

Oral History Interview of Andrew Ceresney

With Dr. Harwell Wells

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Harwell Wells: I'm Harwell Wells of Temple University and we're here in the New York offices of Debevoise & Plimpton interviewing Andrew Ceresney about his time as Director of Enforcement at the Securities and Exchange Commission for the SEC Historical Society. We like to start with a little background about the interviewee and your career, I guess originally to law school. So if you can tell us a little bit about where you grew up and where you went to school.

Andrew Ceresney: Okay. I hail from Brooklyn, New York where I've lived 40 of my 47 years. So I'm a Brooklynite originally and I live in Brooklyn still now. I went to Yeshiva for 12 years, so Jewish day school and then I was at Columbia for undergrad and then Yale Law School for law school. I clerked for two excellent judges, Judge Mukasey who subsequently became my partner at Debevoise, subsequently became attorney general also and then judge Dennis Jacobs on the Second Circuit. And after that I went straight to the US Attorney's Office where I was for a little bit more than five years handling mostly securities fraud, white collar cases. Then I went to Debevoise where I was for almost 10 years and then I went to the SEC as Director of Enforcement.

Harwell Wells: So if I could ask you a little about your work at the US Attorney's Office. I know you were with the Securities and Commodities Fraud Task Force. Did something particular lead you to an interest in securities fraud or anyway, how did you wind up in that particular niche within the US Attorney's Office?

Andrew Ceresney: Yes. I was always drawn to white collar cases because from my perspective, they're the most complicated to prove. Obviously intent is typically the main issue in those types of cases. It's complicated to put together the proof of intent and it's also, these are often very complicated cases. So I was drawn to that and I actually did ... I went first to the Major Crimes Unit, which is non-securities fraud white collar cases, I did a lot of money laundering there and then I changed over to securities and did that for two or three years.

Andrew Ceresney: One case that I handled that was of note -- there were a number -- but one was the prosecution of Mickey Weissman, who was the CEO of a company called American Banknote, and it was pre-Enron conduct. So, I would say Enron was the marker for when accounting fraud became kind of central in terms of criminal activity. He was charged before Enron and probably was the first CEO trial of a CEO for accounting fraud. So that was an interesting case.

Harwell Wells: Okay. At that time I assume because of accounting fraud you were working with people from the SEC, the Division of Enforcement of the New York office. Can you talk a little bit about your ... I guess this would've been early '90s, mid '90s.

Andrew Ceresney: Late '90s, early 2000s.

Harwell Wells: Late '90s. Can you talk a little about your impression of them at the time and what the interaction was between the SEC and the US Attorney's Office?

Andrew Ceresney: Yes. I had a very positive impression of the SEC at that time. In some respects the SEC was the client in the sense that the cases often derived from the SEC because they would typically bring them to the US Attorney's Office, did a lot of the legwork and analytics before it even came to the US Attorney's Office. So I had a lot of good interaction with the SEC. They were very committed people, really smart, knowledgeable, experienced in securities law. So it was a great dynamic. I actually tried some cases with people who were Special Assistant US Attorneys, who were assigned seconded to the US Attorney's Office from the SEC So I had a lot of contact with SEC folks.

Harwell Wells: Okay. And then you went to Debevoise for a decade before coming back as Director of Enforcement in 2013. What led you from Debevoise to the being Director of Enforcement?

Andrew Ceresney: Yes. Obviously Mary Jo White, who was appointed by the president or nominated by the president to be the chair of the SEC. I had worked with Mary Jo with the US Attorney's Office. That was my first exposure to her. And when I was leaving the US Attorney's Office she had told me when I was ready to leave that I should give her a call. So then I'd gone to Debevoise in large part because Mary Jo was here, worked with her for 10 years here mostly on the defense side. And then when she got the call from the White House she gave me a call and said, "Would you like to come down and be Director of Enforcement?"

Andrew Ceresney: Obviously I was excited about the opportunity though I love to tell the story that I called my wife, because we lived in Brooklyn and I clearly was not going to move to DC. So I was going to commute. So I called my wife to tell her the great news. It was like I think 9 o'clock at night. I was in DC and she hung up on me because she was like, "What? You're going to leave me up here with relatively young kids?" We subsequently discussed it and my wife is an amazing person, very understanding and ultimately agreed that it was the right thing to do for many reasons. So I ended up going down to DC with Mary Jo. And that's the story.

Harwell Wells: If I could ask a quick question, how easy was it to commute from Brooklyn to DC with a job as demanding as Director of Enforcement?

Andrew Ceresney: I did it for almost four years. At the time I kept my head down and I kind of was in the mode and not really thinking about it. In retrospect, it was a difficult thing

because I was away from my family during the week, usually Monday to Friday or at the very least Monday to Thursday. And I think, listen, it does take its toll on your ability to be close to your family and like, but my family's very understanding. My wife was, as I said, an amazing person so we made it work.

Harwell Wells: All right. I want to return to Chairman White in a couple of minutes, but you obviously joined the SEC in a period when the division leadership seemed to be drawing less from the staff than at a time when a series of leaders had been drawn from the US Attorney's Office -- Rob Khuzami, but also the deputy director, also the head of the New York office. And your background as well. So what led to that? What led to, it appeared, to increasingly reaching out to federal prosecutors to head the division and to staff it?

Andrew Ceresney: Yes. I thought it was a positive thing. I think federal prosecutors ... You know, a number of things make you a very effective Director of Enforcement. One is, you've tried a bunch of cases. So you kind of know the case starting from an investigation through trial and know how evidence will play at trial and that's one of the things that I think I brought to the commission, was this trial knowledge, trial expertise and a focus on trying cases and winning at trial. So that was one thing.

Andrew Ceresney: Some of the tactics in the criminal side have been imported over the years to the SEC side, things like cooperation and cooperation with the criminal authorities and the like. And I think those kinds of things really are helpful as well. And then of course, the other thing I think was very helpful for me was having been in private practice for 10 years, which I think there's obviously a lot of talk about the revolving door and whether that's a positive or a negative thing. From my perspective, it's very positive because I knew what the defense is thinking about, what the issues on their side of the table are, where I have the leverage, where I don't and I was able to use that, I think, in my work as the Director of Enforcement, I hope effectively.

Harwell Wells: Did you perceive any concern in the Enforcement Division about having you succeed someone else who had not previously been on the staff?

Andrew Ceresney: I think there were initial questions. I think it's just a natural thing that people want to have people promoted internally. I think there's a benefit. There are some drawbacks, obviously, to having an outsider come in. There's also a benefit though because I think you kind of bring a new perspective and you don't look at things in this prism that people who've been there for a long time look at them. And I think I was able to, over time, win their trust and make them understand that I was there to advance what they were doing.

Andrew Ceresney: I mean, I really believe that the people at the SEC are the highest caliber-- really, really talented, really committed to the mission -- and my role was really to try to harness all that and really allow us to bring in the most effective cases, have the most effective program that we can.

Harwell Wells: Sure. So when you first came to the SEC you were actually serving as co-director of Enforcement with George Canellos, and you did that for approximately a year?

Andrew Ceresney: Eight months.

Harwell Wells: Eight months. I ask this question in part because there are currently co-directors of Enforcement. So how did you and he handle running the division together in an arrangement that was really unprecedented and not been tried before?

Andrew Ceresney: Yes. George and I go way back. We go back to the US Attorney's Office and are very close friends and I think that made it really relatively seamless. George is a great, smart, talented lawyer, and having him there--he had been at the head of the New York office and acting director for four plus years--so I'm coming in from the outside, I need to learn the place. Having George there to tutor me on the place and the sensitivities and how things work was really indispensable.

Andrew Ceresney: Another useful thing was, I was coming from private practice, so there were a number of cases that I was recused from, and so having George there to handle those cases was great. I thought it was a great transition, really helpful for me. It allowed me to get up to speed and get in the place where I thought once he left I was really able to function at full speed without any issues. So I thought it was relatively seamless. There were some cases we handled together, most things we divided up the world. We thought about things very similarly. We consulted with each other when there was an important decision to be made. And I think it worked very seamlessly.

Harwell Wells: Okay. You obviously joined in a period of major change in the division, though it had been four years since the financial crisis, four years since the Madoff scandal. It still seems that, and I should say that the staff was working through the remains of the financial crisis. It still seems as though they were recovering from some of the effects of that. In the interview you said it was your goal to help bring the swagger back to the division. So I'm wondering, I guess it's two-part. What did you mean by that and how well do you think you accomplished it?

Andrew Ceresney: Yes. Well, one thing I learned there is, anything you say gets quoted back to you. That was a valuable lesson to learn early on, and it was a relatively painless lesson to learn from that because that's not a terrible thing. But what I meant by that was that I felt like post-Madoff, obviously the SEC took a major hit in the public's mind. I think the SEC for a long time ... If we go back to the Milken years, the Boesky years, the Sporkin years, the FCPA, you go forward to Enron and WorldCom and you really had ... The public view of the SEC was that it was a feared enforcer and that it was really a cop on the beat.

Andrew Ceresney: Madoff obviously caused a lot of public questioning of those kinds of things which was, in my mind, unfortunate. And I really felt like we needed to get back

to where we were. A lot had been done under Rob Khuzami, my predecessor, who really did some amazing things. I'm sure we'll talk about some of them. But I still felt like there was still some ways to go to get back to where we were before. So my point about swagger was to basically make the point that I wanted people to view us with some fear, but also viewing us as being the cop on the beat and people to be proud to work at the SEC again. To view it as a place where people are committed to the mission and doing so-called God's work. I do believe that we actually achieved a lot of that.

Harwell Wells: Okay. Can you talk a little about your approach to running the division. How did you run a staff of several hundred attorneys with a lot of different cases going on and a lot of responsibility?

Andrew Ceresney: 1,400 people actually, more than several hundred. Listen, it's a managerial challenge. I actually had not been a manager of large groups of people before, so it was a challenge for me. But I learned over time a number of things. One, you got to build a very strong team and put people into leadership positions who were really talented. I always felt like the most important thing to me was obviously integrity and judgment, but also energy. And I focused on trying to get people into those roles that had that energy that can turn the program around in various parts of the program.

Andrew Ceresney: I was also focused on making sure that people felt like they had the autonomy to do their job. I always felt like people did a good job when they really owned the work, when they owned the investigations and felt like they could move them along and make decisions. I always wanted people to feel like they could make decisions. My approach was basically, listen, there's always a range of reasonable outcomes that you could reach. Different people can reach a different decision, but that's not to say that the decision somebody else would make is unreasonable. There can be reasonable decisions.

Andrew Ceresney: And my job, I viewed it as making sure that people were making a decision in the reasonable range. Not to say that I always substituted whether I would have done something slightly differently for somebody else's. I wanted them to feel like they could make decisions without fear. I wanted them to feel like they could move their cases forward and have their own ideas and initiatives, and that's what I tried to foster. And I think I was successful in doing that and I hope people felt that way.

Harwell Wells: Okay. I want to move on to talk about some various initiatives and some of the major issues that arose while you were head of the division. But a good way to start might actually be asking a little more about your relationship with Chair White and about the way that an agenda, or *the* agenda, for the division has developed. Because I believe from, at least public comments, that Chair White clearly had some views about the particular direction enforcement should take. And so how did you and she interact in setting up the agenda?

Andrew Ceresney: Mary Jo and I had a pre-existing relationship and very close. Mary Jo was incredibly important to setting the agenda. I would consult with her on big decisions, big issues, obviously every case ultimately she had to review. But I would give her a sense of what's coming down the pike, important cases that are percolating up and we would talk about those. She obviously spent a lot of her time on rulemaking. And she was very focused on that and very focused on getting a bunch of other things-- post Dodd-Frank, Jobs Act, other types of rulemakings--done.

Andrew Ceresney: So she obviously had a lot on her plate besides enforcement. But we would consult very closely and ultimately from my perspective, one of the most important things to a successful Director of Enforcement is the chair's support and the view of the defense bar, but also of the commission and the staff, that you have the support of the chair.

Harwell Wells: Were there places in which you disagreed?

Andrew Ceresney: No. Surprisingly, no. On a particular case we might have a slightly different view of things. But I would say overall we agreed on most things and I think we thought about things very similarly... from similar background.

Harwell Wells: Okay. One initiative that at least got a fair amount of attention in the press was Chair White's announcement of a "broken windows" policy, suggesting an approach of targeting some smaller violators. I guess a two-part question, one of which would be, within the division, how important was this, and two, did it wind up being a significant part of your work?

Andrew Ceresney: Yes. It got more attention than I think it really deserved. It was not a significant part of my work and, in fact, the idea was to try to limit the resources necessary to bring a bunch of cases together in areas where we saw significant amounts of violations. The idea was pretty simple, which is, if you brought 10 cases on a particular issue as opposed to just one, it would get more attention and it would have much more of an impact. And that was true. Time and time again we brought cases on Section 16 violations, filing insider trading in securities and filings they have to make. We brought cases... the MCDC cases relating to municipal disclosures. We brought a bunch of cases... Rule 105 cases.

Andrew Ceresney: So in each of these areas we have seen a whole bunch of violations and what you really saw after we brought these cases and publicized them was, in those areas, a complete reduction in violations, which I thought was very important. It also set the tone that no violation is too small and sent a message that we were going to be looking for these things so people were much more careful. There's been criticism, probably mostly because of the name. I think Mary Jo likes to say she would have liked to have called it "blitz and bundle," but we called it "broken windows."

Andrew Ceresney: That had whatever implications it had. But I think it was overstated. It was not a change. And in fact, I think you've seen in the last year, year plus, even post-Mary Jo, cases like the foreign PF cases-- cases like the recent cases brought against companies that didn't get their auditors to review and sign off on reviews of quarterly financial statements-- those are very similar cases.

Harwell Wells: Okay. While we're talking about Chair White and about the Commission, what was your experience dealing with the other Commissioners, because even though the Chair obviously sets the tone, there's still, when the Commission is fully staffed, there are five commissioners. How does the Director of Enforcement deal with that particular setup?

Andrew Ceresney: Well, listen, first I should say all the Commissioners I served with were very committed to the mission. In general, it's true that enforcement is a bipartisan exercise. No one is going to really object to punishing a Ponzi schemer or punishing an insider trader or microcap fraudster. So really, most of the cases are pretty unanimous. I think it is a little challenging when you have different points of view and you have to satisfy people and I spent a lot of time with the other Commissioners addressing their issues.

Andrew Ceresney: And the other thing you have to worry about is a particular Commissioner may have a pet peeve on something, but you don't want necessarily a particular Commissioner's pet peeve to influence what the staff does because, at the end of the day, that's just one vote and there may be three other votes the other way. So what I tried to instill in the staff is, listen, we obviously have to count the votes. We need to know we need three votes. But our approach is to do the right thing. We recommend to the commission what we think is the right thing and we hope we can count to three when we do that.

Harwell Wells: All right. I'd like to turn a little more to specific initiatives that you undertook as Director of Enforcement. One-- which obviously was in connection with the commission as a whole, which was before your time -- settlements basically were neither admit nor deny. And it appears as though it was extremely rare, if not unheard of, for settlements to include any admission of guilt, I believe, unless there was a parallel criminal process at the time. And for the first time, you announced that there would be in some settlements, a requirement of an admission of guilt. And if you could talk a little bit ... Let's start talking by asking why the change.

Andrew Ceresney: Mary Jo obviously had a huge role in this change. And the bottom line was, we felt that whenever there was a report about an SEC settlement, there was always the "neither admit nor deny" language included in the article, and there was always the implication that that person was not necessarily admitting to it. And we felt there were types of cases where that just wasn't good enough, or we needed more than that, and we needed a potential egregious conduct effect on the market. We had a whole number of factors that we articulated that we would consider.

Andrew Ceresney: I think it was very effective. I think we had over 80 settlements with admissions. And I felt like that was important in those cases and I think it gave us an additional remedy in a particular case where you had to admit to the conduct. You couldn't do it in every case because that would really have a very significant impact on our resource allocation and like, but there were cases where it was definitely appropriate, and I felt like it did bring something more to those cases when there was an admission. We initially got a lot of pushback, like, "You're never going to get these admissions." And then we did get them.

Andrew Ceresney: I think we showed that it's possible to get them. People would admit to both the facts and to a violation of law, which I think is important in particular cases and I think it really did add something to the repertoire. I would hope that going forward that there would be admissions cases, but obviously future folks need to decide. I should also note there was also a view in the public that cases with nor admit nor deny wasn't enough of a sanction. So this kind of addressed some of that concern as well.

Harwell Wells: How did the first parties that you told that you wanted an admission ... What was the initial response? Perhaps I'm asking you to wear your defense lawyer hat again. What was the initial response to the first group of parties when you told them that you wanted admission as part of a settlement?

Andrew Ceresney: A lot of resistance, but as we worked through it they realized that ultimately that most of these things that they were going to admit to are things that they had to admit to. There's no way they could deny them. So then it was getting them over the hump of the violation. And essentially we were able to do it. So I think initially a lot of resistance, but over time it became easier.

Harwell Wells: Okay. Turning to another specific issue you dealt with or perhaps a different way of putting it is, by the time you became enforcement director it was four years, almost five years, after the financial crisis, and a lot of the cases dealt with by the Enforcement Division at least were fairly far along, if not concluded. What did you consider at that point to be new or renewed priorities for the division?

Andrew Ceresney: What I would like to say about my tenure is that the good news was, we didn't have a financial crisis or an Enron-like situation, which would have taken up tremendous numbers of resources. So, it really did allow us to focus on the full spectrum of securities issues. We did focus more on financial reporting issues, which I think post Enron and WorldCom had fallen off the radar a little bit. We doubled the number of cases that were brought in the financial reporting area.

Andrew Ceresney: We also focused on investment adviser cases. We focused on market structure cases a lot in that area. We focused on obviously insider trading, which is perennial, FCPA also, a relatively perennial area. In each of these areas we tried to bring important cases across the spectrum, and I think we were successful. I never felt like we didn't have at least the resources generally that we needed to address all of these things. So that was, I think, a helpful thing.

Harwell Wells: I guess one of the topics I want to ask about is, what was perceived as a new move back to accounting fraud and increased attention to that. I have to quote the New York Times article, which stated that “the commission was bringing sexy back to accounting investigations.” How did you accomplish that, if you did?

Andrew Ceresney: Yes. Well, we definitely did. Accounting fraud became sexy again. No. I mean, listen, as I say, I think we doubled the number of cases and one of things that was interesting about it was that a lot of the cases didn't involve Enron-like conduct. And one of the questions we had when we started this focus was, “Are we going to see big accounting frauds of companies?” And I think ultimately what became clear was that Sarbanes-Oxley *did* have a good impact broadly. The certification process and the controls, internal controls, that were implemented subsequent to Sarbanes-Oxley, had a very significant impact on companies and helped them really avoid that kind of large-scale fraud.

Andrew Ceresney: But at the same time, there were areas where there had been failure to focus and disclosure issues-- revenue issues, other types of issues-- which we found issues in. So we brought a whole bunch of cases under there. We also focused, again, on auditing very closely. I brought a whole bunch of an increase in auditing cases, including cases against Big Four firms. I think there, we also perceived that there had been some failures, again, maybe, it's all cyclical. So, post Enron and WorldCom you had now heightened focus, then there had been some time, financial crisis, less of a focus, and now more of a focus. I think all those things came together. I think it was an increase in focus on this area and I think we were successful on that.

Harwell Wells: Apart from the increase in focus, was it your perception that, for instance, accounting fraud itself actually rose and fell as a problem, or are we really talking about the ability that, obviously during the financial crisis, something else was on the top of the agenda. Is it merely a question of directing greater resources to it, or were you actually thinking that there was some resurgence of problems with accounting after a period of, say, Sarbanes-Oxley and Enron perhaps muting it?

Andrew Ceresney: I think this is probably more about resources and focus because financial crisis cases really did take up a lot of space in terms of the enforcement docket. So I think this was probably more about resource allocation.

Harwell Wells: Were any of the ... I know they're related, but were any of the audit or financial or the accounting fraud cases particularly memorable, or do you think had particularly significant impacts?

Andrew Ceresney: Yes. The cases we brought against BDO and Grant Thornton and EY relating Weatherford were, I think, significant. They were real significant audit failures and I think those were very significant. CSC, we brought a case against them with a huge penalty in that case. One of the significant things about financial reporting cases is that they typically do involve individuals, usually CEO, CFO

type levels. Most of our cases had those types of individuals in them, so I think that was a significant aspect as well. I think we made a good amount of progress in that area.

Harwell Wells: Did you also see bringing charges against individuals as a way to perhaps send a larger message?

Andrew Ceresney: Yes, no question about it. I mean, people have emphasized a lot in recent years the importance of individual accountability in cases against individuals. It definitely sends a strong message. I think I'm seeing it now on the defense side because I talk to CFOs, CEOs and it really has had a tremendous impact on them in terms of deterrent value.

Harwell Wells: Okay. So one of the things you did was to start the Fraud Task Force, but perhaps that leads to an organizational question, which is, under your predecessor, the division had been significantly reorganized-- branch chiefs had been eliminated, he had formed a series of specialized units. So I wonder if you could talk about the utility of a greater specialization within the Division of Enforcement and how well you found those units, and similar attempts at specialization, truly work?

Andrew Ceresney: Yes. I thought that, and I mentioned earlier that Rob Khuzami had done some great things in terms of reorganizing and that was one of the most important things I think. Creating the special units I thought was really important for increasing expertise and focus in particular areas. And it wasn't only the attorney focus, although that was important, it was also the outside experts that were brought in, in each of those units, who could keep track of the cutting edge issues in the particular area and really bring to bear a lot of expertise in those areas, and that I think was indispensable.

Andrew Ceresney: My view was that, it obviously takes a number of years to see the fruits of a reorg like that, and during my tenure I feel like we saw the fruits of that. I will just give one example. In 2014, in the spring of 2014, Michael Lewis came out with his book called Flash Boys, and it was about how the market is rigged and how ETNs or high frequency traders are trading in the markets and taking advantage of retail investors. And after that came out, the first thing I did was call the Market Abuse Unit and asked them, "What do we have going in this area?"

Andrew Ceresney: And I was able, for the next two, two and half years, to work with them where they were bringing really cutting-edge cases in this area. They had had a bunch of cases already in progress. We were able to move them along to bring those cases eventually. And having that expertise, including the outside experts, was just critical to that because we had people who have been traders at investment banks and who understood how trading worked, where if you didn't have that before, there was no way you were going to be able to crack that area.

Harwell Wells: So that actually goes ... it might even have been a bit of an answer to the next question I had, but I'll ask you to expand a little. You became director during a period in which technology and the markets were moving very fast. You can get examples of algorithmic trading, as you said, high speed trading, dark pools for instance, alternative trading. So one of the ways in which that was addressed by the staff was clearly what you just discussed, by specialized units. Beyond the specialized units, were there are other steps that you or the division took to try to keep up with a landscape that was changing very quickly?

Andrew Ceresney: Yes. Well, we did a number of things. One, we obviously coordinated with the other divisions and DERA, in particular, had a lot of expertise. We created the Center for Risk and Quantitative Analytics, which was a group within enforcement that had quants and that could team up with enforcement attorneys to advance cases and to use analytical tools to do that, which was very effective. And we just, as you said, increased expertise and people who focus on this area and bring multiple cases and become very expert very quickly.

Andrew Ceresney: So, we had people who were staff attorneys, who were really steeped in these areas. I remember when I first started, I read a book about dark pools. I'd never heard of a dark pool before. Again, I didn't have anything close to the expertise that's that, but I started to get much more sophisticated about it over time, and I think that's the way you keep up.

Harwell Wells: I do want to ask very quickly about staffers you worked with. And this is a little bit of a progression from where we were, but it seems a good time to do it. I know a lot of people within the division below the director level often go unsung and I wonder if you can talk about perhaps a couple of individuals who you thought were particularly helpful, or contributed a great deal, or whose work perhaps illuminated some of the trends we're talking about now.

Andrew Ceresney: Sure. I hate to bring up particular people, but I'll mention a couple. One, there was a staff attorney out in California. We talked earlier about admissions. We were in a meeting, we were talking about a financial institution and I said, "Well, we should try to get admissions from them." And the staff attorney said, "They'll never agree to that." And I said, "No, no, they'll agree to that." And he said, "No." And he pushed back. I said, "Well, let's see." We went out, we got admissions from them. When I went out to visit the LA office he gave me a lollipop that was a crow and he ate the lollipop as I sat there. So, he was eating crow, but it was clear that he had been energized by having the ability to really bring this case and also get significant remedies on it.

Andrew Ceresney: There are a number of people like that in investigations where I really felt like we were able to empower people. And then there's also the regional directors that we brought on who were really great. There were offices that were underperforming that they really turned around. People like Jina Choi and Sharon Binger and David Glockner and Shamoil Shipchandler and people who we ... And Walter Jospin and others, who I think really just transformed their offices. And Joe Brenner, who was chief counsel was just indispensable in terms

of keeping us smart. And then Stephanie obviously. Stephanie Avakian, my deputy, was wonderful.

Harwell Wells: Okay. Can you say a word about the regional offices and the interactions you had with them from the main enforcement in DC?

Andrew Ceresney: Yes, sure. Every year I'd go and visit every office at least once, sometimes multiple times. I think that was important to get out there and see people directly. Of course, I spent lots of time on the phone with people and tried to stay in touch with what was going on in the regions. I thought each region had its own kind of vibe, its own thing that they were known for and thing they were really good at. Each office had its own strength and its own character. And whenever I would go to the offices and visit, I'd also do a happy hour so I'd get to know people in more of a relaxed setting. I thought that was important.

Harwell Wells: Okay. I want to talk about some of the developments stemming from Dodd-Frank. Let's start with the new authority granted to the administrative process and the commission's administrative law judges. And there was certainly an apparent move to bring more matters in front of and to the administrative process at the commission rather than through federal courts. And I wonder if you could talk a little about that.

Andrew Ceresney: Yes. First of all, I think that was overstated to some extent. Obviously a lot of settled cases are brought as administrative proceedings. I don't think anybody complained about those. Litigated cases we actually kept bringing frankly the vast majority in district court. But we certainly brought cases in administrative proceedings that we could not do before Dodd-Frank. We brought for example two or three insider trading cases and we brought some other cases and there was a lot of opposition to that. I thought the opposition was kind of misguided. The view was that it was actually unfair because we had an advantage in administrative proceedings.

Andrew Ceresney: And I think time has shown that actually we didn't. In fact, I thought we did actually worse in administrative proceedings than we did in district court and frankly, over time, I kind of realized that. I don't know that I fully understood that when I first started, but by the end I was certainly conscious of that. So by the end I really felt like most cases we were going to bring is district court cases. There also was a litigation involving the appointments clause issues. It ultimately made its way to the Supreme Court. And once the Department of Justice flipped ultimately went against the SEC. And we were obviously focused on that when I was there and I worked very closely with Anne Small, our General Counsel on that.

Andrew Ceresney: Listen, that was a challenge that was really to the appointments issue. It really didn't go to the merits of administrative proceedings and it played out the way it played out. Ultimately they'll now have to retry a whole bunch of cases. It will be kind of disruptive. But I think over time I think what all of this probably showed is that, frankly, administrative proceedings probably are best for a

particular type of case. That was the type of case that was brought historically there and that probably will be what they're used for going forward.

Harwell Wells: Okay. On the other hand, having said that, you also apparently beefed up the Trial Unit or at least there was greater discussion about the Trial Unit, the willingness of the Enforcement Division to bring matters to trial. And why did this seem important in 2013? Why the new emphasis on willingness to go to trial?

Andrew Ceresney: So a few things. First, while I was there I think we hired 26 former AUSAs at the Trial Unit, which I thought was a very important thing because I felt like we needed people who had experience trying cases and who really could try cases. So I think that was important. From my perspective you're only as good as the litigated case that you can win because the only way you can get good settlements is if people fear taking you to trial and they know that you're going to win a trial. So I always thought that was really important.

Andrew Ceresney: I placed a lot of emphasis on trials because to me, again, winning set us up for settlements in cases where if we won, people would be ... When I first started, early in my tenure, we lost five straight trials and there was a lot of press about the SEC can't try a case, can't win a case, etc. It was really unfair because those five trials included the Cuban case, and others. There were lots of issues, reasons why we lost those trials, but I devoted myself to the fact that that's not going to happen again.

Andrew Ceresney: So, I would do things like, I'd have a moot for every opening. I'd follow the case closely as they were going along. I'd be very focused on what's going on in the cases and to the extent of there were strategic decisions, I got involved in those. I tried to attend as many trials as I could, and I made sure that we had the right staffing on the trials because I wanted to make sure that we had the right people trying them. So I did a bunch of things like that. Matt Solomon, who was Chief Litigation Counsel was excellent and he was very focused on these things too.

Andrew Ceresney: I think ultimately, frankly, in the last three plus years of my tenure, I don't think we lost a district court case. We did lose administrative proceedings, but I don't think we lost district court case, or maybe one, there might've been one. I thought that was a testament to what we had done and I really feel like these days ... The other story I'll tell is when I first was going to go to the SEC, one of my partners at Debevoise, who shall remain nameless, joked with me, he said "The SEC can't try a case." And then about two, two and a half years into my tenure we actually had a trial against Debevoise at the SEC and I was obviously representing SEC.

Andrew Ceresney: And I would go to the trial to see the trial. Ultimately the SEC won the trial. Afterwards I told the partner who said this to me-- who wasn't one of the trial attorneys in that case-- I said, "What do you think right now?" And he says, "Yes,

I guess you guys could now try a case." So I really felt like we made great progress there and I thought that was important.

Harwell Wells: Okay. Would you be interested in commenting on the Cuban case?

Andrew Ceresney: Probably best not to.

Harwell Wells: All right.

Andrew Ceresney: The only thing I'll say about the Cuban case is that bringing it in Dallas, I thought, put you at a disadvantage. I think the case could've been brought elsewhere, but the result is what the result is and obviously we respect the jury's verdict.

Harwell Wells: Sure. Another significant development stemming from Dodd-Frank was the whistleblower program, the opening of the office the whistleblower, and even though Dodd-Frank passed in 2010, it seems as though that was really getting up to speed when you took office. Can you talk about both how that was used within the division and I'm also curious about your impression of the ultimate impact of that?

Andrew Ceresney: I always called, and I continue believe, that the whistleblower program was transformative because it really gave the SEC a window into cases that you just didn't have if you didn't have whistleblowers. And you have to incentivize people to come in. It was really getting going frankly, while I was there, and I think picking up steam because it takes a number of years for cases to work their way through. I think it was really successful. I think we brought a whole bunch of cases we wouldn't otherwise have brought.

Andrew Ceresney: In terms of awards, they've now gone through the roof. And I think that's a positive thing. I think ultimately it will serve the SEC well to have that. I think whistleblowers, not every whistleblower is going to be reliable. I mean, obviously, there's going to be people who raise issues that just aren't the case, either because they're not familiar with all the facts or they are misguided or whatever. But there are going to be people who have legitimate issues and I think incentivizing those people to bring the cases, I think is great.

Andrew Ceresney: The other thing that I developed while we were there was the whistleblower bar. So, a bar of people, lawyers, who represent whistleblowers, and that was really important because they essentially developed the cases, figure ... like a triage system for the SEC, and I thought that was a very positive development too.

Harwell Wells: You might not know this, but was it expected that a whistleblower bar would develop or was this a surprise?

Andrew Ceresney: I think it was somewhat expected because with the False Claims Act, which is another area where you have similar whistleblower type rewards, it had grown up in that area too. So I think it was expected that there would be.

Harwell Wells: I'm aware there have been some studies showing that there were whistleblowers in a number of areas. Is there any particular area of enforcement that you felt that either whistleblowers are most useful or perhaps open the door on activities that you really were unaware of before?

Andrew Ceresney: That's a good question. I don't know. It could be accounting issues, potentially, where they'd be uniquely suited or situated. I mean, usually the things where they make the most difference are things that are hard to detect. So accounting fraud is one. I don't know that I could point to another area though.

Harwell Wells: Okay. Let me move on to talking about some more specific areas you've mentioned briefly earlier, but you and I spent a little more time on starting with the increasing number of cases against investment advisors. I wonder if you can talk a little bit about how those or that issue came to the fore, or how those cases came to the fore, during your term.

Andrew Ceresney: Yes. Obviously investment advisors traditionally have been a subject of SEC focus because they're registrants and the like. But I think that the twist was with the creation of the specialized unit and with the Asset Management Unit, which now is very focused together with OCIE. They really teamed up with OCIE to focus on particular areas that really, for a long time, had not been focused on before. So, I think it was an opportunity to really send messages in areas that had not gotten focus before.

Andrew Ceresney: One example would be the private equity area. Post Dodd-Frank, private equity firms had to register, then they got to be examined and that led to the finding of various issues relating mostly to fees and expenses and that led to enforcement actions and led to big changes in the PE realm. I think those types of impacts are really what distinguishes an effective enforcement program, when you see that kind of change in the industry. I think the asset management program and the asset management cases really had that impact.

Harwell Wells: So, perhaps I can just ask you to spell that out a little more. So there was clearly an attempt...I mean, there's been an attempt with a number of directors, including you, to target ... maybe this goes back to broken windows. I'm sorry, you said it was bundle and blitz?

Andrew Ceresney: Blitz and bundle. That's what Mary Jo said.

Harwell Wells: Blitz and bundle--to target what you perceived as specific problems within an industry, then put a significant amount of resources towards them.

Andrew Ceresney: Yes. I always felt like that was the way that you look at it. One of the important ways you look at the efficacy of an enforcement program is do you have almost immediate impact on an industry by bringing in cases. And I thought PE was one example. There are others, like market structure cases in the ATS area, brought a bunch of cases there and I think it led to big changes in the ATS realm. Similar things in the municipal area. So I think that is one of the ... you try to publicize. That's one reason to publicize your cases, is so that they have the impact and people are watching very closely what the SEC does. So when you bring a case it could have a significant impact.

Harwell Wells: What did you think was, going back to the PE cases, what did you think were the particularly significant cases there? And perhaps spelling out, what impact did that have downstream?

Andrew Ceresney: Yes. Well, obviously we brought cases against a number of the major PE firms. And again, most of those cases involved disclosures relating to fees and expenses that they were getting from portfolio companies over time-- accelerated monitoring fees, things like that-- and whether they had appropriately disclosed them to investors at the time the investors invested or even afterwards. So those cases, I think what that has led to, is some of the criticism was, well, we have very sophisticated investors on the other side and they know what we're doing.

Andrew Ceresney: But I think what became clear is that even sophisticated investors don't necessarily know 100% what's going on. So you clearly had lots of changes in the PE industry in terms of fees and expenses and how they were disclosed and what kinds of fees and expenses they have and whether they're offset against management fees, those kinds of things. So there's been those kinds of changes. I think frankly the PE industry had been incredibly responsive and I think what you've seen is ... I don't think you'll have those kinds of cases in the future because I think now that they've changed the practices and I think it's a place where people really are focused and have made positive changes.

Harwell Wells: Okay. Were there comparable cases in the ATS space?

Andrew Ceresney: Yes, there were those cases against CES, cases against Deutsche Bank, cases against others, Barclays and others. And I think the issue there was the disclosures of how they were going to do the trading, whether they were going to allow aggressive traders to trade and whether they were going to have mechanisms for trying to weed out those kinds of traders. And if so, were they actually employing those mechanisms? So, it's really all about disclosures that they made about the way in which the markets work that ultimately weren't exactly true.

Harwell Wells: Can you talk a little about the municipal security space as well? Because that was obviously another area of significant emphasis during your time.

Andrew Ceresney: Yes. The municipal security space -- frankly because of the Tower Amendment and other things that limit what the SEC can do in that space -- is really kind of the wild, wild west, and I think it was recognized as such. So one of the special units that was created was the Muni Unit and I think we actually changed its name to the Municipal and Public Finance Unit. It originally had been called the Municipal Securities Unit, which we didn't think was exactly right. We wanted it to be broader.

Andrew Ceresney: But in any event, we were very focused on bringing cases in that area, cases that were really first of their kind and what you really have to do in that area is use the fraud statutes because you don't really have regulations around filings that the municipalities file. And your other piece of leverage there is over the broker dealers and the registrants. So you try to use those levers to try to change conduct in those areas. So we brought a bunch of cases that I think had that impact.

Andrew Ceresney: Probably the most prominent one is the MCDC, Municipalities Continuing Disclosure initiative, which was a cooperation initiative where we had both broker dealers and municipalities self-report violations of their continuing disclosure obligations. And that, like overnight, changed the disclosures, and so the industry now was much more compliant. I think that kind of impact was what you're looking for. Listen, there's more work to be done in the municipal area, but I think by the end, there was a lot of significant messages sent in that area.

Harwell Wells: Obviously when you're dealing with municipal securities issues, plenty of claims are against broker dealers, but some are also against political units and that's perhaps a segue to a question about whether you ever felt any political ... I mean, there'll be media criticism inevitably, but whether you felt at any point there was any political criticism or any attempt to perhaps change any of your activities through you being an agency funded by Congress. What kind of political criticism you might have gotten, if any?

Andrew Ceresney: We obviously get letters from Congress and I had to meet with staffers at times about certain things, but I never felt like we were at all influenced by any political considerations. I really felt like we were essentially charged with doing the right thing, enforcing the law and without any impact by politics. And we stuck to that. We would open an investigation if it was politically sensitive, if we thought it was appropriate to open it, and we would close it if we thought it was appropriate to close it, and we weren't influenced by politics.

Harwell Wells: All right. Some of the initiatives were new, and some of the issues that are faced in Enforcement Division, as you mentioned, are perennial. So if we could talk a little about insider trading. And some of the big insider trading cases have already been brought by the time that you became director, but I'm still curious about what emphasis there was on insider trading during your time. Was it increased? Was it something that continued, but not a special emphasis?

Andrew Ceresney: Well, insider trading, as you say, is perennial issue for the SEC. Obviously we brought some very significant insider trading cases while I was there. Cases like, for example, the case against Billy Walters, who was a very notorious gambler. It was a great case. Ultimately he was convicted after trial. Leon Cooperman, a very well-known portfolio manager and *the* hedge fund manager in New York. Cases involving political intelligence, which was a new area, including the Deerfield Management case that ultimately resulted in convictions here in the southern district.

Andrew Ceresney: We brought a whole bunch of important cases, but I think the other trend that you saw was the increased use of data to make those cases. So, historically, the SEC insider trading cases were originally sourced mostly from FINRA referrals. So FINRA would detect conduct through their surveillance and they would refer it to the SEC, often after working it up a bit. And what the SEC started to do over time, and increased during my tenure, was essentially they had billions of lines of blue sheet data that they had over time compiled, and we developed these analytical tools that were able to see patterns in the data that would suggest insider trading.

Andrew Ceresney: For example, if you had five traders making profits on the same five trades, that would suggest there's something going on and some connection between those traders. So, we had the quants and analytics folks who were able to parse that data. People like John [Rimus 00:53:56] in the Philly office and others, and really just make cases by going into a room, spending an hour and finding these patterns. And that I thought was very significant. It also had the impact like, if you've got a referral, you'd go and do that kind of looking and then build out the case a lot. So that was significant.

Andrew Ceresney: The other significant development were the hacking cases. So, cases where, often foreigners, would hack into places, get information, trade upon them and then ultimately make money when the information became public. And like the Newswire cases we brought were very significant cases in that regard.

Harwell Wells: Am I right in remembering there was a little challenge in applying insider trading cases to those laws initially. Insider trading charges, pardon me.

Andrew Ceresney: Right. Yes. The Second Circuit in Dorozhko ultimately concluded that hacking amounted to deception that therefore could be insider trading. So I think the law is pretty clear in the Second Circuit, which is obviously the most important circuit in that area. So I think the law is clear that that amounts to insider trading, but you're right that there was at least initial ambiguity.

Harwell Wells: I'm trying to remember. The Newman case was 2016?

Andrew Ceresney: '14.

Harwell Wells: '14.

Andrew Ceresney: December 2014.

Harwell Wells: So you obviously ... It must have made an impact.

Andrew Ceresney: Well, it did. The Southern District of New York, I think their view was that it was going to have a devastating impact on insider trading. And it obviously it did result in reversals of particular case. So it obviously had an impact. But I always felt like when you looked at the language in Newman and you could interpret it as not having the huge impact because you could see in there that personal benefit also included intent to ... It could be a quid pro quo or it could be intent to benefit the tpee.

Andrew Ceresney: And, I think from my perspective, the intent to benefit, as long as that was still viable, I thought most cases would be able to be brought. And over time the Solomon case and some of the subsequent cases-- the Martoma case--I think it became clear that Newman didn't have the impact that I think people feared initially. I always say it was a significant case, but I think it ultimately had less of an impact than people initially thought.

Harwell Wells: Okay. So you mentioned that the insider trading cases were fairly consistent over time. So, you didn't have a sense that insider trading was perhaps increasing during the period we discussed?

Andrew Ceresney: No. I think it was relatively stable over the years.

Harwell Wells: Okay. Are there issues or are there things you remember as Enforcement Director that you think were significant that we haven't covered during this conversation that you would want to be remembered?

Andrew Ceresney: Well, we have talked about the FCPA. I think there were some very significant FCPA resolutions, particularly cross-border resolutions with other countries that I think were important. And that was a trend that began under me and Kara Brockmeyer, who was chief of the unit, who really did an outstanding job there. I think the Market Abuse Unit really did great work in the market structure area, in the ATS area. I think we've covered a lot of ground.

Harwell Wells: Okay. Wrapping it up, how do you think the Enforcement Division changed during your time?

Andrew Ceresney: It goes back to what we talked about early on. I really feel like during my tenure, again, it's because of the work of the Enforcement Division folks that I thought the Enforcement Division got back to where it was pre-Madoff frankly. I think morale during our tenure was extremely high. I think in the best places to work survey, I think we went up by 20, 30%, and I think people really had a pride of working at the SEC, working in the Enforcement Division. I think we made great progress.

Andrew Ceresney: I think there was a view that we were the cop on the beat and that if there were violations, we were going to bring in case. I think it was important to be fair and reasonable. I think people perceived us as such. And I think the other thing is I think people felt, I hope, that I was supportive of what they were trying to do, that I think again, I always said, what we accomplish is because of the people who are working in the division day in, day out, coming into work and really wanting to achieve and advance the mission. And that was why we were as successful as we were.

Harwell Wells: All right. Thank you so much for your time.

Andrew Ceresney: Thank you.