

Securities and Exchange Commission Historical Society
Interview with Robert A. Marchman
Conducted on November 17, 2009, by Kenneth Durr

KD: Interview with Robert A. Marchman, November 17th, 2009, in New York City, by Kenneth Durr. Let's start with the obligatory background. I noticed that you were from Brooklyn originally.

RM: Correct. Born and raised in Brooklyn, New York, in what was originally called the East Flatbush section of town. I don't know what they call it today, but then it was the East Flatbush section. I went to public school in Brooklyn, Tilden High School. From Brooklyn, I ended up going to a small liberal arts college in the sticks of Western Pennsylvania called Allegheny College, which was a very interesting and different experience from Brooklyn, but one that profoundly changed my life in a very positive way. It gave me the opportunity to explore different avenues of culture and meet different people. The experience expanded my intellectual horizons. I also met an individual there who became a mentor and who really helped and directed me, and helped shape my interest in law.

KD: Okay. Who was that?

RM: Robert Seddig who was a political science professor.

KD: Did you study political science?

RM: I did, I was a political science major. When I went to college my first year, I actually declared my major in political science. I knew early on that I wanted to be an attorney. Dr. Robert Seddig was very well known in the political science department. I was fortunate that he took a liking to me. His area of expertise, actually, was constitutional law. We had a lot of discussions with regard to the goings on of the Supreme Court and as a mentor of mine. In fact, we're good friends to this day, which was one of the benefits of going to a small college, that you get to develop very personal relationships with your professors.

KD: So you moved on to Penn after that.

RM: Correct, I went to Penn.

KD: It's clear you were going to law school.

RM: Correct.

KD: Did you get interested in securities law or anything like that at that point?

RM: Actually, I didn't. By background, my father was a New York City police detective, and my brother, who was younger than me, was also a New York City police detective. So I had an interest in the law, and actually criminal law. When I was in law school, I did one internship, and I thought that criminal law was where I was going to be headed. I was

fortunate. Two things happened between my second and third year of law school. I was fortunate enough to be selected for an internship program with the U.S. Attorney, Southern District of New York, and got to spend time in the securities and commodities fraud area, which was then headed by an individual named Peter Romatowski. He took me under his wing that summer, and it was a phenomenal experience.

That was really my first exposure to securities law. Then the following year at school, Harvey Pitt was an adjunct at Penn, so I took Harvey Pitt's class, which now is amusing because years later, we were on the other side of the table in a number of matters. In any event, that sparked my interest. When I was interviewing for positions, I wasn't interested in going to a law firm because I wanted hands-on experience. I wanted to get right into the fray, so to speak. And I happened to be talking to a Penn law school alum who mentioned that I should look into the SEC. Fortunately, at the time, the Commission was just starting a program for graduates out of law school. Prior to that time, it was difficult to get into the SEC right out of law school. So they had started an honors program, and I was fortunate to get an interview.

I remember the interview well. It was an all-day interview. I went down to D.C., went through numerous interviews and, ultimately, ended up staying the entire day and late in the evening interviewing with the Director of Enforcement, who was then John Fedders. He one of the few people I actually had to look up to—literally look up to because of his height—so it was amusing. Things went really well, and he actually extended an offer of

employment to me that day, which I readily accepted, and that was the start of my career at the SEC.

KD: What kind of things did John Fedders and other people say to you about the enforcement division? This was a time of pretty significant change at the SEC.

RM: It was a time of change. The way the interviews were structured, you initially started out with the branch chiefs, and if you made the cut with the branch chiefs, then you went to the assistant directors, and you had to wait, and they would tell you whether you should stay or we'll get back to you. And then after that, you met with the associate director. I met with Gary Lynch, which I remember to this day. It was late in the evening in D.C., 450 5th Street. And then after that, Gary told me to wait, and that we want you to meet with the director.

A couple things came through all the interviews: One was the importance of the work of the SEC and what the work of the Division of Enforcement meant to the integrity of the markets and protecting the public. Another was the complexity of the area of securities law, and whoever wanted to practice in that area had to understand that there were a number of nuances to become familiar with. At the time—it was 1983—there were still areas that were developing because, in essence, the major component of the securities law of the 1934 Exchange Act was still evolving.

The third thing that stuck with me was the history of the Securities and Exchange Commission and the division, and the pride that employees had who worked there, as well as those who left. So those are three major facets, if you will, that stuck with me during the interview, and why I was extremely thrilled to be given the opportunity to work there. I remember it to this day. I was going back on the train that night to Penn, it was really a happy occasion.

KD: I'll bet. It must've been quite a day.

RM: It was, it was.

KD: Tell me a little bit about what your job was like as a young lawyer in the Division of Enforcement.

RM: A lot of that was like yesterday, actually. I will tell you, even to this day, I'm very proud to have worked at the SEC, and to be an alumnus of the institution. It saddens me to hear some of the things that are going on, and I'm glad that the institution is back on the right track. But the one thing that struck me from day one was, again, the pride of all the employees that worked there. I was very fortunate, looking back. I know there was a golden age when Judge Sporkin headed up the division, and I just missed that, but I became well aware of Judge Sporkin and what he meant for the division.

I was fortunate later on to have worked for one of his key people, Dave Doherty, who was and is a mentor of mine. But when I was there, Ted Levine was a senior management team member, there Bruce Hiler, Gary Lynch, Bill McLucas, people who were phenomenal in their own right. Excellent lawyers, but also good people and very committed public servants.

KD: What kind of assignments did you get?

RM: Well, interestingly, right off the bat, the first case I had I remember to this day. I was thinking about it because it was an accounting case. The reason why I remember it is because I didn't have much of an accounting background, so I was pretty much thrown into the water. In fact, I remember the case. The case was against a financial institution in Cleveland, Ohio: Broadview. We ended up bringing a case against Broadview. It was one of the first cases against a firm and an accountant, I can't remember the accounting firm, but it was for auditor shopping.

What Broadview did is that they engaged in a number of fictitious land transactions to pad their balance sheet, and they went to different auditing accounting firms in order to get a good review. I was assigned the case with a senior attorney, John Courtade, who was a great guy. He helped guide me, but told me "You're going to be working on this case, too, and get prepared for testimony." There were no courses that we were given on depositions, so you pretty much had to get a book and observe other people. I sat in a couple of times with John, and then I was on my own.

But it was phenomenal. Within three months, I was taking testimony of senior people at a financial institution. One of the key people on the other side was an individual, Sy Glanzer, SEC alum, who was involved in the Watergate hearings. All this as a young attorney was pretty overwhelming.

So at any rate, we did the case. I had to travel, which I hadn't done much before. I had to go to Florida, John and I. In fact, I remember our first trip to Florida because they lost my luggage. But it was amazing. We went to the sites to see some of the so-called land purchases that the company made. I had to get up to speed on the FASB, the accounting standards; I had to go piece together the case with John, and we were eventually able to make a case that really what this company was doing was just shopping around, and that they had made false statements on their 8As.

That was one of the first matters that I worked on. Then I had a number of insider trading—not large-scale—cases. But it was interesting. After we finished the Broadview case, I happened to run into Sy Glanzer—and this just goes to the core of the camaraderie of being an SEC alum. He pulled me aside, actually, and critiqued the way I did the OTR, and said, "You didn't hear this from me." But it, again, just gave me a sense of why the institution was special, why the place was special.

We did a number of financial cases, and continued to work through the ranks. Within a year or so, I had a new branch chief, Richard Murphy, who was a great person. Actually,

I was very fortunate. I ended up being in a unit with Richard Murphy as a branch chief, Bruce Hiler as my assistant director, and Bill McLucas as my associate. So it was just phenomenal.

What was phenomenal about the experience was the care that they took to help develop their attorneys and my legal skills. Ultimately, I was interested in management, and they helped me with that. But what was interesting as my career went on is that at some point, I got involved with an insider trading case that involved Ivan Boesky. Within a couple of years (I must've been there maybe two, three years) I actually took Ivan Boesky on the record.

KD: Was this in the Jefferies case?

RM: This was before, actually. What happened is—and to the credit of the staff, I didn't know what was going on with the whole Drexel investigation when I took Boesky—I'm taking Boesky on the record. And unbeknownst to me, on the other side of the wall, so to speak, there's this whole investigation going on regarding his trading on inside information. I had a case where there were a number of mergers and acquisitions where his account came up, and so I was bringing him in for testimony to ascertain what he knew and when. And what was interesting is he was very belligerent and made it clear that, in his view, I was wasting his time.

In fact, he was represented by Harvey Pitt. It was an amazing experience for me, a relatively junior attorney, taking this person who was always in the *Wall Street Journal* on the record. One of the things that stood out about that is we were in 450 5th Street in this enclosed conference room, so it's myself and an investigator and another senior attorney, and he has his entourage of attorneys, and Ivan Boesky's asking Harvey, "Is it here yet? Is it here?" So I'm thinking he's in the midst of some big merger and acquisition, and they're having the associate run out and check on this delivery.

So finally it comes, and it's his lunch [laughter]. A box lunch, which he takes a little bit and then leaves the rest, and says if we want anything, we can help ourselves, and then he left. So, needless to say, the guy was a piece of work. I'll leave it at that. To juxtapose with that, within a couple of months, I was then brought over the wall. Myself and another junior attorney, Lani Lee, were brought over the wall and told what was going on, and that certain staff were being selected for cases involving the Boesky matter. It was at that time that we got assigned to the Jefferies case.

That was phenomenal because here you are a relatively junior attorney, and you're getting assigned to this major confidential case where we had to fly back and forth to California, take testimony, and ultimately, make the case against Jefferies that led to him flipping. So we put together the case.

KD: Now this wasn't just regular insider trading stuff.

RM: No, it was parking. What he was doing was actually parking positions for Ivan Boesky's account. He also, in essence, allowed Boesky to shield the fact that he had the positions which he had traded on inside information. Additionally, he was looking for favorable net capital treatment for his broker dealer. So we pieced together a lot of information. It was presented to Mr. Jefferies and his attorney. It was interesting. When we spoke to Mr. Jefferies—and we spoke to him on the record—he was very civil and courteous and gave us what I thought were straight answers, but we ultimately developed a case which was clear, based on testimony and correspondence, that he and Ivan Boesky were engaged in a scheme to defraud. And he, eventually, agreed to settle, but did it in a way where it was kept confidential.

Once he agreed to flip, it got really interesting, because we had to bring him in. The U.S. Attorney then got involved and had to actually, one day, fly him in to the office up to a floor in our building where there were no other persons, bring him in through the garage, have him go upstairs, and then debrief him. He really told us everything that was going on. It was phenomenal in terms of getting involved with that case, making the case, being involved with something that you knew was part of a major scandal. That was definitely, without a doubt, the highest profile matter that I worked on, a relatively junior attorney.

What was interesting is then after everything broke, we then, myself and Lani, had to go debrief Ivan Boesky. And let's just say he was a totally different individual when we met him the second time. I said, "Good to see you again." He was much more forthcoming

this time. A couple of times we had to remind him of the stakes if he didn't tell us candidly all the information. It was different. I got to see two sides of the man.

KD: Did you just debrief him about the Jefferies' case?

RM: Yes, in connection with Jefferies. And then there was another component of a case that we were working on with Bilzerian. We were going to him to get information to bring out that case, which ultimately resulted in both a civil and criminal action. Interestingly for me, what ended up happening is—one of the habits I picked up from college which I still have today is I'm a very good note taker. If we're in meetings, I can write pretty much verbatim. When we debriefed Boyd Jefferies, I was the note-taker. Years later—actually, it was when I started here at the New York Stock Exchange—the Bilzerian trial had started, and I was subpoenaed to testify at his trial. At the time, I didn't understand why. But then when they said the notes, I knew what it was about. And they actually called me to testify.

Bilzerian was represented by Art Mathews, who I knew, and myself and another colleague of mine, Michael Missal—we're good friends to this day—were called down to the courthouse. We were represented by Colleen Mahoney, who was in the General Counsel's Office at the time. I knew Colleen. What was interesting with that is we were waiting to testify, and Art knew both of us, so he came in, and he said, "Well, this is going to be perfunctory, and we just need to walk you through the notes that you took,

Robert. And, Michael, you were involved in some interviews, so we need to talk. So we'll get you in and out."

Mike went first and I had to wait in the waiting room. And while I was there, I could kind of hear some of the things that are going on to the court. And Art—he's usually a mild-mannered guy—but I could hear him raising his voice and screaming at Michael while he's on the stand. [Laughter]. So Michael comes back. As they come to get me, I see him leaving, and he just—so it was my turn to get in there.

And it wasn't that bad, actually. But what was interesting was when I got on the stand to testify, I didn't understand, the Judge got off the bench to—maybe he wanted to exercise or something—but he stood off to the side while I was testifying, which didn't particularly make me feel comfortable. Anyway, it was fine. But that was another interesting experience that you don't normally get from working as an attorney on a case that you actually then have to testify at a proceeding.

KD: You're heading toward the end of your career with the SEC.

RM: Yes.

KD: Tell me a little bit about the decision to leave.

RM: It was extremely difficult, candidly. The reason why I left had nothing to do with the Commission. It was personal in that I'd been in D.C. for six years. I loved D.C. then, I love D.C. now. I think it's a great place, but I hadn't seen my family that much. Also, and probably what trumped things, is that my wife and I were expecting our second son, and financially, I just wanted to be in a better position to provide. But even then, I didn't want to go to a law firm. I really like the work of regulation. I believe we fulfill a critical role in society. I like wearing a white hat. I believe, particularly in the United States, that the integrity of our marketplace is paramount to the creation of wealth and capital investment. And I still believe to this day—look at my career—that what we do is important. I was looking for a middle ground. Fortunately for me, the New York Stock Exchange was in the process of ramping up their enforcement program.

KD: Why?

RM: Because the SEC had come in and done a review and said, "We're giving you two choices. Behind door number one is you invest more resources in your enforcement program. Behind door number two is a legal action. So you pick." Guess which one they picked? That was why. The SEC had made a determination that more resources were needed in the enforcement program. And that was beneficial for the New York Stock Exchange, for investors. But it was good for me, personally, because as a result of that, Dave Doherty was brought on to head up the enforcement program. I think Dave may have come on in late '88, '89. And I had talked to Bruce Hiler and Bill McLucas,

who were mentors—are mentors—and are good friends to this date, and told them what I was going through.

And they suggested, "Well, look, why don't you talk to Dave? We don't want you to leave, but we understand." So I reached out to Dave Doherty, came up for an interview. It went great, and he made me an offer.

KD: What was the challenge here? Resources, of course, but what kinds of things needed to get done that weren't getting done here?

RM: It's interesting because I hearken back to my days and experience at the Commission. One thing was to enhance the reputation and let the industry and the public, and particularly the SEC know that we were serious about our jobs. When I was at the Commission, self-regulatory organizations were not looked upon in a favorable light. There were concerns about whether or not folks were beholden to the industry and whether they going to do their job in a serious nature when you came across violations. So the challenge was not only to develop a disciplined program, but to get the message out that we were serious about business. Bringing in Dave sent that message. If people know Dave—I've gotten to know him and been very fortunate, Dave is a pillar of integrity, but he's very serious about what we do as regulators. To me, that was one way to send out the message because he wouldn't have taken a position unless he was given free rein to do what needed to be done, and that's what he did.

They expanded the middle management ranks. I was brought in as the equivalent of a branch chief. It was working to build up the culture, discipline, and making staff understand the importance of our work, and also a message to the member firm community that we were not going to tolerate nonsense, and we didn't.

KD: What kind of transition was it coming from a regulator to a self-regulator? Was the setup different? Were there things that took you a while to get used to?

RM: What was helpful was with Dave being from the SEC there was that bond. I had free rein to be serious about what we were doing—high expectations, commitment to excellence. So from the culture in terms of what I wanted to implement, that was the issue. Personally, the issue was getting a handle on the language of an exchange and trading market. At the SEC, the cases that I worked on were at a high level. I was doing accounting work, financial fraud, corporate fraud. I didn't really do a lot of the market trading cases. When I came here, I had to familiarize myself with the market at the close, transactions, limit orders—all this language, and my head was spinning.

So I had to familiarize myself with the language, the terminology. Also, “conduct inconsistent,” what's that? How do you apply it? That's our catch-all, umbrella term, when I was used to 10(b)5. I had to familiarize myself with that. Also, having to understand that, unlike at the SEC where we had the tool of a subpoena, at an SRO, you don't have subpoena power. You can reach out to people and ask them to come in, and

they can cooperate or not. But we did have the tool that if they don't cooperate, we can bar them.

KD: How much did you use it?

RM: Not that much—we used it when we had to. We didn't have to use it a lot, but one of the things we did—and I was involved with this with Dave—was, the bar, up until maybe the mid-90s or so, was one that was an open-ended bar. If you failed to cooperate, when you decided to come back, you cooperated. The case may be stale, and if you cooperated, then we would allow you back in. We changed that, and we went to the board here to get approval to change it so that if you failed to cooperate, there would be a trigger within six months to turn that into a permanent bar.

So it raised the stakes in that you no longer could just sit on the sidelines, wait for time to pass, and then decide one day, “hey, I want to come in.” That raised the stakes. With that additional tool at our disposal, we really didn't have to use it that much. If someone was in the industry, we didn't have to use it that much. If someone was out of the industry, they may have decided that they weren't interested, but we then would use it. But for those folks in industry, and particularly with firms, we didn't use it that much.

KD: Okay. So you're looking at people who are on the floor and brokers, and essentially, just looking for evidence that people are doing things that they shouldn't be doing. Where are you getting this information? How much of it is market surveillance developing?

RM: I'll tell you, one thing that was interesting when I started—when I left the SEC it very sad time for me personally because I just loved the place. But I was working on the Drexel case at the end, and that got to be a little bit of a drag. One of the things that happened was, I figured when I came here, no more Drexel. Within a year, or less than a year, the Exchange decides it's going to look at the supervisory aspects of the Drexel case, and particularly, Fred Joseph, Mike Milken's supervisor. They did so because one of the issues was the SEC, based on Section 15, could not bring a supervisory action against Fred Joseph if they didn't have evidence of an underlying violation.

So being that there was, at the time, not much going on with him, the Exchange decides they're going to look at that, and also Drexel, because they were a major member firm. So I was tabbed to the Fred Joseph case. As a branch chief and with another staff person, I kind of wore two hats. I actually was a manager, but I actually did a lot of hands-on work, which resulted in having to go to California and talk to people out there, and take Joseph on the record testimony. But, interestingly, at the end of the day, we ended up making a case against Fred Joseph, and I actually did bring a case against him for a failure to supervise. I think it was the only action that was brought against Fred Joseph by a regulator in connection with the Drexel case.

KD: What was the penalty then?

RM: We gave him a couple years bar, supervisory bar, and I believe there was a fine as well, but it was hard-fought because the point Joseph kept trying to make was that these things were going on and were concealed from him. And we were able to show, in essence, the reason they were concealed is because he didn't bother to look, and he had a responsibility as a supervisor to do certain reviews and see what the office looked like, little things like that. But that was interesting.

KD: That's an example of something that everybody knew was going on.

RM: Right.

KD: What percentage of your work at that point was stuff that you were generating internally?

RM: At that point in time, the bulk of our referrals came from firm filings because at the time, member firms were required to file form U5s when they terminated an employee with us. So the bulk of our cases came from firm filings, member firm examinations, because we had the member firm reg. group here. This is all before the formation of FINRA.

KD: And is this just looking at the information that the members routinely provide to you?

RM: Yes, it's information the members routinely provide. It's the result of examinations that were done by our member firm examiners, and then there were some market surveillance referrals based on the surveillance work that was done. That would be looking at the

work of brokers and specialists with regard to things like failure to maintain a fair and orderly market, issues with regard to a broker trading ahead, things like that were picked up. But I would say at the time, the bulk of our work was from the filings that the member firms themselves made. We also had cases based on what we read in the newspaper, and also that we would get sometimes tips, people complaining. But, definitely, the bulk of them were from the member firm filings.

KD: You moved over to market surveillance after a period of time, right? In the time you were in enforcement, did things change? Did you beef up everything, or was there some specialty that you moved more?

RM: No. What happened in enforcement—I was fortunate. I was promoted to vice president, department head, and didn't have a specialty per se. But one of the things that I did get involved with was that when the research analyst matter broke, Dave Doherty assigned me to head up the investigation for the New York Stock Exchange enforcement group. That was a pretty amazing experience as well because you had many regulators who were involved with the case. You had the New York Attorney General, you had the SEC, you had the states, you had New York Stock Exchange and you had the NASD. So we're all involved in this case, and trying to work out a strategy so we're not all tripping over each other, and also trying to work out a strategy that everybody feels that they're playing a key role in the case.

So we, eventually, worked out a strategy that was pretty much led by Steve Cutler. What was interesting for me is when it first started and we were supposed to try to keep it from the press, we actually had our initial meetings in this building, and they were attended by Elliott Spitzer, and Steve, and the key heads of all the SROs and their lieutenants, and/or senior people, and then representatives from the firms. What we did is had the attorneys coming on Pine Street, the back street, to avoid the press.

At some point, the press found out that we were having the meetings here, so one day I come into work, and there are all these camera crews right in front of the building waiting for us to come in. Fortunately, we had them go in the back, but that was a pretty interesting meeting as well, I would say.

KD: You talk about everybody finding their role in this team. What was the thing that the Stock Exchange was looked upon to do? What was your part in this process that couldn't have been done by any of the other parties?

RM: I would say we, the NYSE, and probably the NASD, focused on the supervisory aspects of the firm. For all the cases that we conducted then and conduct now, supervision, focusing on the internal controls processes and procedures, were things that we were very familiar with. We were very familiar with the operations of a firm. So we were able to give the other regulators some insights as to operations.

When some firms said they had a separation between investment banking and research analyst—when you really scrutinize it, it's nothing more than a thin veil, which can be easily pierced. You need to be able to have a discussion as to why it's bogus, it's not really a wall at all. It's very transparent when there should be a brick wall that prevents the flow of information. The role we played was to be able to provide some insights based on our expertise.

And it all, in my view, in the end worked out. I will say, as I've been in the industry and have looked at how the SROs have been viewed and their involvement—the research analysts case and some other matters that I've been involved in with the SEC, even of late, demonstrates to me that there's definitely more of an acceptance from the SEC as to the ability of the SROs, and now FINRA, to do arm's-length important work without concerns that we are somehow beholden to the industry.

There's definitely a trust factor there, there's more cooperation, there's sharing of information. We're involved with meetings with a variety of different regulators, whether they be at the state or federal level—we're part of that team. And to me, that's an important development, because given that we all don't have all the resources we would want (I say that because if anybody asked you about resources, you would always say you never have enough)—with that said, it's important to efficiently and effectively use resources that are dedicated to the regulation of the market, and you have to use them wisely.

It doesn't make sense, for example, for the SEC to duplicate a matter if we can do it efficiently, and effectively, and get the right outcome at the end of the day. And I've seen that evolution over the years and to me, that's important, one that benefits the investing public and maintains the integrity of a market. I think that's an important development.

KD: I seem to recall that in this period of time when the regulation is still in with the Exchange that regulation was something like half the people or close to half the people in the whole organization.

RM: Correct. At the time, in New York, about 50 percent of the employees were in regulation.

KD: How would you get people to come into the regulation side and build careers there when they could maybe make more money doing something else?

RM: We would have discussions. One thing that we had to make clear to people—because we still had to deal with, I think, some perception issues—was the quality of our program. By that I mean the SEC has a phenomenal reputation, and in my view will always have a phenomenal reputation, so they're viewed as the gold standard. But you have to let people know that you're aspiring and working to be right there with them, and that you're trying to work diligently to have the same outcome, and that you're putting the resources in, that you take what you do very seriously, and that you want to dissipate that mentality that this is a nine-to-five place. It's not.

We impress people with our commitment to our jobs, we get people who are committed to what we do. It hasn't been that hard of a sell. You do have a number of people out there who understand the importance of this work. Having the middle ground, if you will, between being with the government and a law firm in terms of salary—it's a nice middle ground. That's important as well—benefits and everything. That enables you to live comfortably, and live comfortably but do the right thing.

KD: During this time, or even after, did you ever sort of get the sense from the people on the market side that the brokers are unhappy, that they wished you guys would cut it out?

RM: It was interesting. We talk about my career. As we fast forward to what ended up as the corporate governance changes, there was a lot of rumor that—and particularly in this whole thing with Dick Grasso—somehow we were being influenced. To me, people who had that mindset didn't have an understanding of who was running the enforcement program. Dave Doherty. If they had known Dave Doherty and what he stood for, they would have known that Dave wouldn't have tolerated outside influence—he would have left. He just would have said, "This is not for me," particularly having been mentored under Judge Sporkin.

For me, in fact, it was interesting that when I interviewed, that was one of the things I talked to Dave about. I didn't want to come to a place that was a step down from the SEC because of what I thought of the SEC, my respect for the SEC, the people at the SEC.

And Dave had said, "Robert, that's what I'm working toward, and I want you to help me get there." So that's what we did, and I think we accomplished that goal.

But the point, I will tell you, with Dick—I only have one experience with him where even the issue was raised about our work. And, actually, I remember it because we were brought to his office. Drexel had raised an issue about our doing the investigation because of the SEC work and they thought that it was piling on. So they reached out to him, and we were called to his office. Dick said if we didn't do our jobs, and didn't do the work, he would fire us. That was my only exposure regarding my enforcement work to the person who supposedly was influencing us.

My point is, yes, the folks on the floor may have complained about things or didn't see our perspective in terms of why we saw certain things important and not minor. For example, you can't trade ahead on the floor. It's serious stuff. I never felt influenced in any way while I've been here to do my job. Now I'm in meetings with the other side, they're complaining. That's been my take, and continues to be my take.

There have been a number of things that have happened here since I've been here. We used to be over at the World Trade Center. I was here on that day. We collectively, as a team—thank God no one was killed in our group—collectively as a team pulled through that. We were the only division, actually, that was over at the World Trade Center. And the Exchange went out of its way—it was Dick Grasso, to give credit where it's due—to make sure we were back. People were pretty surprised at how quickly we were back in

business. I mean within months, they had a temporary space for us. We were back in business—it was amazing how quickly we were back on line doing our work.

KD: And then you came over here?

RM: Yes, then we came over to 14 Wall. So we were over at 20 Broad for maybe a year or so, and then we came over to 14 Wall.

KD: Okay. Well among the highlights—the World Trade Center, and the Dick Grasso imbroglio, I guess you could call it—sometime in there, you're talking about the floor and front-running.

RM: Right.

KD: And that blows up into the next big thing. Either you're in market surveillance or close.

RM: No, I wasn't at that time. I was in enforcement. The interesting thing with that is—look, some specialists on the floor, there's no other way to put it, defrauded the investing public and they abused their privilege and unique privilege of being on the floor and trading on behalf of the investing public. They just abused that privilege. And the folks who did that deserve to be whacked.

From here, from this vantage point, I was in enforcement and, in fact, I was once again tasked with leading that investigation on the enforcement side by Dave for the Division of Enforcement. We served as partners with the SEC, their NYRO office. And that was interesting because the New York Regional Office staff ran the investigation. We partnered with them in doing the investigation. What was interesting with that, and what kind of got lost in everything, is that that case came to light because of a market surveillance analyst doing a review of surveillance alerts, kick-outs, and saw a pattern that was unusual and raised it up the ladder and then, eventually, got to the SEC.

Now there were some issues in terms of how quickly it should've gotten all that, but it was the Exchange that identified the problem. This goes to the issue you were talking about earlier about the value of surveillance because that was instrumental. And so we partnered with New York. Naturally, they had concerns about what was going on there, and how much could we be of assistance since it could be viewed as a negative for us. But we said, "Look, if there's a problem, we want to find it. No holds barred." And that's the way we worked with them.

So we worked with them. The Office of Compliance and Inspections and Examinations was intimately involved in the matter because they had come and done examinations. That was another part of the problem from the SEC 's view. OCIE had done examinations previously, and apparently, surveillances were not tweaked in a way that they had recommended. If they had been, maybe things would've been caught earlier.

Even with that said, the surveillances they had in place did find the problem. In any event, I led that investigation. It resulted in fines of, I think, nearly \$50 million.

KD: When you're trying to figure out how to keep this from happening again, I assume you would look at why it happened in the first place.

RM: Exactly. We have to do an analysis.

KD: The question that I have is, is this something that just got bigger over time due to structural changes or technological changes? Why did this pop up at that point?

RM: Well, you did have an evolving market, so the market's changing. I think, in terms of the structure, that may have had an impact on it because we moved to decimals, so that has an impact on the spread and the type of transactions that could be done. Systems that were in place were changing in terms of technology, and I think that may have had an impact on the ability to do these trades.

All that snowballs into a situation where folks are gaming the system, and they're trading ahead in a way that is below the radar screen. That was one of the issues with the case.

It wasn't that, like an insider trading case where you have someone who didn't trade before, and now all the sudden they're making a \$500,000 trade and it shows up on the trader screen, and you're saying, "Wow." With these trades, there were a lot of small trades that added up to the thousands of thousands of trades, which, when you add them

up, add up to millions of dollars. That's the other issue—that you had to scrutinize the trades, review a lot of the trades, and match them up with the technology to make sure you're matching up the right trade.

It was very intense and in-depth. But as a result that led to changes in the system. Just like—and I wasn't intimately involved with this, but I was involved with it—with the floor brokers who gamed the system because of a lack of technology with regard to the audit trail of their orders. They were able to trade ahead, hold orders in their pocket, and when they saw something was profitable, put in an order for their own account. As a result of that, that led to a system now, and audit trail that was put in where now the trades are followed and we're able to track them.

As a result of this whole fiasco with the specialists trading ahead, and with the move from the manual trading to the more electronic trading, what was done is that the trading system now is hardwired and the rules are embedded into the system to the extent that, for example, the system will not let the specialists trade ahead. There are certain limit order display functions that will be triggered. Now the rules are embedded into the system. You need to learn from experience.

Now it was at that point that I went over to head up market surveillance. Rick Ketchum came in as a result of the fallout from the specialists case, and also the Dick Grasso fiasco, as well as the corporate governance concerns for enforcement and market regulation and market surveillance. So a separate, independent board was set up.

Independent directors. Rick Ketchum was brought on as the chief regulatory officer, the CEO of the New York regulation. Within a year, Rick asked me to move over and head up market surveillance to help the transition to a new model.

We were going into a new market, a hybrid market, so systems had to be changed. One of the major things we had to do, very candidly, was to regain the trust of the SEC. That was one of my major challenges, to regain the trust.

KD: How did you do it?

RM: Well, I did it with a lot of communication, and a lot of outreach, and a lot of transparency in what we were doing. Whenever we did have an issue with new systems we were trying to implement, we called to let the SEC know.

KD: Who were you talking to over there?

RM: OCIE, John McCarthy for the most part. But we let them know proactively. The worst thing to do would be for something to happen and them to read about it in the newspaper. So that never happened on my watch. If something happened, we would let Rick know, and then we would call the SEC. It was a lot of communication, a lot of dialogue, a lot of listening to what they had as recommendations. Eventually, over the three years I was there, we did see a change.

And I brought on a new team. I brought on some people from the outside. John Malitzis was a key person who was in the industry, was at the NASD, was well-known in the industry by folks as someone who knew the markets and trading. He had worked with Rick previously. I brought him in to play a key role in market surveillance in the area where they were concerned, moved some other people around. I wanted them on the outside to know we were very serious about what we were doing. So it was focusing on where we needed to make enhancements, lessons learned, talking to the SEC.

The other thing was to have a dialogue with the industry, our member firm community, to reach out to them, and let them know, "Hey, look, not everybody down here is a crook, but you've got to work together. You guys need to proactively flag things for us as well. So if you're seeing issues, you need to let us know, and we'll work to have more dialogue." So we had more dialogue with them as well, and I think that helped because when there were some issues, they raised them. We established periodic meetings, monthly meetings. It was a very hectic time because we were in the process of going from a manual to an electronic market, so there were a lot of systems changes, transitions. All those systems changes resulted in an impact on surveillances because you had to have surveillance in place to monitor the new system.

KD: And it sounds like you could get to better surveillance that way.

RM: Exactly. When you went to the electronic trading, you could put in systems that would more readily follow the audit trail of trading in the system. So that helped. And then

putting in blocks, if you will, with regard to the trading. For example, Rule 92. If the system recognized a customer order, and a specialist tried to put in a principal, it would block the trade from taking place. That made it easier—automatically those things happened. So we had to work through that. And then on top of that, the Exchange was sued by the Commission, and they brought in a regulatory auditor. That was part of the settlement.

We had to work with the regulatory auditor. Again, the same thing—open transparency, letting them know that we want to work to get this right if they have recommendations. It was painful, but at the end of the day it did result in a better surveillance program, and a better program for the Exchange.

KD: This is also the point at which you've just set up the separate board, so you've essentially split regulation.

RM: Correct.

KD: Did that make a difference day to day in the way things happened?

RM: Not really. Again, the key is who's the chief regulatory officer. Rick was phenomenal. I mean, it was a pleasure to work for him. Without a doubt, he is one of the brightest people I've ever encountered. His grasp of market issues, whether it's the nuances of market trading rules, or financial operation, or even enforcing matters, his grasp and

ability to conceptualize issues is just phenomenal. It was a pleasure for me to work with him during the short time I did. I do have some feeling of regret that he left because he's such a good guy.

KD: Let's talk a little bit about that too. First you've got enforcement split off, and then, essentially, the whole piece goes away. How did that change your day-to-day working in enforcement at the Stock Exchange? My big question is how did you decide what was going to go to FINRA and what was not?

RM: That's important because a lot of people still don't understand it. I get jokes now. It was funny. It was about a year and a half ago, Penn Law School invited me to be a keynote speaker at an event. They, annually, host a securities regulation institute where compliance personnel come in and have all these speakers at the end of it. I think it's a three-year program, but at the end of it, you get some type of certificate. Anyway, they invited me in to be keynote. And the professor who runs the program says to me, "I didn't know you still had a job." [Laughter]. This was right after FINRA.

But, in essence, here's how it worked. Internally, there was a lot of anxiety from the staff. People were wondering, "What's going on? How's that going to impact our work?" Because our people are committed and dedicated to what they do. To me it all worked out well. We were looking for efficiencies and effectiveness. It changed our focus, and at that point in time I also came back to enforcement, to head the division of enforcement. What it means to us now—as you asked earlier, is where do we get most of our cases?

Pre-FINRA, we got most of our cases from the filings from the firms—those would be the sales practice type cases. Now we get the majority of our cases from market surveillance because we are focused on the market trading issues. FINRA is focused on the member firm issues, so it's basically the sales practice financial operation. If you look at the types of cases that we bring, they're cases that deal with trading on the floor, or impact the New York Stock Exchange.

Now, since the merger with Archipelago and the merger last year with AMEX—for example, a month or so ago we brought a case against an individual who was violating Reg SHO, circumventing the options market maker exceptions to allow other broker dealers to effect naked short sales, and it was a profitable setup for this individual, because he was getting commissions on the so-called trades that he was setting up. But we ended up bringing a case against him with a \$4 million fine.

So we'll do those, we'll do cases that deal with—there may be some trading ahead—but it's more, our rules, for example Rule 92, states you have to document it if you get approved to trade along with an institutional customer. Some of the firms don't document that they get the approval, but it is a violation if they don't. So those type of things—market manipulation cases. Those are the type of cases now. We have FINRA, which is still, pursuant to a regulatory service agreement, doing some work for us in an enforcement vein, although those cases are winding down. Those would be primarily the sales practice cases.

Those would be major market timing and mutual fund cases—those would be the type of things that they will handle. That's basically the split now.

KD: Have you found that you're able to focus more on what you're doing, given this more finite portfolio?

RM: What I would say is, what it does is it narrows what you're looking at. But remember, we were a much bigger division prior to the merger, so you had more people who could look at the different types of trading. So our procedures haven't changed—the manner in which we do the job hasn't changed. We're still committed to excellence here, and continue to do that.

KD: Terrific. Well, thanks. I've taken more than an hour. Is there anything that we haven't talked about that we should?

RM: No. I appreciate the opportunity. And I will just say again, to this day when I'm talking to students who are in law school or junior lawyers I still do not hesitate to recommend the SEC as a place to work to start one's career. I think it's a phenomenal institution. I'm glad to see that things are back on the right track, and I hope they continue to do so, but I feel privileged to have had the opportunity to work there.

KD: Terrific. Thanks a lot.

RM: Sure.

[End of interview.]