

## Audio File: SEC Historical 20180404 Roundtable

**Jane Cobb:** Good afternoon and welcome everyone. I'm very happy to see everybody.

My name is Jane Cobb, I'm the Executive Director of the SEC Historical Society.

For five years, from 2002 to 2007, I was Director of the Office of Legislative Affairs at the SEC. And in that capacity I worked across a number of offices and divisions, and had the good fortune to meet with and work with some very fine professionals there at the SEC. And some of them are here at this table today, and in the room, and the SEC has an incredible mission and I was very proud to have worked there.

And for that reason, about a year ago I accepted the position as Executive Director of the SEC Historical Society. The Society is a 501(C)(3), a nonprofit organization. We're not affiliated with the SEC, the US SEC. But we do work together on occasion. And we're not to be confused with our good friends ASECA, the Association of SEC Alumni. But they are our partners here in this event.

We were founded in 1999, almost 20 years ago by David Ruder, Paul Gonson and Harvey Pitt. This was at the suggestion of then Chairman Arthur Levitt who had been to an event at the Supreme Court Historical Society. The mission of the SEC Historical Society is of course to capture and preserve the history of our securities markets.

We do this by continually growing our permanent collection of unique oral histories, papers, photos, galleries, programs like this one. And we make them available through the virtual museum and archive which is at [www.SECHistorical.org](http://www.SECHistorical.org). We're purely virtual. The site is used by historians, students, authors, legal practitioners and others who are conducting research or are simply curious about how our financial markets and system of corporate governance has evolved over time.

If you haven't already, I invite you to explore the virtual museum and consider how it might be interesting or useful to you. The Society wouldn't exist but for a dedicated group of volunteers and advisors, the volunteer trustees and advisors who have over the last two decades given of their time and resources to the Society's mission. Some are here

with us today, and I'd like to pause for just a second and ask those who serve or have served as trustees and advisors to the SEC Historical Society to please stand up.

Thank you for your service and for your dedication to this important mission. As you'll hear in more detail in just a moment, our program today is being held to kick off construction of a gallery on the SEC's enforcement program. And a special exhibit to honor the late Irving Pollack, the first Director of the SEC's Enforcement Division.

As such, we are very fortunate to have with us today the family of Irving Pollack and some of the family also of Judge Sporkin. Welcome all of you, thank you so much for coming the distance that you traveled today.

I also want to thank our partners, the Securities Law Division of the Federal Bar Association and ASECA for your partnership and support with this program. Let me now introduce the Society's rising President Tom Gorman. Tom is a partner with Dorsey and Whitney LLP here in Washington. He previously served as special counsel in the SEC's Division of Enforcement and as special trial counsel in the SEC's Office of the General Counsel.

He is a graduate of John Carroll University, Cleveland Marshall College of Law, and Georgetown University Law Center. Tom is also Chair of our Taskforce for the Enforcement Gallery. Thank you again for coming, I hope you enjoy the program, and welcome Tom Gorman.

**Tom Gorman:** Thank you Jane and thank you to everybody who's come to this program, and everybody listening online. We greatly appreciate it. We think this is a very special moment in the history of the Historical Society and the Virtual Museum. Up until this point there are segments in the museum, if you go online and talk a look at it, to talk about different things that happened that were part of the Division of Enforcement. There's a segment about the FCPA, for example. There's some segments about insider trading. There's some segments about other topics, about things that the SEC's Enforcement Division did. But there's nothing that's really dedicated to the founding of the Division and talks about how the Division evolved over time. And the purpose of this meeting today is really to announce the kickoff of the construction of that with Harwell Wells who will be the curator whom we will hear from in a few minutes.

And we're going to try to go back and recreate the spirit that created the division of enforcement and show people exactly what happened there. And part of what we want to do is we're going to make a special exhibit to the memory of Irv Pollack. And that's more than fitting and proper here.

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Irv was not only, as Jane said, the first director of the division, he really helped create it and he really helped create the spirit. Irv was on the staff for years, and he started back in the day when there was no division of enforcement; it was just scattered about in different regional offices. Irv once called them a group of fiefdoms. They pulled them into trading and markets. They put them under his reign. But that was still a hybrid division until the early '70s when Irv and the Commission created the division of enforcement.

And that division became known as one of the best and the finest enforcement programs. And the reason that that happened was real simple. It was Irv. It was the spirit that he started with. He started with the idea that you had to be fair. He started with the idea that he wanted excellence in work. And that's where the division started; and he passed that down through Stanley and through each one of the men and women that you see here today who are carrying on that tradition of the division of enforcement as being one of the finest programs in government.

And that's really what we want to do here. And the idea for the museum gallery that we're going to build is we're going to try to put you inside the division. We want you to be there not just through the eyes of these people here, but also the staff attorneys, the people who work these cases day after day, because the division is a lot more than a collection of cases.

We can talk about the FCPA, we can talk about insider trading, today we can talk about crypto currencies, and next week there will be something else to talk about. It's not just that; it's the way the division runs and it's the way the division does business, and it's the way the division treats investors and looks out for investors; it's the way that it treats the people that come in there.

I always remember a story from Stanley. Years ago he was talking about the FCPA. And most of you know the history of that and you've heard of the volunteer program. 450 major US companies walked into Stanley's office. They self reported. They laid out internal investigations that showed they'd violated the law. And there was no promise... no promise that they were going to get anything other than maybe whacked.

No promise that they were going to get leniency, no promise nothing. And Stan was asked why'd they do that? Three words. They trusted us. They trusted us. That's where this division started when Irv was its founder. That's where this division went when Stanley was leading it, that's where this division went when Gary and Bill and the rest of the people you see sitting this table moved it forward, and that's why that worked then, that's why it works today, and that's what we're going to try to build with this gallery that talks about the enforcement division. We're going to try to show you what that meant, not just the cases, but why that worked, why people would self-report, why people would come in, and why that would happen.

So that's the focus of where we're going here. We hope you enjoy the conversation today. I'd like to turn this over to Don Langevoort who also is a veteran from the staff, having worked in the General Counsel's Office and now is a distinguished professor of law, teaching securities law, prolific writer, has been cited by the Supreme Court for his expertise in securities. He wants to say a few words and then we'll get to the program.

Thank you.

**Dan Langevoort:** Thank you Tom. Let me, on behalf of Georgetown, welcome you also to the Law Center, to this wonderful collection of speakers, former enforcement directors, honoring the legacy of Irving Pollack.

We at Georgetown are very pleased to announce that there will be another tribute to Irv's legacy. The Irving M. Pollack Memorial Student Writing Endowment Scholarship Fund, which will provide scholarships to Georgetown students who have written on the subject of ethics or integrity in relation to securities law.

Foundational gifts for this fund have been provided by two of the sponsoring parties for today's event, the Federal Bar Association Securities Law Section and the Association of SEC Alumni. Many were involved in the planning of this gift. I especially want to thank

Steve Crimmins, Charlie Niemeier, Brian Breheny, Larry Storch, Brandon Becker and Linda Griggs for their leadership.

The gift is indeed seed money, and so I ask those here today who are interested in honoring Irv's legacy to make additional contributions to this scholarship fund. If you'd like to make a gift to Irv's scholarship fund today, Jessica Imagna in the back waving her hand will be here for about 30 minutes during the reception to help you. Also feel free to take a giving form home with you to make a gift at your convenience.

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Now we're going to turn this over to the main event, so let me introduce Dr. Harwell Wells, Curator for the Enforcement Gallery at the Historical Society. He is the I. Herman Stern Professor of Law at Temple University. Harwell.

**Harwell Wells:** Thank you. I could introduce each of the panelists to my left and give a full account of all of their accomplishments and achievements at which point it would be time for the reception. So, I'm going to apologize to almost all of them and do this very quickly, because I know we mainly what to hear what they have to say.

So, working backwards, chronologically backwards, I'd like to thank, first of all, the current co-directors of Division Enforcement, Stephanie Avakian and Steve Peikin who are here. And then going backwards in time, thank you to Andrew Ceresney, Rob Khuzami, Linda Chapman Thompson, Stephen Cutler, Dick Walker, you can stick your hands up. I hope most people know who you are. But Steve Cutler, Dick Walker, Bill McLucas, Gary Lynch and finally Judge Stanley Sporkin.

And while most of you must know Judge Sporkin's career path, I will briefly mention that Judge Sporkin spent a couple of decades on the staff at the Securities and Exchange Commission, worked in the Office of Enforcement underneath Commissioner Pollack, became Director of Enforcement in 1970... I'm sorry 1974 pardon me, Your Honor. Then he moved... I don't know if it's a promotion or demotion when one becomes General Counsel of the CIA but changed jobs to the CIA and finally became a judge on the Federal Bench here starting in I believe 1986. So, without further ado I want to start with a question for Judge Sporkin, and just ask if you could share a little of your thoughts

about Commissioner Irving Pollack and especially about the period in which you began with him to establish the Division of Enforcement.

**Judge Stanley Sporkin:** Thanks. This was a very interesting period of time. There was no Division of Enforcement. There were, I don't know whether five or six divisions of enforcement. Each area of the Commission had its own enforcement division. And in addition to stepping on everybody else's toes and bringing multiple cases against certain people, it got to the point where Irv and I used to talk about this, about how we needed really one division. It was silly to have all these separate divisions.

And the climate at the Commission, I hope I don't give away too many secrets here. The climate at the Commission was very welcoming for this event because the Commission itself and I don't know how to phrase this but was not very... didn't like the enforcement work. And if they thought they could give us a little... some little grass and we'd be happy, and we wouldn't bother a lot of people, especially the Division of Corporation Finance which always looked at itself as the division, and nobody was to mess with it.

But what happened is we fooled a lot of people, because with this power of doing all the enforcement in the Commission, we became very powerful and we sort of did things the way we wanted to do things. And we had a tremendous leader in Irving Pollack who was full of energy and enthusiasm and was going to make it the best enforcement group in government.

And that's what he set out to do and we were able to do it with all these people that were in the division. And we had the perfect leader in Irv. Irv... I don't know if you knew it but if you know him... How many out there actually met Irv? Okay. So many of them know him, especially his family.

But he was a leader of a different dimension. He led by not leading. He was available to everybody, anybody wanted to talk to him, his door was open. Fred, you remember that. Anybody could go in to talk to him. And he had certain attributes which cannot be duplicated. He was extremely intelligent. And don't let anybody kid you otherwise. He was a smart guy and he knew the law, and he worked hard.

His daughters will tell you that every night that he would come home was it one or two bags that he didn't get to during the day, but he would carry those bags home and that would be his work that night. I don't know when he would ever finish it.

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And in any event, he just was able to do what... he did the whole thing almost himself. And I was very privileged to be able to work for him, and to work with him. Now there's certain things that you got to understand about Irv. The first thing is he was... the only way to describe how much, think of a word and I think the best word to describe him, principled. He was an extremely principled person.

And he just... there was no way, you know his shortcuts, his principles held on during his entire tenure and they were the... they carried... the principles carried the day. The other thing that Irv was able... the other thing that the division developed a model or a theme and everybody knew that the question that was asked in almost every case is how would Irv handle it? What would Irv do? And, of course, in most of these cases we'd go to Irv and find out.

But the point now is that that theme has permeated many of our lives, I don't know how... Bill, you remember that don't you how to, right when I say...

**William McLucas:** Well, Irv's approach to cases was do the right thing. It's not, we got to bring this case, we got to name this person, his questioning and his message was, we don't know the evidence, if you're not sure, we don't name that person, we don't bring that case. And you're right. I mean I think it was the ethic that he tried to ensure that everybody in the division brought to the thought process.

**Stanley Sporkin:** But that business of saying what would Irv do, how would Irv handle this thing. That theme just sort of carried through because he... he's with me to this day. If I have a tough problem, I think about what... how would Irv have handled this thing. And we would always say that and then we would obviously sometimes go right to see Irv. And he wasn't... it was no... the system there wasn't very... that you couldn't do certain things. Don't... let's not bother Irv, let's not do this, no it was the other way

around. He wanted you to come. He wanted you to share with him. And, of course, he always had the right answer. And that was a principled answer.

So, you got to think of the terms principle. The principle includes fairness. He was extremely fair as Bill said. And taught us. And I don't know if there's anybody that has any view of that. This was a unique individual that was able to instill and inspire in the people that worked for him. And be able to come up with that kind of a theme.

And this carried through with all the Gary and Bill and everybody else during my tenure there. And that resulted in getting and developing very, very competent people. We had extremely good people and competent people to be able to carry out this program. And that's why this program was such a success.

**Harwell Wells:** Judge Sporkin, I'm sorry. I don't mean to interrupt, I just... can you... so I was... I guess I was going to ask a follow up question about Watergate, about the activities in the mid-70's which Tom discussed -- the number of companies coming in voluntarily reporting. I mean part of my question was how did you sort of set your sights or how did you decide to handle some of those very high profile matters. But it sounds like you are already partially answering that.

**Stanley Sporkin:** Yeah, the... well you already are now getting into certain programs that we developed. How did we develop them? Well the point was it was never "no" as an answer. If there was a problem out there, we had to solve it. And one of the issues of course was budget. We don't have the money to put in a case like this. It's going to take a lot of manpower, womanpower.

But the point is that we did it by using imagination, using all our talents and that what we did with the volunteer program we couldn't ourselves do it, so we'd go out and got other people to do it. We got the lawyers themselves. We instilled in the lawyers many of them are practicing here that they had duties and responsibilities. And they couldn't just walk away from it. And we said, okay go ahead, what are you doing? Do your own investigation. The lawyers and accountants have responsibilities.

And it was such an opportunity that people had to realize that they themselves should be developing solutions to their own problems. And we depended upon that. And many of

the lawyers are here. Mrs. Cobbs' father-in-law was one of our big... he was with Steptoe and Johnson. And he bought into the project. And would do that for his people.

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They all knew that they were going to be treated right. They were going to be treated fairly. And even though we could not promise them anything, that they would go out and do the investigation, and take certain action and normally we wouldn't do anything. But that's the way we were able to do it.

The ability to be able to do this with as few people as possible. And it just, I don't know Bill or Gary how you think these people bought into the program, were willing to do that and to be able to see that they're going to be treated right, fairly, without promises. We didn't promise them anything.

**Gary Lynch:** I agree with that. Yeah and I guess the query that I would have is, could you do that today? Because back in that time, year, there was a focus on the SEC and the program, and the program was rightly applauded. I think today you would have media, congressmen, others questioning why are you letting these companies off the hook, having engaged in this misconduct which... and that's just the sign of the times today. Back then I think it was almost universally applauded as a great program that worked very well.

**Stanley Sporkin:** Do you feel that way Bill?

**Bill McLucas:** I think Gary's right. I think that if you look at what the agency's been through in the last 15 years, 20 years, the amount of criticism, if there's any mistake or any perceived mistake and frankly the degree to which politically there's an appetite to go after the agency, has just been unfortunate because it does have an impact on the way, I think, the agency operates. I still think the agency's incredibly independent, calls it as it sees it, but the reality is I think what Gary said, it would be very difficult to duplicate what happened in the '70s and early '80s because very few people out there would be as trusting because there would be worry about the amount of pressure, second guessing and Monday morning quarterbacking that would be brought to bear on the agency's decisions. And that's just a reality of the environment we're in.

**Harwell Wells:** And, actually, I'll encourage if other panel participants have thoughts on this to chip in. But if I can ask Bill and Gary because, and Judge Sporkin as well, what changed? Why can't... I mean maybe the answer is the culture but...

**Stanley Sporkin:** I would add one other point. Is this just the failure of the private Bar? In other words, is there an inability for them to sell to their own clients the fact that we got to go in there and fess up?

**Gary Lynch:** It's not easy.

**Steve Cutler:** Don't forget it's not just the SEC because now you've got a lot of criminal enforcement authorities that are interested in this subject area. May not have been quite as true back in the '70s and so you can walk into the SEC, but the SEC doesn't control the whole panoply of potential sanctions and reactions from the United States of America.

**Andrew Ceresney:** I guess I have two thoughts. And first of all, let me just say it's awe inspiring to be on this panel with such luminaries who I was just honored to follow as Director of Enforcement. I guess I have two thoughts. I mean first is part of I think what has happened is you guys set the standard for how companies should act, right.

In other words, back in the '70s the FCPA wasn't in place. It wasn't a statute. You guys created it. Insider trading in the '80s was sort of obviously there were cases before that, but those were the first big cases. And now that kind of conduct is obviously unlawful and obviously punishable. And so, people who engage in that conduct now the sanctions should be higher.

And also, the economy is larger, the world we live in is much larger and the need for deterrents and the way to deter I think certainly is different now. And so that's I think part of what's going on. And I don't think it's just a change in views, I think it's just the evolution of kind of the structure of the law, and also kind of what's necessary to deter.

I guess the second thought I have is, I actually agree with the sentiment that like the extra scrutiny that you have now, and Bill and I talked about this a lot when I was Director of Enforcement. I think obviously there are always were the high-profile cases. But then there were the cases that nobody was looking at. Nobody was watching. But today every

case, every decision, every trial, every case you bring gets coverage. And is focused on. And that has a certain amount of... and there's certainly public scrutiny and you have to answer to the public, that in some respects is a good thing, but it also creates a dynamic of accountability of everything that you do that I think impacts how you approach things.

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**Dick Walker:** And the flipside, it's not just the cases that you bring, but I think as Steve said, if you don't bring a case in an area where some crusading state or local official or something brings an area, it just raises questions well where was the SEC? Why didn't the SEC do that? That's down their fairway and where were they? Why were they not active as well? Though that in turn raises the question, how many people does it take to enforce the law, even though the laws are different? Does it really take five agencies, five actions, against the same people arising out of the same questions of facts? But you don't want to in this day and age be sort of the odd man out. Pressure's too great for that.

**Stanley Sporkin:** You see, Irv was fearless and if you believe in what you're bringing and in the position. That was it. You didn't have to worry about the... he would take the heat. And he could take it. You never saw Irv, you know, not defend his actions. But we... what did we do once where we asked where were the lawyers, where were the accountants? We put the onus on the private sector that you can't just allow this kind of conduct to go on knowing about it. It was unheard... I mean you shouldn't... lawyers shouldn't do that, accountants shouldn't do that.

And what we did, it was... it's very interesting. And sort of humorous. But we in effect got every lawyer and ever accountant in the country to do our work. And it became easy, you guys go and do it. And if they did it, and fixed everything, then nobody, who was going to... who was going to complain? They took the action on their own. They weren't going to complain.

Now you had an addition to that in the big cases, the cases involving the downright crooks and then you had to... you couldn't walk away, you couldn't turn this over to the private sector. But what we were able to do... and I say this that you were able to do things only because we had a leader like Irv Pollack. A leader... not only did he, for the particular cases while he was Director, but it continued on. His views continued on. And

that's what made him so effective as a leader. We had nobody... well we had a great Commission so I'm not going to demean that, we had a great Commission. We had the Phil Loomis' and the Pollacks' and the what not.

But the point is that we were able to carry out these programs. Look how imaginative the Commission was when it views the equity powers of courts to do a lot of the things that were not in the rule book. I mean appoint trustees, appoint special masters, we did that at the Commission. And Irv would say, okay go ahead and go get a special counsel on this case, go get this, go do that. And we would do it.

And we weren't fearful of anything. And we weren't... you know there were some people that sort of opposed us by saying, where is it written that you could go into court and ask the judge to go and appoint a person to go and be a special master and what not? Where does it say that? And we would say, well, let the court tell us that he doesn't want to do it. And they did it.

And that became the theme was let's do it. If somebody's going to stop us from doing it, let them tell us that we can't do it. And the theme was how to do something, not how to walk away from something. We had too many... I guess the part of this was the fact that the people on the staff who were willing to buy in to the program. Were willing to go to court and ask for these incredible things. And that's the way that was the principle.

If we didn't have a team that was willing to do this, I don't know what would have happened. But everybody on our team was willing to do these things. Am I right about that? Do things are unique. And you know and that's how it operated. And it operated so successfully that the other enforcement groups in government came to us. They wanted our people. They wanted to do what we're doing. How come you guys can do all this and we can't do it? Tell us how come?

And you know that was... some of these sessions that we had with Irv were incredible sessions. Incredible sessions. How far can we go? Well we'll go until they start pushing us back and tell us you can't do it anymore.

**Harwell Wells:** Judge Sporkin one of the things I wanted to sort of think about in the context of the Commission is that clearly not only was Commissioner Pollack

extraordinary, but he started an extraordinary legacy. That is, you worked under him initially and then succeeded him in turn, Bill and Gary succeeded you over the course of time as directors of Enforcement. But, of course, along the way you faced a series of new challenges.

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So one of the things I wanted to ask Gary moving us forward in time a bit, is to think about the challenges that did arise when you became Director of Enforcement starting in 1985, and particularly that was during the period of the M&A boom and suddenly, I won't say for the first time, but suddenly insider trading had a new salience and you supervised a series of really extraordinary cases at that time. And how did you deal with that, and perhaps deal with the public spotlight that was cast on your while those cases were being dealt with?

**Gary Lynch:** I guess I would start back a few years earlier than that. In 1978 Stanley made me the branch chief for a new office that was created called the Office of Tender Offers and Mergers. And you know I was three years out of law school at that time.

**Stanley Sporkin:** Where is it written?

**Gary Lynch:** And we... so we took a look at every tender offer that was announced in a merger. But we also did something for those of you who have been with the Commission, we put in a MUI, a Matter Under Inquiry. Now in every merger, every tender offer, there was always suspicious trading. So, we were the group that got the bulk of the insider trading investigations which was not without controversy at the time, since we were doing all those cases.

And from 1978 going into the mid '80s, obviously M and A activity actually picked up. I don't want to leave anyone with the impression that there wasn't an enforcement program against insider trading in the '80s or prior to that obviously. But going back at the time you had Kady Roberts and Texas Gulf Sulfur. But the cases really picked up in intensity.

And a couple of cases that come to mind even before the very big cases of the mid '80s like the... that got the press attention back then, because it was not that easy for the enforcement cases to get a lot of press attention. Now every... someone made the point

earlier everything gets attention. But we had an insider trading case against a Wall Street Journal reporter. And obviously that got a lot of attention and amicus briefs filed by the reporters committee for the freedom of the press somehow suggesting it was okay for a reporter to trade on insider information because it was related to free speech.

And then we had one case that got enormous attention where we sued the Deputy Secretary of Defense for Insider Trading for tipping his mistress, which we described in the pleadings as a close personal friend. Now going back to that time though, I want to make a point here that has a broader application.

I'll never forget this. There was, in that kind of case, the investigation went on for a year at least. There was not one leak in the entire investigation. Now think about that happening in these days and times. Not one leak of the investigation. The day before we file the case, I went over and met with White House counsel, and told White House counsel that it was going to happen the next day, it was at 4:00 p.m. in the afternoon.

**Harwell Wells:** Sorry I have to ask, was he the current Undersecretary of Defense?

**Gary Lynch:** Yeah, he was the Deputy...

**Harwell Wells:** Oh okay...

**Gary Lynch:** He was the Deputy Secretary of Defense. It's Paul Thayer who had been the Chairman and CEO of LTV. And so we deliver that... I guess that begs two points. One about the fact that the agency and government in general didn't have the kind of leaking issues that we have today. And second, about the separation of an independent agency from the administration. I mean we told them a day before we were going to sue them, after the Commission had already authorized the case.

But anyway, there was a very active insider trading program. But it clearly became much more visible when shortly after I became Director of Enforcement, this is 1985, I got an anonymous, Merrill Lynch actually, forwarded me an anonymous letter saying that someone in the New York office of Merrill Lynch was trading on insider information. We investigated it. It turned out it was two brokers who were piggybacking on trades coming out of Bank Leu, out of the Bahamas.

So that led to a major investigation where we confronted Bahamian secrecy in trying to get the name of the individual. And it went on and on and because we knew as soon as we had the name of the actual trader, it was over, because there had been trading in like 25 targets just before the acquisition.

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We cut a deal then too which would be very difficult to cut today. We told Bank Leu that we would not prosecute them civilly and we worked with the US Attorneys Office, so it wouldn't be criminal either, so long as they disgorged their profits. Even though they had executed all these trades and had to know at the time that they were aiding and abetting an insider trading scheme.

Today it would be kind of tough to get that one by. Back then I have to say while I was worried about it, it wasn't even controversial. It just went down without a hitch. And that person turned out to be Dennis Levine, an investment banker at Drexel Burnham. We sued him which at that time I think was the largest insider trading case of all time. It was a \$12 million of disgorgement.

And immediately he cooperated, and then gave up a number of people, his coconspirators as well as an arbitrator named Ivan Boesky, which most of you in the room have heard of. And then it went on from there, and it eventually led to Drexel Burnham and Michael Milken and others, many others in the case.

And going back and try to put it in historical perspective, what that case did for us at least in the '80s and I understand that there were criminal prosecutions before. And there were a couple even for insider trading, but they were few and far between. When the Boesky case came out, and the US Attorney's Offices around the country saw the kind of press that that got, and frankly even when Rudy Giuliani saw the kind of press that it got, because up to that point in time he wasn't all that interested in these cases.

Suddenly we had US Attorneys from all over the country calling and a while back in 1984 Congress had passed the Insider Trading Sanctions Act. I'm not sure it had that much of a deterrent effect. Going to jail or the prospect of going to jail for white collar criminals had a major deterrent effect.

And for me at least in history, that went from the time where there was one program about Wall Street that was on, you know, Louis Rukeyser, Wall Street Week, and occasionally Lou Dobbs, who was just the newscaster would do a program on the SEC. So, what we have now, we're you know between Bloomberg and CNBS and the Wall Street Journal and Reuters and everyone else covering every little thing that the Commission does.

So, it's a... at any rate, a fantastic set of cases that really came from one anonymous letter and we just kept unwinding it to get to where we got with it.

**Harwell Wells:** And you were succeeded by Bill McLucas.

**Gary Lynch:** I was.

**Harwell Wells:** And you...

**Bill McLucas:** As you can tell I had quite a mess to clean up.

**Harwell Wells:** That was my next question actually is how you resolved all the issues.

**Bill McLucas:** So, as you can imagine, what Gary described, actually Gary was viewed... we started meeting with regulators all over the world. Michael Mann, we had an Office of International Affairs, and we would... we were negotiating agreements, memoranda of understanding, to get cooperation from a lot of foreign countries. But as we met these folks, Gary had been viewed by people throughout the other regulators as Elliott Ness. I mean we were suddenly viewed in a way that seemed even odd to us.

I went down to the National Airport to get on to the shuttle one day, had my trench coat on. Had to show my SEC ID and the ticket agent said, Mr. McLucas will you be checking your gun today. Of course, I smiled and said, no I'm not checking it, I'd like to carry it. But anyone who knows... I wouldn't be within 20 miles of a gun because who knows who would get shot.

But the image of the Commission and the stature of the program changed dramatically. And we moved from the '80s. I became the Director in late '89 and we had a new Chairman, Richard Breeden, whose background had been as Head of the Vice President's Taskforce on Financial Institutions, largely focused on the S&L crisis that had emerged in the '80s.

And because his view of what happened in the S&L industry was such a national catastrophe, he believed that the only vehicle you could use for a real effective civil enforcement was penalties. And he was the architect of what became called the Remedies Act which was passed in 1990 and gave the SEC financial penalty authority, something that with respect to all my current clients, I deny I was even there for.

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But as you can see what's become of that over the years and how both effective and necessary it's been for the Commission. But we moved into the '90s. Gary alluded to the changes in the media coverage. MSNBC, CNBC, the internet. We also had a massive change in the fact that most people prior to the '80s had been savers. Most households had their money in bank accounts. By the end of the '90s, 50 percent of all American households owned securities.

We had now a movement of individual investors into the stock market which created enormous risk and enormous enforcement opportunity, because there were a lot of abuses by the industry. There was the eventually under Levitt the reform of the NASD because of what was viewed as fixing of commissions and maintaining of spreads.

But as we moved into the '90s the Insider Trading Program was solidly established. We started an initiative with respect to municipal securities markets. We had initiatives in the retail stock market with the reform of the NASD. And the program relied to a great extent on the misappropriation theory which got tested in the O'Hagan case.

O'Hagan was a lawyer at a law firm that represented a bidder in a takeover. The target was Pillsbury. O'Hagan learned about the proposed acquisition, went out and bought equity and options in the target. Indicted, sued by the SEC. Case ultimately goes to the Supreme Court in the... on the criminal side, with the issue being whether the misappropriation, that is the theft of the information from his law firm and the law firm's client could be the fraud that would be in connection with the purchaser sale of securities, the misappropriation theory was upheld. And it was... it became and continues to be a key part of the Insider Trading Program that the Commission has today.

**Harwell Wells:** Thinking about, I mean the technology has always been an issue. But certainly, during the time you were Director of Enforcement and ever since then because I'm sure, we'd love to have you talk about crypto currencies, a lot. But technological changes seem to drive some of the major issues that have been facing the Commission, starting with the internet in the late '90s. And I think Linda you were actually discussing on a conversation earlier about the SEC's initial dealing, or the way the SEC tried to address fairly rapid technological change, which started to come in the mid-'90s.

**Linda Thomsen:** Oh, I think I only told a little vignette about how fast things moved. We had... there was one case a while ago which ultimately was the second case against Michael Milken. And the key evidence in that case was email. And at the time we didn't know whether or not email was admissible or not. There was simply no history... there wasn't enough history yet to know whether that evidence would be admissible in a contested case. And that just shows you how rapidly things have moved since that time. And we want... it was a topic of discussion by the Commissioners and within the other divisions about whether or not the evidence would be something we could even use.

**Harwell Wells:** So, sort of continuing with Bill, but also Dick you succeeded Bill. So how did, and this is the time of the first great tech bubble, rapid offering in stocks, companies had added dot.com to their name and would be worth billions of dollars. How does the SEC, how does an organization like the SEC handle something when technological change seems to be producing new issues so rapidly?

**Richard Walker:** So, I think that historically the SEC has actually lagged developments in technology -- that's sort of a sad truism. But I think that the agency has been very, very resilient and catches up quickly. So, I think certainly in the area of technology where we were seeing so many traditional frauds migrate, a boiler room and things which would require large spaces and endless phone banks of people picking up the phone and making telephone calls.

We would see that the smart money learned that it's very effective to do this from your living room on a computer and rather than hiring a bunch of people to make a lot of fraudulent statements you could sort of create a little statement, click, put, and you know you could get your message out to lots and lots of people. And we had to adapt to that.

We had fortunately some very skilled people within the staff. A guy named John Stark, who was very nimble and understood the internet very, very well. So, we sort of formed a specialized unit, the Office of Internet Enforcement, which was headed by John, and really tried to bring some cases quickly so that people would recognize we're not disregarding this new medium, we are going to follow these people.

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And we tried to package the cases so that we would put three or four or 15 cases together to make a statement so that people would understand that this was something where the SEC was looking at it and really following through. And I think it was highly effective to do that. I think the internet is now a way of life. We all are used to it, but the opportunities for fraud continue to this day. There's no question about that.

**Harwell Wells:** When you became Director of Enforcement in '98 with only... I guess a few months before Chairman Levitt gave a pretty famous speech on the numbers game about accounting hocus pocus... and by the way this brings out at least a couple of the themes that other commentators have already brought up, one of which is the relationship each of you might have had with the chairman and the other commissioners while you were serving, and as well the role that accountants, lawyers and what we'll call the other... what are generally called the other gatekeepers, what role do they play. So, in 1998, Commissioner Levitt gives the numbers games speech, and criticizing the current accounting profession. And within a few months it's seems as though the enforcement, or perhaps even predating that, the enforcement division seems to pay new attention to accounting issues.

**Richard Walker:** Well, Chairman Levitt certainly was one to use the bully pulpit of the chair, I think more than other chairs have done sometimes. And he was quite effective. Certainly, the numbers game was one of the most influential speeches I think an SEC chairman has ever given. It really sort of galvanized attention, not on new issues, but he put them together and he created a focus and an urgency on something that enforcement had done for long periods of time, financial fraud and reporting cases.

I'd like to say that he sort of vetted this with the enforcement division beforehand, but I would say that there was very little discussion beforehand. So, we saw it, we heard the

speech, and we said, okay I think we see what our new priority is now, and we better get on this quickly. And it really did require a real programmatic type of focus on this area. It's not that the Commission hasn't historically brought a lot of these cases, but the Chairman had laid out a very bold framework and had described in great detail the kinds of accounting techniques that had been used. So, we had to scramble and go through our cases and investigations and put the truth to that. We had to show examples of that.

And historically the division operated in a non-specialized way. Attorneys would do insider trading, and broker-dealer and financial fraud cases. But this really required some focus and some specialization. So, we did a taskforce, a financial fraud taskforce. And fortunately, we were able to find Charley Niemeier who is here today who was a lawyer in private practice but had also been an auditor and knew that world quite well.

So, we brought Charley over to sort of help us with these efforts to sort of prioritize investigations to mine through the inventory, help make sense of some of these cases and really bring the important ones to the fore. So, it was a lot of work, but our inventory, the cases went up from year to year. On the anniversary of the numbers game speech, I remember we brought 30 cases all at once, sort of happy anniversary. And...

**Bill McLucas:** See what the program's become.

**Richard Walker:** Fifteen public companies and a lot of individuals. And a lot of CEOs, so there were a lot of CEOs that were involved in this. And the program developed. Another priority of Chairman Levitt's was auditor independence. He felt very strongly that the growing consultancy practices of the big accounting firms was weakening the audit functions, because the auditors were going to loath to make the hard calls for fear of losing lucrative consulting.

I remember one of the things he did was he testified on the Hill, the Senate Banking Committee. And he got a lot of push back and a lot of pressure from Senator Graham particularly was then the Chair of the Senate Banking Committee. And Senator Graham said, well you need to show us evidence of how do we know that this is a problem? And he said, well you just need to talk to our Enforcement Director Dick Walker.

So, lo and behold, the Senate Banking Committee convened in a very unusual session. They came to the Commission to the closed meeting room, and Steve and I and a couple of others I think put together sort of snippets from some of our investigations because we wanted to give them enough information that would cause them at least to neutralize some of their comments about how this is... there's no there there.

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And so predictably the TV cameras follow them as they come up to the Commission steps and asked them what they were there for and what they were doing. And they came in and spent a couple of hours. And we gave them some information from some of our investigations. Then they went out and the same cameras asked Phil Graham, so what did you learn? And I think he said something about, well you know there's two sides to every story. Which we thought this is about a good a victory as we're going to be able to get here. And at least we will be able to neutralize some of the negatives that would prevent us from moving forward to kind of attack this area. So, interesting time.

**Harwell Wells:** So, if I can expand on that and actually toss it out to everyone who is willing to talk. I won't ask you violate any... well actually I hope you will violate confidences, but I'm not holding my breath. So, Judge Sporkin you made it clear there was a very close relationship between the Division and the Commission, Commissioner Pollack while he was serving. How do you deal with a Commissioner who doesn't perhaps agree or perhaps gives a speech that surprises you and you learn your new... the new priorities that the Enforcement Division is going to have? How do you navigate that relationship, or how did you navigate it for instance with Commissioner Chairman Levitt?

**Richard Walker:** Well he happened to be absolutely correct. I mean he just really strung together, in a very coherent way, with a very strong message, things that were pieces and bits of a lot of the investigations that we're seeing. But he had a wonderful way to sort of reach across you know, and give a voice to some of these issues in a way that bringing a case, every month or two, was not able to do.

So, he was not saying something that we didn't believe in. He was, I think, giving a real platform and a voice to things that we were seeing in our investigations, but we just

realized, okay we got to expedite now, these are long, some of the most complicated investigations that there are to conduct. Lawyers are not accountants and some of these issues are very tricky and very difficult. And we said we can't take three or four years to bring these cases after our chairman has identified this problem, we've got to get these cases prioritized and through the pipeline.

**Linda Thomsen:** Well another thing, some of us worked for more than one chairman, even at... not the most senior levels but relatively senior levels. And one of the things you learn is they have different styles and different priorities. The other thing that I think is worth remembering is that Chairman Levitt, in particular, some of them had short attention spans. So that and really did not focus on how long a case could take. And I can remember with him, in particular, people would be toiling away at a priority of his, but he had moved on.

And so there was one colleague who was despondent when he talked him or her and asked what they were up to. And in response he said, oh we're still doing that? And you know they'd been working on it for forever.

There was another matter which you and I worked on where he had specifically said we want... I want you to do this. I want you to work at this. And we worked it very hard. We brought it up to the Commission and right before we went into the Commission Meeting Room he said, you know this is hard, you're going to have to work the Commission really hard on this. I thought oh great. But it ended up working out fine.

But they also, thanks to everybody here, the Commission is very careful about interfering with investigations. They do not get in the way of investigations. They may state priorities. They may sort of say I want this quickly, but investigations run, relatively speaking, independently and professionally. They have views when you bring a matter to them, but the investigation itself is done very professionally and quite independently and always has been.

**Richard Walker:** And, actually, to Stanley's point and to what Linda said, I think... I was there for ten years, three chairmen, one acting chairman. And the strength and the support for enforcement from each and every chairman, all different, was unmistakable. And really put the wind beneath our wings so to speak. I mean it really empowered the

Enforcement Division to do the right thing, to be strong, to know that they would have ultimately the support of the Chairman which was very influential at the Commission level. So, it was a very strongly-supported program.

**Steve Cutler:** I mean what's been more difficult over time, I would have thought, isn't the chairman but the Commission. And as the Commission has gotten more politicized, I think the head of Enforcement tends to think of him or herself as working for the Commission. But reporting to and accountable to the chairman, or chairwoman. And so that... navigating that relationship is less difficult than navigating the four other people whose votes you got to get to get your cases authorized. And that's become dicier, I don't think there's any question about that.

**Harwell Wells:** Over time you think it's becoming...

**Andrew Ceresney:** Yeah.

**Bill McLucas:** Well I'm sure Steve and Stephanie have thoughts on that they'd like to share.

**Stephanie Avakian:** I kept thinking my God I hope Steve doesn't say anything.

**Harwell Wells:** Tell us what you think of one or two Commissioners, not all five.

**Stephen Peikin:** Talk to me later.

**Andrew Ceresney:** I was going to say obviously most cases are bipartisan. I mean an offering fraud, a Ponzi scheme, an insider trading scheme, all of those things are really bipartisan issues. Almost all of them are all unanimous. But there are the issues like corporate penalties, like length of bars, like just the issues that particular issues have views on.

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And what I used to say to the staff was, we have to do... and this kind of goes back to what Stanley said at the beginning, Judge Sporkin said, which is you got to do the right thing at the end of the day. And we have to recommend what we think is right. But also we have to count to three. And we need to get three votes, and usually that's the

chairman, and usually you could find two other votes. Because if you have a division of views, there's going to be two other people out there who will ultimately support you.

**Gary Lynch:** I mean this points out a difference in the Commission today than 20 years ago. 20-25 years ago, the Commission generally voted as a body and they marched forward on policy issues, enforcement agenda as one. And that sense of the agency being, and the message being, more important than my views on a particular issue, save for matters of extraordinary principle that a Commissioner may disagree with, that has changed.

I mean we... I was a part of decisions where there were bitterly fought debates. But when the decision was made, that decision went out the door as a Commission decision. There were not written dissents, there were not comments to the press, it was the agency's decision. That has disappeared more and more with the Commission over the past two decades. And I frankly think it's hurt the Commission because it doesn't speak as often with one voice, and it's just a... again it's just a fact of the world in which we live now and the way that commissions operate.

**Harwell Wells:** Steve I guess things got boring in 2001, there wasn't much going on in the... well okay in fact you became director and very shortly after it you had a series of extraordinary financial collapses, Enron, WorldCom, fill in the blank, going down the list, series of events culminating fairly rapidly with the passage of Sarbanes-Oxley in 2002. And I guess a two-part question, how did you actually... the Commission was certainly in the spotlight in general even before these events, but these events brought a new, sort of became very front and center, made news in the newspaper. And how did you respond to them, and then how did perhaps Sarbanes-Oxley and the new attention being given to corporate governance and corporate malfeasance change your job, change what you were doing in the division?

**Stephen Cutler:** Yeah, so I think Enron announces a restatement. I want to say September, October of...

**Linda Thomsen:** 2001.

**Stephen Cutler:** Okay there you go. Linda actually oversaw the Enron case. So, you know 9/11, markets are I'd say quite volatile, Enron announces that its restating -- that's a big, big deal. We go to work, the criminal authorities go to work on that. Congress begins to get sort of active on what would ultimately become Sarbanes-Oxley. I think the thing that put it over the hump, if you will, was WorldCom. I think WorldCom announces its financial issues in June of '02...

**Linda Thomsen:** '02.

**Stephen Cutler:** And by the way on that one, the Chairman, Harvey Pitt, came to me and said, we're going to sue WorldCom tomorrow. And we had never done anything like that. And I sort of took a big gulp and I thought, we can't do that. I mean that's not the way the Commission operates, and I went back to the staff. I think we went back to Bill Baker and Larry West and Peter Bresnan and said we're going to try to do this tomorrow. And we got the same reaction of course from them. We can't do that, and we're going to do it.

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And we filed the papers the next day. And I do think sort of you know you had Enron, WorldCom, Sarbanes-Oxley, to his credit, Harvey... the other thing he did was, I think this was in the aftermath of WorldCom, said you know we're going to require every CEO and CFO to attest to their financials. We're going to do it in the form of a... we'll issue sort of an Omnibus 21A Report and require all public companies to come back, attest to their financials. That became one of the centerpieces by the way of Sarbanes-Oxley. That was a Harvey Pitt brainstorm. And there were lots of them.

By the time I think Congress was ready to do its thing, I think one of the people they were not going to listen to was Harvey, because the view I think of Congress was the SEC really had missed this. Notwithstanding, in think, Arthur's focus on financial reporting, but in quick succession you had not only Enron and WorldCom, but you had Adelphia, you had Tyco, you had HealthSouth, just big company after big company.

And you know I think we too at the Commission ultimately relied on as Judge Sporkin said at the outset, we too relied on the private sector to come and investigate it and Bill

did a lot of work on behalf of WorldCom, Enron, Special Committee, probably were in some of the others as well, Adelphia. So, we got a lot of help from the private bar as well.

One area I think of particular focus, and again I think Arthur was prescient on this, and some of the work Dick did was prescient on this, was what was the role of the auditor. Where were, Stanley, so you know, where were the lawyers? where were the accountants? that's what we began to ask as all these big, big companies collapsed.

And one of the things that we did was decide that we were going to actually change course in how the enforcement division dealt with audit firms. And for the last, I don't know how many, five, ten, years, 15 years, 20 years, the tradition had been, when there's a failed audit we're going to sue the individual auditor. We might sue the lead partner, but we're not going to sue the firm, unless somehow the national office was involved in the audit.

We changed that. We said why should audit firms be different than any other kind of company when it comes to the methodology for when you sue, when you don't sue. So that was sort of one change of course I thought, probably for the good actually, so that just to bring I think the accounting profession in with other professions.

And then as Dick said, we had Charley Niemeier there and we were doing case after case involving financial reporting misconduct until Elliot Spitzer refocused the world and us on what was happening on Wall Street.

**Harwell Wells:** And that actually is a follow up question which is, other people have already mentioned the US Attorney's Office getting increasingly involved in this space that once seemed to be the SEC's. And then State Attorney Generals, Governor Spitzer being the most notable example, coming in as well. I don't know whether they viewed it as competition, were they... were there collaborative relationships... speak freely if you want... what did you think of that?

**Stephen Cutler:** It... I don't think it... I don't think I would say it started out as collaborative.

**Harwell Wells:** Okay.

**Linda Thomsen:** There's an understatement.

**Stephen Cutler:** I think the first I heard about Spitzer and the initial salvo was getting an ex parte TRO or preliminary injunction against Merrill Lynch in connection with Henry Blodgett's research reports. And after he got the TRO, he called up Merrill. Merrill said, by the way I think you've just disqualified us from operating our mutual fund business. He said that can't be. So, he calls up, he says, you know what I just sued Merrill, and got this TRO and they're telling me. And I... well actually that's true.

So that was the first word we had that. Competitive, I mean yeah in some sense. I mean look, Elliot was in this incredible position of, if he did something visa vie Wall Street, it was icing on the cake for him. And by the way, it was more than that. I think he quickly realized without having... I don't know that he had realized when he set out on this course, but and this goes back to what Bill and Gary were saying about the coverage of the SEC and the coverage of the space.

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This was front page news. And in New York in particular, it was like the sports pages, what was happening with Wall Street. And I think Elliot quickly found that out. And also realized that he didn't have to cover everything, the whole territory, that was us. So if he went and picked out something, he was sitting in a pretty position. And it was just something, we had to sort of bring him into the tent, that's what we tried to do, and tried to negotiate sort of industry wide settlements, not only on research analysts but also on market timing, with mutual funds, etc., etc.

**Stanley Sporkin:** You guys all make it sound so simple, and it wasn't that simple.

**Stephen Cutler:** No.

**Andrew Ceresney:** Yeah, it's a recurring theme right?

**Stanley Sporkin:** What?

**Andrew Ceresney:** It's a recurring theme right?

**Stanley Sporkin:** Well, no I mean the business, there are a lot internal, and not only external, but you were getting a lot of opposition. And it wasn't that easy. And you had to overcome that opposition. And this goes back to the original theme that this all started and became the thing to do because of a guy like Irv Pollack. And I just realized that.

**Harwell Wells:** And speaking of opposition there's something puzzling. Because Linda you became Chair, I'm sorry you became Director in 2005.

**Linda Thomsen:** Yes.

**Harwell Wells:** Three years after Sarbanes-Oxley with all this not only as living memory but barely calmed down and yet this was a period in fact which there was push back against, as I understand it, from our conversation, push back against enforcement and aggressive regulation to the markets.

**Linda Thomsen:** Sure it was... well if you think about what we've been through in relatively recent time. We did not have penalty authority against issuers until 1990. The first big penalties against issuers were sometime later and they were measured in tens of millions. Here we are 15 years later and the penalties of hundreds of millions of dollars.

**Stephen Cutler:** If I can just interject, when I joined the Commission to be Dick's deputy in January of '99, the biggest... Dick oversaw the case against Xerox. That was, at the time, the biggest issuer penalty ever imposed in an SEC enforcement action and it was \$10 million. And by the way, the defense department was really pissed at us.

**Linda Thomsen:** Yeah.

**Stephen Cutler:** They were, you know, anyway...

**Linda Thomsen:** So yeah, half a decade later, five years and hundreds of millions of dollars. Steve has... Steve and Elliot and everyone else has taken on Wall Street in the research cases with mega dollars, big resolutions, and not against little companies, little offices, but major financial institutions, major brokerage firms.

Meanwhile there's also late trading and market timing somewhere along the way which has now got the investment advisors and investment companies all in a lather. And again, it's industry wide and never mind somewhere along the line we're going to get to the stock options backdating.

We had taken on, in various ways, entire swaths of the financial industry, and not surprisingly, people weren't that happy. And the London markets were getting to be quite strong, and people were starting to think, well we can go to London, we don't need this silly market. The chamber of commerce was all hot and bothered.

And Henry Paulson and Hal Scott were... did a study on American competitiveness. They were toiling away at. And thinking that we had gone far too far in enforcement, and we had all the introduction of all the criminal authorities who historically had done insider trading, but now we're doing financial fraud and carting people off for things that people didn't really think of as jail worthy in some sense.

And that report, I'll never forget was just about done, and it got to be 2008. And they scrambled and rewrote it because we were in the midst of the crisis as it were, so...

01:16:33

**Harwell Wells:**

**Bill McLucas:** If you think for a minute about what you just though, Adelphia, Tyco, Enron, WorldCom, then Madoff, and then you think of the push back by the mid part of the first decade of the century, and you remember that as soon as the massive accounting frauds started there were questions about where the hell was the SEC.

Now you know, you can be blamed for some things, but being able to see into and get ahead of massive accounting frauds by public companies is a... would be a real... it would be a great tool to have if you had it. And the reality is, everybody who sit's up here today, there's probably rarely a day you don't drive out of the building and say to yourself, I hope we didn't miss something today.

And it is a... it's a reality of the job that you're going to get criticized if you go too far, or you're perceived to go too far, and God help something happened that you didn't have somebody out in front of. Or that somebody made a mistake. And people make mistakes. We all, you know.

And I think it's one of the things that is rarely visible out there when you're looking at the job and the division and the people. But everybody who runs that division leaves the job with, if not an ulcer, it's just the beginning of a little ulcer that's built up over that kind of worry.

**Linda Thomsen:** Could be high blood pressure.

**Harwell Wells:** Can I quickly ask how Steve and Stephanie would like to respond to that particular comment? Because I feel like you haven't been able to respond, to join in some of the conversation...

**Andrew Ceresney:** They chose not to speak when they came here.

**Harwell Wells:** They're going to look at me and blame me.

**Steve Peikin:** Look I mean last year we triaged 16,500 tips, complaints and referrals. Did we... and we looked at every single one of them and made a judgment about whether to follow up, close, dig further, etc. Did we get every single one of those right? Probably not. I think that when I think about it, what we have to do is be in a position where, if we miss something or get something wrong, we're going to be able to defend the process.

And one thing that I've been pleased by is we inherited and have a really good process for that and for a lot of other things. And we think a lot about how we can improve on those processes to get the error rate even further.

**Stephanie Avakian:** Yeah. No, I think Steve's got it exactly right. And look you know as Bill said, there may be something, we all worry about that all the time. We don't know what we don't know or what we're missing. But I think we benefit from not just the TCR process that's been put in place, but really all the learning and everything that everyone at this table has talked about, right? Every director left something better behind them, and we've been the beneficiaries of it, whether it's the specialized units, the TCR process, whatever it is. But we're lucky in many ways that we've inherited something that works really well.

Lots of other things I think are different for us and folks have talked about what some of those things are. But we've been very much the beneficiaries of what everyone here has done.

**Stanley Sporkin:** Do you have any... do you get any pushback from the Commission?

**Stephanie Avakian:** No, they love everything we do. But I think, look all of the Commissioners bring their own perspective to the table, right, and some have been very vocal. So, I think different people have different views, and it's a difficulty navigating in a way that keeps all five happy all the time. And I think Bill really sort of nailed that.

That's probably been a progression in terms of changing. And I think, you know, we sort of do the best we can navigating what we can. And I think we try our best to get five every time. Can't always do it, but we do try.

**Harwell Wells:** And actually, sort of speaking of the big event I want to talk to Linda and Rob. Which is obviously 2008, leading into 2009. The financial crisis -- suddenly what you're waking up to in the morning is the fear that maybe American capitalism and the stock market is going to collapse. How do you as of course to be frank, as Bill suggested, criticism coming from the outside about the SEC's actions. How did you deal with both a series of incredibly quick moving events, and the fact that there was a lot of public criticism going on while you were trying to address these things?

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**Linda Thomsen:** Well there are a couple of things. First, in time of crisis enforcement has sometimes had to take a back seat. So, for example, the analogy is if there's a car accident somewhere, there may be a lawsuit coming, but the first thing you got to do is take care of the people who are injured. And so, in the financial crisis when Anderson was going under, implementing some of the rules, there are other things that are more important than the enforcement process. But the enforcement process continues, the cases continue.

One of the things you're on the lookout for are those who would take advantage of the crisis. So, it's the financial crisis... it could be the financial crisis, it could be September 11th, it could be Katrina, and in every one of those instances there was someone trying to take advantage of it in the securities market.

There were also people who are responding to the crisis itself. So is it... if people... which will have an impact on our markets. So, if people start selling stock in a massive way because of the financial crisis, that's not an enforcement issue although it may have devastating impact on our markets. If they start manipulating, sending out false rumors that's some... if they're acting in concert that's something else again.

So, we're looking at those kinds of things. And the criticism you just take. I mean I have concluded somewhat reluctantly in quieter moments at 3:00 a.m. in the morning or

something like that, that the criticism directed at law enforcement across the board, not just in the securities world, is a sign of American optimism. We spend about 3.5 seconds blaming the perpetrator and then looking to see who could have stopped him or her before they did that.

And you know the reality is you're not going to stop everyone. But if you think you can stop everyone you're going to stop more people than if you don't think it. So, I think you just keep doing it. Now Rob of course bore the brunt of the worst of it, because I was gone by the time people were dealing with the rest of Madoff. And it really was sort of a challenge for the agency.

**Robert Khuzami:** I remember after I accepted the job I was actually at Deutsche Bank getting ready to pack up and I happened to walk by, I think it was Dick's office. And I look on the television and I see Linda and five other division directors in front of Congress getting screamed at...

**Linda Thomsen:** Oh, that was a good day.

**Robert Khuzami:** By Gary Ackerman I think from Queens who basically said you couldn't find your ass with your hands or words to that effects.

**Linda Thomsen:** He said, we thought Madoff was the enemy and now we know it's you.

**Robert Khuzami:** So yeah look it was a difficult time maybe even well existential threat maybe a little overstatement but it was a big challenge. I came in March of '09, Madoff had confessed in December of '08. Alan Stamford's fraud was starting to unravel and in both those cases there were, you know, it certainly was indisputable that the Commission's enforcement exams staffs were in those registrants looking around and missed some of the misconduct that turned out to be a great deal of pain and loss to US investors.

The financial crisis had just come, the SEC was supervising Lehman Brothers and the [inaudible] and they all either blew up or merged. And congressional investigations, I think, you know Mary Shapiro testified once a month for four years. I testified eight or nine times in the first year. The press drumbeats. I remember bills introduced in Congress either suggesting that the SEC's jurisdiction should be turned over to the CFTC or I

remember, in particular, Senator Schumer introduced a bill providing for additional funds to respond to financial crisis case. There were 12 federal agencies that were afforded money in that bill and the SEC was left off the list.

And having said all that, I must say it was really a remarkable response by the Commission, by the staff, by the Commissioners, all of whom recognized that the Commission had to respond. And so, we got great support from Mary Shapiro, from the Commissioners to sort of embark on a pretty hard look at the SEC's processes. And all of that resulted within a year or so of creation of specialized units and elimination of branch chiefs. Creating a business manager, a function so that lawyers were no longer doing workflow and project management and IT, but fully invested in the cases.

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And even simple things requiring tolling agreements to be approved by the director personally so that people had to come and get that approval from us, and were reluctant to do so, creating the office of Market Intelligence that Steve indicated to really triage and analyze tips and compliance because they had turned out to be a real problem in Madoff.

And so, people worked incredibly hard. I see Dan Hawke, we used to call him the hardest working man in the division, like three full times jobs. People were doing their cases, running the offices and reforming the place sort of changing the tires on a moving car is another tire cliché, but maybe somewhat true.

So, I think, we were very fortunate to have a consensus, that everybody was kind of rowing in the right... you rarely get that in a private organization, you rarely get that in government, but everybody really understood that the goal here was to take a hard look at the Commission and do what was necessary. And we had the cover and the protection to do that. And I really think a lot of these changes are still in place today and they've proven to be effective and they'll change and be massaged in one way or another. But really great.

But you know the financial crisis also, it just continued to be a constant drumbeat throughout the four years, so much so that I literally felt at the end of it that if I... I if

sued Lloyd Blankfein and Jamie Dimon I'm a hero, and if I didn't, I'm corrupt or incompetent or both. And that was the single barometer by which the success of the division was to be measured, even though at the same time, you know record cases and a great deal of expertise was brought in, so many great efforts.

And then I think as a reflection as other of my colleagues have mentioned is the intense press scrutiny and the politicization of so much of what the enforcement action did. But all in all, it was I think the Commission is rightly very proud of itself for what it did during those years.

**Bill McLucas:** Rob I'm sure you don't know this, but Mary Shapiro at one point called both Dick Walker and me and said, who do you think would be tough enough and dumb enough to take this job. We both said, Rob Khuzami.

**Robert Khuzami:** I don't know about tough, but I know dumb. Even just successes were, you know, criticized. I remember we sued Goldman Sachs, not an easy decision. And then what do you get for that? You get a Congressional investigation, an IG investigation looking into the possibility that we only sued them when Dodd Frank was being contemplated in order to help to get Dodd Frank introduced. And then settle the case once Dodd Frank was passed because we had no need for the case anymore. And you know you can go up and testify to Congress about those things. And so, it was really... it was an overheated environment.

**Harwell Wells:** Okay suppose I want to close with a question for Andrew because you're the last former director. How has it been after all these events? You became director in 2013, Rob described his challenging four years, things calmed down, what did... perhaps thinking about looking back, what did you pursue while you were director?

**Andrew Ceresney:** Yeah, I mean Rob obviously has described a time that was incredibly challenging, but I like to say that I benefited from the fruits of what Rob and others put in place. I mean I feel like the four years where I was there, post-financial crisis, you now no longer are really almost... I mean you obviously focused on other types of cases, but you're, as you just said, your main focus was on financial crises cases. And we were now able to take advantage of all the things that have been put in place. Things like, for example, outside experts who were brought into the units.

You had five specialized units, now you had outside experts brought in from Wall Street, from other places who had expertise able to direct cases and direct where the cutting edge was. We now were on top of what's going on in the industry, on the street. And so that was... and I felt like we were bringing cases, really important cases, across the full spectrum in areas where we hadn't before.

One of the things we talked about was first of their kind cases because we were bringing many, many of those first of their kind cases, whether it be market structure, asset management unit, complex financial instruments and others. So that was one thing. I think second, taking advantage of the data. I mean the explosion in the last five years of data... one of the things I think Dick you talked about how the SEC was laggard in some respects on technology.

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And I feel like in some respects, the last five years, the SEC actually surpassed the industry in terms of their capabilities in analyzing data and taking, using big data to build cases, to detect misconduct and investigate it much more quickly, in all kinds of areas, insider trading, market structure, you name it, in every area we were taking advantage of that data. And I think that was... we brought in quants, we used other divisions that had quants, we teamed up with DERA, we created CIRCA, our own quantitative analysis group. And so that was really important.

Another thing that was really important was the whistle blower program. And this was obviously created by Dodd Frank. But again, it takes a number of years to actually see the benefits of that, but I feel like you started to really see and now obviously with the kinds of awards that are being announced now, I mean you obviously see this coming into its own really.

And then a lot of focus on the trial program. Obviously for years the SEC, one of the things that we haven't mentioned is trying cases and actually... and the SEC has tried cases for a long time. But I think the number of trials, and the focus on trials, and the public scrutiny that comes with winning. And unless you can win at trial, getting settlements that are really meaningful from parties is going to be difficult because they're going to know, they're going to take you on and they may well beat you. And so, having

a credible trial presence and being able to really win those cases, and I see some of those folks from the trial unit here. It's really... it was I think really important and we placed a lot of focus on that.

I remember early in my tenure we lost five straight trials. And there was all of this press about the SEC can't try a case, etc. And after that we went three plus years and didn't lose a trial, a jury trial.

**Stephen Cutler:** You brought them all administratively.

**Andrew Ceresney:** No, we brought jury trials. We actually lost some administrative proceedings. We're not going to go... we can talk about administrative proceedings if you want. But I think that would take another hour and half. So, I mean bottom line was I really feel like we took advantage of the changes that have been made and really sort of... we were able to spread our wings across lots of different areas.

**Harwell Wells:** And, actually, there are a number of wonderful issues that I would like to ask about, but unfortunately, we've already, I think, taken a great deal of time. So, hope the audience will join me in thanking our panelists.