make their arguments and actually encourages that.

The only time I can recall disagreeing with somebody was with Joe Goldstein who I worked extremely closely with, who really mentored me over a lot of my career, and I was I think an assistant director at the time and I felt pretty strongly about a case. The name of the individual was Pardo, and I know it involved life settlements, and I felt pretty strongly about the matter. Joe never really liked the case and I don't think Joe—I can recall a lot of discussions with Joe where Joe wasn't quite sure that it was a security. I took the other side, and obviously there were lots of other people involved, but Joe let me run and sure enough did nothing to restrict my views on the matter, and lo and behold the case was eventually authorized. But I always joke with Joe to this day that we should have listened to him as the courts found that it was not a security, but that's one of the small examples that I remember.

WT: That it was not a security?

JM: Yeah, I believe that we had an adverse decision in the courts that found for Pardo, that the life settlements did not constitute a security.

WT: Okay, very interesting.

JM: But by that time I had left the division and I wasn't involved in the case, but I do remember being a pretty strong advocate at the time that we wanted to bring it.

WT: You eventually came up here to the Boston regional office in 1993, is that correct?

JM: Correct, '92, '93, somewhere around there.

WT: So had you progressed upwards within the—I'm not really sure what the echelons look like within the enforcement division.

JM: Yes. Over the twenty years I was at the Commission I spent ten in Washington, ten in Boston. And at the Commission I started as a staff attorney. After a couple of years I was promoted to a branch chief. Then I was promoted to be an assistant director, and that's when I really started working closely with Joe Goldstein in that I was promoted to be an assistant director with a new task force that Chairman Breeden had really been pushing for.

At the time there was a lot of S&L fraud going on, so he wanted us to focus on the banks and made clear that bringing cases against the banks was expected, that he'd like to see an increase in that particular area. So with that Joe was designated the head of the task force, and as an assistant director I worked very closely with him to get the bank fraud program, the task force up and running off the ground.

WT: Can you tell me any more about that? That's very interesting and, of course, a very important event in financial history.

JM: It was very interesting. It was a challenge that we really enjoyed, because it was clear that this was a pet project. I hate that colloquial term "pet project," but it's clear that it was an important project of Chairman Breeden.

WT: A special focus.

JM: Right. And we wanted to succeed very much. We had to pull together a staff. We had to train the staff particularly. I think my experience with FCA and loan loss reserves—and by now, though I had not come to the Commission with any type of accounting background, I was pretty proficient in the area of loan loss reserves. And we pulled the staff together, trained the staff, but we did so much more.

We laid out a program where we basically took oversight of the banking cases that were being conducted out in the regional offices. We coordinated with all the banking

regulators, which at the time wasn't easy. The banking regulators, I think, would allow us access, but it was always in a begrudging fashion. But we ended up bringing actions against numerous banks at the end of the day. And again, as I worked with Joe, I probably benefited the most from that experience in the task force than anybody in that Joe insured that I fully participated in everything.

If he had a speaking role at a conference, he made sure that I also had a speaking role there. If there was a meeting at the Federal Reserve, Joe made sure that I was there presenting whatever our position was. So, from an educational perspective at the Commission, the task force was an opportunity that I was given where I was really able to develop.

WT: Could you tell me a little bit about the process of how potential cases would come to you, and then how you would develop them?

JM: With respect to the task force?

WT: Either that or in general, whichever is in your memory.

JM: In general, most of the time—and the Commission doesn't like to admit this, but it's fact—most of the time you're reactive from an enforcement perspective. It's nice to try to put mechanisms in place to do risk assessment and be there ahead of a problem, but for

the most part, enforcement was more reactive, particularly in the '80s and '90s, and I really don't think that that's changed today.

But you'll read about something in the paper, and you'll start an investigation. There are other times where somebody may inform you that a problem's going on. You may get a referral from another agency, or even with the respect to insider trading there could be some type of market surveillance, but the source of referrals could come at you from any type of direction.

WT: What would be the burden before you would, say, move to a discovery process that you would have to meet, roughly speaking?

JM: Well, you jump in, you'd do an analysis. Most of the times, where there's smoke there's fire. It doesn't happen all the time, but you'd perform that preliminary analysis. You start moving a matter forward, and when you feel comfortable that nothing's there you end it, and when you think that something needs further investigation you move it forward.

WT: What would be, roughly speaking, the balance of cases between, say, larger financial institutions and your more kind of run-of-the-mill, boiler room, petty fraud sorts of things that you would run into?

JM: I'd have to say you run into the whole gamut. I mean, it's hard to draw a line. We did some of what I would call the easy picking Ponzi type of cases, and then there's some

very complex large cases that have much more of an industry impact that you're doing also. I wouldn't argue that some are more prevalent than others. It's just, I think when you come from enforcement any case that you think has been a violation looks pretty good to you.

WT: Is there anything else that you'd like to deal with before I come up to the Boston office period, or any other cases that stick out in your memory that we might have missed?

JM: No, not off the cuff. You said that you had a list there.

WT: Most of those are from post '93.

JM: Okay.

WT: So then how did the Boston opportunity come up?

JM: How did the Boston opportunity come up? Well, we had been winding down with the bank task force, and I was sitting in my office one day, and I believe Bill McLucas walked in and in essence asked, "Juan, have you ever thought about going back to Boston?" and, "Take a walk with me. Let's go up to the chairman's office." And I went up there, and the background to the situation was Boston did experience some management issues, and there had been a review done and I think some people thought that it would be good if somebody went up to the office to try to turn things around.

WT: Had you been wanting to come back up this way, to where you're from?

JM: It's a hard question to answer, in that I'm quite sure as I had gone down to law school in my early years in D.C., I always did have an interest in coming back to the city, but I pretty much fell in love with the city of D.C. while I was down there, spent so many years there that at the time I was not looking to come back, and wasn't sure that I wanted to.

WT: Before we move into some of the cases that you ran into up here in Boston, I'm kind of wondering about serving under different directors of Enforcement, about differences in personal styles. I assume that you wouldn't have had too much interaction with John Fedders as you were still quite junior at the time, though maybe you did, I don't know.

JM: I actually did, and again that was because of the nature of the FCA case, and I was frequently in John's office. And John had a wonderful habit that I tried to adopt as a supervisor, and that was making his presence felt. You knew if you were ever in the office and it was after hours—for the most part people clear out around 5:30, so if you were there, 6:30, 7:00, John was going to be walking the halls, and you'd get a chance: he'd pop in your office, chat with you, ask you about what you were working on. So the interaction with John was fairly high.

WT: And then of course there was Gary Lynch, Bill McLucas, and everyone really. We won't talk about necessarily the Boston period yet, but what about those two guys?

JM: Specifically, what about them?

WT: Yeah, I don't know, what were your impressions of them?

JM: I'll take them chronologically. With Gary, Gary was a pleasure to work with because of his enthusiasm for the work. You could tell that Gary really liked the securities law and the issues that are presented. One of my better memories, or one of my best memories, is at the time they were still called blue sheets, and they were blue, but I remember having a bunch of trading set forth on the blue sheets and finding some really interesting things. And I think Gary had been walking the halls also, was asking me what I was up to and I started showing him, and he got so excited the next thing you know I'm down in his office and the two of us are going through the blue sheets together, and he had a real enthusiasm for it.

WT: And then Bill McLucas, he was of course there quite a while as the head of Enforcement.

JM: When I think back on the directors—and I don't know if we were to chart out who I worked for the longest period of time—but without doing that I would certainly think Bill comes to mind first and foremost as the director that I spent the most time with.

Somebody who I think of, again as I mentioned, Joe Goldstein being one of my mentors, he clearly was also just a wonderful individual to work for.

The best thing that I can say about Bill may not be—I mean, I'm sure you could say a lot more lofty things, but what I appreciated the most was Bill made the job fun. It was just a great atmosphere to work with Bill. It's the "Let's go get them," we wore the white hat, and we enjoyed going after the bad guys, and he made the job a lot of fun.

WT: Of course you've mentioned Joe Goldstein. Is there anybody that you'd like to recall? Of course, you'll forget people.

JM: I could recall almost everybody I worked with, but that's one of the things that I think is really special about the Commission, is the people that you work with. And I don't think anybody was more important to me, and I think you can make the generalization that nobody's more important to anybody who works there than their first branch chief, because that first branch chief is really the person you're going to learn the most from substantively. And I worked for a guy, his name was Jim Coffman, who to this day I cannot say enough good things about in terms of what he taught me and what I learned from him.

The experiences that I had with Jim from both learning how to do an investigation, I feel as if, you know, you work so closely with that branch chief, my writing skills were developed to a degree where certainly nobody would ever question them. Any

compliments I've ever received as relating to how well I write I've got to pass them onto Jim, because it's how I was taught.

So I had a wonderful time working with Jim Coffman, and my first assistant director, Gary Sundick, midst the SEC, his group, as an assistant director, had such a strong sense of camaraderie, and I think Gary was largely responsible for that. He just had an ability to pull the group together and identify. We were his group, we were his boys, and he was just absolutely a fantastic manager.

WT: Tell me a little bit about the general character of working the Boston regional office. Of course Boston, it's not New York but it's a financial center, did that impact the nature of the cases that you saw?

JM: It did, but not maybe towards larger degree as one may think, because Boston has a lot of the investment advisor industry, without a doubt, and we did have our share of investment advisor cases, but you'd see everything that you see around the rest of the country. Even though we're doing advisor cases, we're doing just as many insider trading cases, or as many revenue recognition cases. And I think the types of cases you do are probably reflective of the enforcement program over all, and whatever the trends that particular year are.

WT: Like I say, I have the list of cases that I've seen your name attached to, but I have no way of evaluating how significant or insignificant they are. And of course you'll know that

what makes the paper isn't necessarily what's significant. I'm wondering if there's anything that sticks out to you from your ten years there.

JM: I can think of it in terms of themes as opposed to particular cases, but one case that stands out in my mind—it was early when I went up there—we got a lot of local publicity over a case involving a fellow named Mark Ferber who was an investment advisor. And I apologize, it's been so many years, but in essence, I think he was paying for the business, or something of that nature. But with that, we brought a case in close coordination with the U.S. Attorney's Office who criminally prosecuted him.

So, that stands out in my mind, but as I started mentioning, I can think of it in terms of themes. When I came to Boston, we initiated something here before it became the in vogue thing to do, and what I'm talking about is the close coordination with the U.S. Attorney's Office. The U.S. Attorney at the time was a fellow named Don Stern, and the two of us, Don and I, developed a really great working relationship where we literally opened each other's inventory to one another, encouraged our staffs to meet together periodically. A lot of these things have been systemized over the years, but at the time this was not being done.

And we got great results from it, from the Ferber case, and particularly, I'm thinking, there was a case called Kurzweil, which I happen to know was the first case that resulted in a criminal prosecution of revenue recognition. There was in another case, a thing of two guys up in Canada that we coordinated with the U.S. Attorney, Shell and Faisal.

There were just so many matters, so many of the cases we did we did hand in glove with the U.S. Attorney's Office up here.

WT: One of the ones that came up in the papers would have been an early one with a Boston company, and ultimately the reason that one's there is because there was a very limited penalty due to the fact that there had been self policing from the parent company, which was Shearson Lehman Brothers at the time. Maybe to bring it at the thematic level, was that a frequent occurrence, that you would have cases where there would have been a lot of self policing of the company or organization involved?

JM: Unfortunately, that is not one of the cases that I have a good strong recollection of, and the self policing aspect might have been something that we were emphasizing as part of, again, an enforcement program that we were trying to emphasize at the time.

WT: To encourage that through the use of light penalty incentives. Then another one was against Centennial Technologies, it involved the falsification of financial statements and insider trading by the CEO.

JM: Centennial is another case that makes me smile. Some cases are just fun to bring. And that case was a mess of a fraud, and while we were developing that case and running around in a TRO mode, you have to understand that I'd worked in Washington so closely with Bill McLucas at the time, and I can recall that Bill actually happened to be visiting the Boston office the day that we were trying to get Centennial, as we were gearing up to

bringing a TRO in the matter, and it was just a lot of fun as Bill would try to step out the way and let me run the show, but that brings back good memories on that case.

Again, that was something that we coordinated very closely with the U.S. Attorney's Office, and I can recall that we got a tip that the CEO in that case, I think his name was Pinez, was trying to leave the country, and the FBI ended up picking him up and making his life very difficult under incarceration until the matter was resolved.

WT: There is some question that I saw that—again it's Lehman Brothers, a safely defunct company—knew of what Pinez was doing, and was that ever extended up to them, and to what extent can you bring cases that far up the chain?

JM: I truthfully, and I apologize because this is probably maybe fifteen years ago, but I just don't have a recollection of that.

WT: All right, that's fine. You got to deal with a rogue trader. It was with, how do you pronounce it, RhumbLine?

JM: RhumbLine case.

WT: Yes. And significant losses for the AT&T pension fund, I think.

JM: Right, and if I'm not mistaken, once again, I think that was a case that we got the U.S. Attorney involved in.

WT: So it's a part of this theme.

JM: Exactly.

WT: It seems like something that pops up in the news from time to time. I mean is that particularly interesting, when you do have somebody who goes out in kind of such a spectacular way on their own and commits frauds?

JM: Oh, no, absolutely. I remember that case in that—again, from an enforcement perspective, it doesn't matter for the most part what type of case it is—but when you've got an enforcement background, you know what a good case is, and that case was a very good case to bring. The fraud, it was just an egregious fraud, and again, one of the type of cases that's a lot of fun to go after.

WT: Then another one that made the papers, this is 1999 now, there was an insider trading, basically another one of these long rings surrounding the IBM-Lotus Merger.

JM: Oh wow, I had completely forgotten about that. (Laughs) That was a very large case we brought that I think emanated out of New York City. I can recall the staff. We all got a pretty big kick, because the breadth of the defendants from high-level professionals to

pizza parlor owners (laughs), I mean, we had every spectrum of society in terms of the defendants in that case. And the press gave us a lot of attention with regard to that matter, but absolutely a big case that we brought up here in Boston.

WT: And one of the things that the press latched onto was that you couldn't quite extend the case to a particular Staten Island, I guess they were a local broker or something like that, and they got away from the SEC twice. Then there's this case with the Massachusetts Turnpike Authority. That lasted a few years, I guess.

JM: It lasted a few years, and it's a case that I'll pat ourselves on the back about, because it's easy to look back on that with hindsight and say great that the SEC was there holding those folks accountable, given the local issue where it involved what we call the Big Dig up here in Boston. But taking that hindsight factor out of it, it was questionable at that time whether the SEC should be pursuing that case as aggressively as we did. And I thought it was a case worth, no pun intended, digging at, and I felt very strongly that there were clear-cut disclosure violations that were occurring with that public works project, and fortunately enough, enough people at the Commission agreed and we ended up bringing the matter.

WT: That's the case where fairly early on, I guess, in the case of the chairman, who I guess was the focus of the investigation, had already stepped down. And then ultimately, in 2003 I guess, the penalties were ultimately fairly light, or it may have even been a cease and desist I think, because the burden would ultimately fall on the taxpayer.

JM: Right. And I think those were certainly factors that came under consideration. My recollection, at the time the investigation started, I believe he was still running the show. Probably by the time the matter was filed he wasn't. But with regard to the charges that were filed, they could have been, I think, theoretically stronger. But I think, as among the factors that you talked about, we were looking at public servants who were attempting to do some good for the public. The agency has never really had a strong appetite for suing other government entities. I mean, it does what it has to but there's no strong desire to be super aggressive and super firm with them, so I think all of those factors came into play with that.

WT: Particularly in this case where the cost overruns were already so great that it would be a bit of piling on. The final one that really came up was Shawmut Investment Advisors, and the Duff & Phelps Investment Management Company. This was a case where there was a union pension plan that directed commissions to a broker who then offered kickbacks to the pension plan trustees.

JM: I do remember that. I do remember both of those cases, fairly routine type of enforcement violations.

WT: So again, it's just one of these cases that some of them make the papers and some of them don't, right?

JM: Right. But, for example, with regard to those, those cases had egregious facts, but I don't recall that there was anything significant from the perspective of new principles or an impact on the law as it was being interpreted, no policy implications with those cases. In contrast, however, one of the cases that does come to mind involving investment advisors, was we brought a case against a firm, I think it was called DeRoth & Albrecht, and that particular case was premised on their allocation of hot IPOs to preferred customers.

And I think that case had real serious policy implications that allowed the Commission to really make a statement on the impermissibility of that practice at the time. So cases like those, and as I think back on the publicity, I could be wrong, but I think one of the beneficiary accounts might have been a former speaker's account—who had been treated favorably, or something of that nature. I do believe it got a fair amount of publicity.

WT: Could you speak a little bit more about what changes you would have seen in overarching policy or legal questions as far as the cases that you brought. I can think during this time, if you were still dealing with insider trading cases, the O'Hagan case might have had an impact on that. Then again, it may not have.

JM: That's such a broad question, and I'm just taking a moment to reflect. You're always responding to changes in the law and policy as they impact your case, but as I mentioned earlier, fraud is fraud. And when you think that something is impermissible, you're going to do your hardest to try to adapt the facts so that they fit within any box that the law

places you under, and I think for the most part the Commission is fairly successful. The staff can be fairly creative at times in accomplishing that.

WT: Are there trends in cases that one would get spurred by general external trends? So for example, in the late 1990s you discussed the IPOs. It was a time of a lot of IPOs with tech stocks, and of course with MIT and the technical nature of the area in general, did that crop up in the cases that you saw?

JM: Yes, absolutely, but I think it goes to the more general premise that I was talking about in that enforcement is often reactive. In times where you have, for example, merger and acquisition activity increases, there's usually a resulting increase in insider trading cases. So you react to the trends that are out there in the industry and you focus on them.

WT: And of course, during that time was also when you had the big corporate and accounting frauds, Enron and so forth, did those have analogs in this region?

JM: Oh, absolutely, we brought numerous revenue recognition cases in this region, and I think that those type of cases were probably prevalent throughout the country. I think if you were to look at the plate of enforcement back in those years, it was probably heavily laden with revenue recognition cases.

WT: And then there were the cases, I know down in New York Eliot Spitzer was very active in going against the broker analyst conflicts, was that something that one would have seen up here as well?

JM: Broker analyst conflicts, I can recall several investigations that involved those issues, but I can't recall what we brought in that area.

WT: So tell me then a little bit, shifting over to a focus on the office, you mentioned of course that there were some management problems before you arrived, so is there a particular history to working that out after your initial arrival?

JM: Most definitely, and it was something that I had to deal with. The staff here in Boston was not blind to what had happened. There was a real sense of uneasiness, as I was coming up from Washington, that people obviously related to me later. But people at the time didn't know whether the office was going to be shut down, or what was to become of them. And as I had mentioned, unfortunately the productivity of the office hadn't been what was expected, and that was the result of, in my judgment, having come up here to try to change that, the office had had such difficulty, particularly on the enforcement side, of getting their recommendations through the Commission and its processes that a mentality had developed that less is better.

If we send less cases down to Washington then there is less for them to hassle us about and criticize us about, and so the pipeline had pretty much really closed up. I think that,

and it's probably my proudest accomplishment at the Commission, I think we did effectively change that 180 degrees. I was fortunate to convince a few folks from the Washington, D.C., office to take supervisory positions up here in Boston.

But we were able to I think instill in the staff that it was fun to bring cases, and with a little supervision the staff was able to get their matters through with a lot less pain than previously. And I'm sure the numbers are what they were. This is just an approximation, but I think the office went from bringing maybe a half a dozen cases a year to bringing about thirty a year. And again, I think the staff was infused with this. You know, hey, this is a great job, this is fun to do, and we really did turn the dynamic of the office around.

WT: Tell me a little bit about the relationship with Washington. Of course, you were working with Bill McLucas who you had previously worked with for several years, so I assume that that continued to be a good working relationship.

JM: It was an excellent relationship, and I think in running a regional office I truly benefited from being in the home office for ten years, because whether it's in enforcement or whether it was in IM or Corp Fin, you know all of the personnel. With respect to the commissioners, they know who you are. You not only work with these people, you're socializing with them, you know them close. It made for a very healthy and productive relationship.

WT: What would be the primary things that you would communicate about with Washington? Would it be on a strategy level about the cases, or would it be more technical even?

JM: No, I think most of the communication, it's just open communication. You know, if something is developing, you're on the phone, you're talking about it. There's probably a lot more communication as you're taking a case through the Commission, or you're getting ready, winding down the investigation to the point where you're about to bring the case, so there's a lot of coordination. Some matters are very routine, some other matters are high profile; you're probably having a lot more dialog on matters that are high profile.

WT: Do you still get some of those special focuses at the regional level from the level of the chairman or the Commission?

JM: I'm not certain I understand.

WT: For example, we talked about Chairman Breeden being particularly interested in the savings and loan cases. So does that extend to the regional level, then, when they want to go after certain types of cases or focus on certain types of things?

JM: You know what the enforcement priorities are, there are always meetings and conferences, and you know any violation you're encouraged to bring, but you're also aware of certain program areas that the Commission is trying to emphasize, and bringing

cases in that area could be particularly helpful. So that's always being communicated. You're always cognizant of that.

But I think with regard to your question, if you were wondering how involved the commissioner stays in terms of the regional office, that is pretty much you get encouragement when you bring things to the table, but you don't have a commissioner reaching out during an investigation saying, hey, I want you to look at this, or how is this particular investigation going. It doesn't work that way.

WT: Is there anything else that we should discuss about developments in Boston?

JM: No, that's about it.

WT: You've expressed your wish not to discuss the events surrounding your leaving the Commission for particular reasons.

JM: Right.

WT: You've been over to private practice, which you've been in now for a dozen years. So, first of all, you've been your full career at the SEC to this point, so what was it like to be on the other side of the table?

JM: You know, throughout my career I've heard everybody at the Commission—who's left the Commission, excuse me—it's a cliché; you always hear that you'll never enjoy anything as much as your time at the Commission, and you don't realize that until you actually leave. And the reason I say that, not that I haven't enjoyed private practice, but irrespective of how large a firm you are with, you don't have the resources at your disposal like you had back at the Commission.

And even as a matter of economics, despite how large a client that you have, you're not going to get—you know, if you're at the Commission, let's use the Boston office as an example, and I've got an issue where a hot regulatory issue comes up involving investment advisors, I've got every kind of expert at my disposal, where I can pick up the phone and bounce things off of them, which is a common occurrence. You don't have that luxury in private practice.

And not only that, I think back in terms of the camaraderie and just the spirit of the people working towards that collective good, and that sounds very corny and hokey, but it's absolutely true. I can now appreciate the cliché that folks would say, that you're always going to look back and really think dearly of that time you spent at the Commission.

WT: I've heard another big contrast is that you don't have to bill your time at the SEC, as well.

JM: Exactly.

WT: So, is there anything else that you'd like to talk about in your time since leaving the Commission? I don't have any particular questions to ask you about it, but if there's anything else about your experience as a private practice attorney that you'd like to discuss, please do.

JM: No, I don't want to suggest that being in private practice after the Commission is not the most positive, because there are a lot of positives to being in private practice. But the one that I would particularly like to note is that it is wonderful, once you're in private practice, to get the opportunity to go back and be in front of the Commission. I can't tell you how much I've enjoyed the opportunities I've had to keep practicing in all of the Commission offices, particularly since I was in the regions.

We focused a lot on Boston, but I probably spent more time than most folks throughout the country at the Commission. By virtue of so many issues that came up over the years, from the substantive issues with the task force, to taking the lead on things such as certain diversity priorities and things of that nature, I had a lot of interaction with all of the Commission offices and that I've been fortunate enough to regularly reappear in them all.

WT: Is it a shift of mentality? Obviously, in certain cases you'll have people where a defense—all defenses are warranted, but in some cases you'll be defending people who are clearly innocent, other cases, you'll be advising people who may not be as much, I guess may be the best way to put it.

JM: Well, let me tell you about my day today. No. (Laughter)

WT: No, I obviously won't ask you about particular clients.

JM: Reflecting on private practice, there have been clients who I absolutely love, enjoy spending time with them, and recognizing you have a job to do. There are clients who sometimes you wish that you could take the defense counsel hat off and lean over to the staff and say, "Hey, you really need to think about x, y, and z, and go get this guy."

WT: So do clients to a certain extent get to direct the direction of cases in private practice? Do they mainly take your advice?

JM: The good clients do. (Laughter) I don't think you'll find anybody in the defense bar that says that every one of their clients has done everything you've told them to do and followed that advice. Some clients just can't help themselves.

WT: I guess that should wrap it up for the generalities, then. Unless there's something else you'd like to talk about, I suppose we can feel free to wrap it up.

JM: All right. Well, Will, I've appreciated this, and for anybody's who's listening to this at any point in the future, thank you very much for giving me the opportunity to share some of my recollections with you.

WT: Well, thank you very much for your time.

JM: All right.

[End of Interview]