

Securities and Exchange Commission

HISTORICAL SOCIETY

David Glockner Oral History
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By Kenneth Durr

KD: This is an interview with David Glockner for the SEC Historical Society's Virtual Museum and Archive on the history of Financial Regulation. Today is October 23, 2024, and I'm Kenneth Durr. David, good to talk to you today.

DG: Very nice to be with you, Ken.

KD: I appreciate your taking some time out and look forward to talking with you about not only the SEC, but the US attorney's office and some other things. But first let's go back and cover a little bit on your experience. Where did you go to school?

DG: Undergraduate, University of Chicago. I grew up downstate, came to the big city for college, and then after finishing college, went to Stanford for law school, and then came back to Chicago where I clerked for a district judge, a new district court judge at the time, Brian Duff.

KD: Okay. Did you get any securities law, anything like that in law school?

DG: I had a securities law class, which was a terrific kind of fascinating class, but I was not on a securities law path, not a big law path. I was much more interested in doing things that I thought were more kind of practical and interacted with interesting people and characters. And I think maybe I didn't understand enough at that point to realize that the securities world was actually full of interesting people. That was my view of the world in my early 20s.

KD: You clerked at the Northern Illinois District Court. Tell me about that experience a little bit.

DG: In Chicago, the district court clerkships, then and now, traditionally are two-year clerkships. And for somebody coming out of law school, it's a great opportunity to get kind of a real-life experience as to how the courts work and understand how the practice of law works. Coming from a smaller city, not being part of the big city legal community, it was an opportunity for me, before I started practicing, to understand what is it that lawyers do on a regular basis? What are the different kinds of law that people practice? And to help me both gain experience and also think about what I wanted to do with my career.

KD: Okay. So you were a law clerk at this point?

DG: Yes.

KD: Okay. Talk about your decision to join the US attorney's office. Was that the next thing after clerking?

DG: In law school I had spent what I would describe as sort of a magical summer working for a law firm in Seattle. I never spent time in the Pacific Northwest, but one day was more beautiful than the next, living rent-free in a sorority house on top of a hill with views of Mount Rainier and Lake Washington. And I was going to go work there. And if I wanted to clerk, ended up with a clerkship in Chicago. And I thought, fine, I'll do that and then I'll go to Seattle.

But as I spent time in the clerkship and looked around at who I thought was kind of having the most fun as a lawyer, the people who really seemed like they loved their jobs were the assistant US attorneys. And at that point, much more than is the case now, it was possible, if you got lucky, to get a job with a US attorney's office straight out of law school. And so I applied and ended up with the US attorney's office job. They had a four-year commitment, and I figured, okay, I'll do my four years and then I'll go live life in Seattle. But four years turned into 24, and I'm still in Chicago, and happy with the choice.

KD: I'm going to resist asking you how you end up living rent-free in a sorority house. And let's talk about the US attorney's office. What was the size when you came in, how many assistants were there, that sort of thing?

DG: The size varied a little bit over time, but of the criminal division, when I started, I would estimate was around probably about 60—50 to 60. And then it grew over time in part as the sort of focus on federal law enforcement grew, and the responsibilities of DOJ grew. By the time that I left, the criminal division was about 120—130.

KD: Okay. Wow.

DG: Pretty significant growth.

KD: Okay. I guess we can get into the cases. I assume that you assisted other attorneys at first, and then moved into your own cases.

DG: Yes. One of the benefits for a young lawyer working in a US attorney's office is you have your own cases pretty much from day one and what changes is the significance and scale of those. Most offices rotate you through different areas of criminal practice, and you start doing small mail theft, small drug cases, small fraud cases, appellate work. So you kind of learn what has happened in trials that other people have done, you see what went well and what maybe got them in trouble on appeal.

And there's a strong supervision process so that while they may be your cases, you've got people watching over your shoulder. A very strong ethic in that office and DOJ generally about, the most important job is to get things right. And what matters is not so much the outcome but the process: fair and even-handed. And there are times when a decision not to prosecute is as important and as desirable an outcome as a decision to prosecute.

But like most people in that office, I did a variety of different things. I ended up focusing more on fraud cases as I grew in the office, did a lot of fraud work, did a lot of cybercrime, very early cybercrime work, which was really just starting to be a thing. And then because it's Chicago, did public corruption-related work.

KD: Right. Yes. Speaking of public corruption, there was a case that seemed—looking at the newspapers and things—like it lasted forever involving the state treasurer and the Cosmopolitan National Bank. Was that one of the earlier cases for you?

DG: It was one of the earlier ones that I handled, and it started as what was a very routine kind of bank embezzlement referred by the FDIC Inspector General. And the initial allegation was that the bank president had misapplied, essentially embezzled, some money from the bank and used it to fund a restaurant, a French restaurant, that he and his wife ran. But it was one of those things where you start kind of pulling threads, and more and more things end up coming out.

And at the end of the day, there were a series of, I think, 15 or 16 different individuals were prosecuted who were associated with the bank; bank officers, employees, borrowers, people associated with the bank. And then that case itself sort of spun off another series of prosecutions. But it turned out that the individual who owned the bank was a former trucker, had purchased the bank with the proceeds of a fairly spectacular arson.

He owned a warehouse on the near south side of Chicago, filled it up with flammable chemicals, and hired an experienced arsonist to come in and set the fire. It was a massive old warehouse. The fire at the time was one of the largest since the Chicago fire. It was so hot that the windshield of fire trucks that responded melted. There were firemen who were injured fighting the fire. The bank president ultimately pled guilty to a whole series of offenses that included the arson. And we called one of the injured firemen at that sentencing and he talked about how the barrels of chemicals were kind of exploding like popcorn in the building. So really, it was a very dangerous situation. But that was how he got the money that he used to buy the bank.

KD: How was the state treasurer involved in this?

DG: The state treasurer was also a trucker, and he was a business customer of the bank. So he had a trucking company, Fast Motor Freight. The trucking company was not doing well, and the trucking company ended up kiting checks through the bank, writing NSF checks and then writing new NSF checks before the old ones bounced to create an inflated balance. And he was kiting checks to a pretty substantial amount to keep the failing trucking business afloat.

And it turned out that at the same time, while the bank was essentially allowing this check kite to go on and not aggressively addressing it, he was putting large amounts of state deposits into the bank. And since he was the state treasurer, he controlled state deposits, and the bank became one of the state's larger depository banks outside the big money center banks. And there was financial benefit to the bank from holding those deposits. And then the bank provided benefits back to the state treasurer in the form of both a mellow attitude toward the check kite, and also favorable loans to the trucking company.

KD: How long did this case last?

DG: It depends on where you draw the line in terms of the case. I think different aspects of the case probably played out over five or six years. But the core parts of it in terms of the bank fraud and the arson—and tax evasion was part of this—really happened over about two or three years in terms of time investigating it in court.

KD: A similar case, Capital Bank and Trust, perhaps a little similar, it involves some union leaders moving assets.

DG: And that actually came out of the Cosmopolitan Bank case. There were similar borrowers at each of the bank. And in the course of the Cosmopolitan case, we became aware of essentially a loan for deposit scheme at Capital Bank and Trust, where there were two prominent union leaders in the city of Chicago who were moving union pension money from bank to bank around the city in order to get favorable loans for themselves and their associates. And Capital Bank was at the center of this activity. And Capital Bank ended up being charged with an offense. And there were a number of individuals, including the labor leaders, who were charged as a result of that.

KD: It looks like you're definitely developing a specialty in banking and that sort of thing. Canadian Trade Bank also came across my radar screen. That one involves some pretty elementary fraud, I guess you would say.

DG: Yes, that was really a Ponzi scheme. It called itself a bank. It was a bank purchased mail order with a Caribbean charter, I think in Grenada. And the individual who ran the bank, to the extent it was a bank, was a former Chicago Police Department officer who had gotten some publicity, at various points during and after his time in the police force, for engaging in activities that were criticized. Part of what was known in Chicago as the Red Squad, which was a group of police officers who were alleged to have targeted what were believed to be communist or leftist sympathizers back earlier. And also, I think after he left the police force, one of the local newspapers did an investigative story about how this individual and some others created a business that essentially went door to door to funeral homes buying gold.

And then from there he ended up creating this Canadian Trade Bank. He typed up certificates of deposit in his kitchen on his typewriter, and he sold about \$17 million of them, principally to people through various work with insurance agents. There's a strong anti-government flavor to some of the people who were targeted and some of the people who were part of the network. And so the part of the sales pitch would be, "This is a deal so good that the Fed doesn't want you to know about it, and the government is hiding what a good deal this is." And there were people around the country, but kind of predominantly in rural areas, who fell for this, invested at times pretty significant money, and he spent it all. But there also were others who simply had relationships with insurance agents who were part of the scheme and ended up selling investments in Canadian Trade Bank.

KD: How did this case get to you? Did you have a complaint by an individual?

DG: It's a good question, and I don't remember, but one of the victims was a woman who became a widow when her husband died in a house fire, and she invested the insurance proceeds from the house fire and her husband's death with Canadian Trade Bank. It's the kind of thing that really drives home the personal cost of investor fraud. It's not sophisticated crime, and I think sometimes easy for people who look at these things from a distance to wonder like, how could somebody possibly fall for this?

But people who have good judgment, who are normal people, their mistake is to trust others, and she and other victims, regardless of their views of the government, trusted and they were taken. And that's really one of the things that I think the SEC has consistently been really good about over the years, has been keeping that focus on protecting investors.

So we worked closely with the SEC to help in recovering assets, liquidating what we could find. This guy had bought a bunch of expensive art, and a house, and some other assets, and the SEC

was well-equipped, and had the experience to marshal and liquidate those assets and create a vehicle for getting them back to investors. So that was one of the first times that I worked with the SEC.

KD: Did you work with the regional office?

DG: I did, yes.

KD: What was your take on the regional office, your initial impression?

DG: It was a strong office. Chicago, I think, had always been very much in the shadow of the East coast offices, particularly New York and DC where the bigger cases tended to come from. But it was a strong office with good people doing important, but often kind of under the radar screen work. They had a lot of people who were very skilled. One of the cases that came out of the Cosmopolitan National Bank case involved the Union Carbide Pension Fund.

KD: Tell me about that case.

DG: The chief bond trader for the Union Carbide Pension Fund at the time was a director at Cosmopolitan National Bank and he entered into a scheme with the leading bond trader at what was then Chicago's principal bond trading house, essentially a trade allocation scheme, where they would take a position, wait until the trade moved, and then allocate it either to the bank or to the pension fund, depending on whether it was a winner or a loser. Winners went to the bank, and losers went to the pension fund, and the SEC had an expert who was really instrumental in helping us understand the trading and work through the mechanics and nuances of the trading tickets, identify the pattern of the trading, and help us understand that. And that's the kind of thing where the Justice Department, FBI, IRS, and Postal Inspection Service agents that DOJ typically works with, just don't have that expertise on a regular basis. So the SEC was really instrumental in bringing that case.

KD: Do you remember who that person was in the Chicago office that helped you?

DG: I believe the person's name was Bob Gator.

KD: Tell me a little bit more about the US Attorney's Office's relationship with the SEC. Clearly you brought in expertise when you needed it. Was there any ongoing relationship? Did you check back with each other?

DG: One of my observations while I was at the US Attorney's Office was the relationship was, I guess I would say, professional but not particularly tight. We communicated as needed, but there was not much in the way of joint strategy planning, joint thinking about if and how we may collectively have a problem and how do we collectively address it. I think that just wasn't done as much really with any agency, SEC or otherwise, outside law enforcement at the time. And I don't think Chicago was particularly unusual in that, at least maybe outside of New York.

KD: Okay. Let's talk a little bit more about the US Attorney's Office and then we'll move to the Commission, but I want to get a sense of how your role changed, how your responsibilities changed as you moved up in the US Attorney's Office.

DG: I did a bunch of different things there and I ended up staying just under 25 years. And there were various points where I thought: time to move on and do something else, but then what I was doing would change. At different points I supervised new lawyers, supervised in the Fraud and Special Prosecutions group. I was the principal bank fraud coordinator for a long time and had the opportunity to create, probably for about a ten-year period or so—I was the main author of the Justice Department’s Bank Fraud Manual. I did a lot of cybersecurity work and then as I was finishing up the trial that came out of the Capital Bank case, I ended up being appointed head of the criminal division in Chicago overseeing all of the work of the prosecutors. And that was at a time when a new US attorney had just been appointed. It was right after September 11, the new US attorney was attorney Pat Fitzgerald.

And so my thought was, great, I’ll do this criminal chief thing for a year or two, help Pat Fitzgerald settle in and then go on and do something else. But that ended up becoming an 11-year run. He became one of the more prominent and celebrated US attorneys in the country. The office became very involved in national security and terrorism related investigations in part because of his expertise in that space and in part just things that happened naturally after 9/11. We ended up with investigations and prosecutions of two governors, Scooter Libby, which Pat was the special counsel for, and a number of us within the office helped out as advisors or counsel on that in that process.

And then the office was also very focused on trying to reduce violent crime in Chicago and working with academics at the University of Chicago and Northwestern to study different violence reduction tactics and how prosecutions could fit in. So a lot of really interesting stuff. The other thing that was interesting for me at the time was that I had the chance to create a software platform or tailor a software platform that we used to automate the creation of various documents. It was kind of 1980s technology in 2000, but it was not really being used much in the legal profession at the time outside of trusts and estates work. And I’ve always had, in part through the cyber work, and interest in technology; building and coding that and doing that work within the DOJ framework to try to make some of their work process more efficient and more reliable was also interesting.

KD: So you have a developing expertise in computers and the implications thereof. Talk a little bit about the early cyber work that you’ve mentioned a couple of times.

DG: I think people recognized really early on, as early as the late eighties and nineties, that as computers became more common and people used them for more things, there were vulnerabilities that could be exploited to engage in various kinds of misconduct. And early cyber cases were largely about people doing things as much to make statements or to trash systems as anything else. I mean, at that point there wasn’t the serious criminal underground that had emerged, and you didn’t, at least to a really significant extent, have nation states active in a visible way in that space. And so early cases were rings of hackers who would attack systems to disable them. There’s a case involving a group that attacked various Bell System phone switches and computers and made them inoperable for a period of time, or diverted calls to places that they thought were funny. And then you had intellectual property theft cases, places that served as platforms for distributing software and other kinds of copyrighted material for free.

But as computer use became more common and a more central part of the business world, the significance of those cases and the risks posed by the vulnerabilities of computer systems became much more prominent, partly as a criminal matter, but also increasingly as a regulatory matter. And so when I arrived at the SEC at the very end of 2013, beginning of 2014, the SEC was in the early stages of thinking about what its role as a regulator was in the cybersecurity space and how you appropriately set standards for registered entities like broker-dealers, investment advisors and exchanges. What do you require from public companies in terms of disclosure? Does the commission play a role beyond just driving disclosure and in trying to influence behavior at public companies? And then also what's the SEC's role with respect to hacking activities that are designed to manipulate markets. People breaking into systems, stealing information, using that information to trade, using that information to influence markets in one way or another.

KD: You mentioned cyber, and you mentioned that in conjunction with coming to the Commission. Talk about how you came to this job. Did you answer an ad? Were you referred? And was your cyber experience part of the package?

DG: When I left the US Attorney's Office in the summer of 2012, I joined a cybersecurity consulting company called Stroz Friedberg. They were independent at the time—the company still exists, but as part of Aon. And I spent a little over a year with them, essentially assisting companies and law firms in responding to cybersecurity incidents, providing consulting on cybersecurity practices and cybersecurity investigations. After I'd been there for a few years, the SEC job, the regional director job, at Chicago opened up and it was the first time I think in nine years that the job had come open. I think it had been 11 years. And it was the one other federal job in Chicago that ever really intrigued me as I had spent time in the US Attorney's Offices and learned more about what they did. The regulatory responsibility is very different from the DOJ responsibility.

And it was interesting and appealing to me to be in a role where you're really explicitly trying to influence behavior and influence behavior through regulatory oversight, through communication and education. And then enforcement is also a part of the picture. I mean, DOJ really just has one tool and it's a stick. And the SEC has a stick, not nearly as big a stick as DOJ, but they have enforcement capabilities which are significant. And then they also have the exam program and the ability to issue regulations and communicate to registrants about regulations. And that's a whole kind of another layer of nuance that was very interesting to me and, I thought, created an opportunity to do positive things. And I also thought that there was an opportunity to deepen the relationship between the SEC and DOJ. But to your question: cyber I think was very much a part of my interest in coming to the Commission. It was clear the Commission was stepping more into that space and that was going to be an increasingly important space for them.

KD: Okay. Talk about the hiring. Did you talk to Chair White or other folks at the home office?

DG: I think when I was hired, the SEC had just switched to a process—it's standard, and again, all sorts of hiring at this point—where you ask the same questions to every candidate, where it's structured interviews, and the questions are designed to address core competencies of the role. The SEC didn't have budget at the time to do the in person. So I went to the SEC office and sat in the room and did a video chat with the interview panel, and they would read a question and stop, and then I would respond and nobody would say anything, and then somebody would read another question. The process—people have gotten much better with those kinds of interviews

now. But this was an early iteration and it was a little bit shaky still in the implementation. But I had the interview with the panel and then I had an interview with the co-enforcement directors at the time, Andrew Ceresney and George Canellos. He left almost immediately after I got there.

KD: Okay. I want to get the sense of, did you have marching orders? Was there something that the Commission wanted to see in Chicago? More of the same or a shift in direction?

DG: I don't think, at least at that time, they were giving marching orders to the regional offices. Maybe if you came into a division at the SEC, you get some guidance from a higher up or political appointee. But my mission that was communicated to me, was do a really good job and engage with us and be as helpful and as good a Commission citizen as you can, and make the office better and bring good cases.

KD: Okay. My guess is that you were part of a cohort, a post-Madoff cohort of people coming in from US Attorney's Offices, which was an increasing trend at the Commission at this time. Talk about when you came in, the effect of Madoff on what the office was doing.

DG: Yes, I came in after this and I was absorbing all this second and third hand, this experience by, in particular the enforcement people who had lived through it. What was pretty clear was that there definitely was a lot of post-traumatic stress, a fear of leaving something uninvestigated, or even if you haven't actually left something uninvestigated, being accused of leaving something uninvestigated. And in some instances it led to paralysis of the investigation process where you had investigators who were afraid that they wouldn't have the support of the Commission and their supervisors to either close a case or bring a case that didn't include the broadest possible set of charges. And you just can't function as an enforcement agency like that.

Part of what I had really focused on in the US Attorney's Office was trying to work with prosecutors to understand what's enough investigation to have the level of confidence you need, that you've got the right answer, that if you're going to accuse somebody of something, they did it. There's no ambiguity about it and that you can prove it in court. But that doesn't mean that you investigate forever. Somebody can always find stuff to continue poking at, and if you don't have a reasonable judgment about when to pull the trigger, you can't function as an enforcement organization. And so a lot of what I was focused on—and I think Andrew and the other top leadership in the Commission on the enforcement side was focused on at that point was helping to reassure lawyers on the enforcement side that it's okay to use your judgment. We need you to use your judgment. We have to bring cases promptly, and that while there's a cost to missing something, as Madoff shows, there's also a cost to endless investigation and delay. And so I think this was a natural consequence of the Madoff rebound. But over the years that I was there, the number of enforcement cases we brought each year really significantly increased. And I think that was part of what was happening more broadly across the Commission as we dug ourselves out of this post-Madoff organizational funk.

KD: Yes, it is a judgment call, but could you provide guidance or help people make it?

DG: Yes, In part because that's what I'd been doing for 20 plus years as a prosecutor with a higher standard of proof. I had done a lot of fraud cases; I think I took 30 cases to trial. And so I felt like I had a pretty good understanding of what it took to prove something in the courtroom. And there's always an element of uncertainty. You're presenting the evidence. You're not the one deciding the outcome, but bringing that background to bear and helping walk people through, this is what these facts add up to. Here are things maybe we can do that would help

short circuit an investigation. Here are the kinds of conversations you might be able to have with defense counsel to get to a resolution more quickly. Those sorts of things. And also just communicating through both words and probably more important action that we have the backs of the people we work with.

KD: So resolving this problem and resolving the post-Madoff funk was a big one. Did you have any other priorities when you came in?

DG: It was clear pretty early that cyber was a priority across the Commission. I was fortunate enough to arrive with something of a cyber background at a time when there were not a lot of people in the Commission with a cyber background. And so I ended up being pulled into conversations in the exam program, in the enforcement program, at both the regional and national levels as the Commission tried to work through what its role was in this cybersecurity space and develop communications, think about policy issues and work through cases. But it was a very interesting time for the Commission in terms of having the opportunity to see and participate in the development of its response to this kind of significant issue that was becoming much more prominent for the industry.

KD: Another thing that's happening is technology, the SEC is getting better at using digital technology, right? And I think that Chicago was one of the innovators.

DG: Chicago was great at that and this was something that really started before I got there. Merri Jo Gillette, my predecessor, had emphasized building data analytic capacity. And then, while I was there, we continued to expand that, but we had data analytics capability in both the exam program and the enforcement program, and the exam program people were focused. Most of those people sat in the broker-dealer exam program, which was where the biggest volume of data was. But they also helped support work in the investment advisor exam.

And on the enforcement side, we had a couple of individuals who were accountants, forensic accountants with the enforcement program, but who were developing tools that would screen earnings releases and look at earnings data from companies to help try to develop indicators of problematic financial reporting. And then, we had somebody else, a person named Darren Warner who I think is still with the commission, but who had been a trader in a prior life and helped build very sophisticated tools to look at patterns of trading activity for indications of insider trading or other problematic trading activity. And they all worked both to support local examination and enforcement work, but also plugged into national resources and help build capability at the national level as well.

KD: Okay. While we're talking about those digital capabilities, exams is something I've been looking at recently. Talk a little bit about risk-based examinations and how the Chicago office helped develop that.

DG: Yes, I think there was a period earlier in the SEC where the exams were significantly cycle-based. And I am not sure at what point it happened, but I think the view by the time I got there was that this was a transition, that although it was underway, needed to continue to happen and to accelerate. With limited resources, particularly on the IA/IC side where there's no FINRA, the number of registrants was growing significantly, and the resources available to touch those registrants on a regular basis were not growing. And so, how do you use the finite resources you have in a smart way to address the highest risk registrants? And also when you go in and do an exam, focus on the highest risk areas within those registrants. Part of that was data work. There

was a process where the exam team would sit down on, I think, a roughly quarterly basis to plan exams, identify exam firms that would be examined.

They had a process which we continued to refine while I was there, and I'm sure the refining is still going on now, to look at different areas of risk and adjust the way we looked at risk based on what we learned from the exams we did. So does the registrant, for example, have a high population of unsophisticated investors? What's its product mix? What does it appear to be selling to those investors? Are there individuals at the registrant who have regulatory histories that suggest risk? What's our exam history with the organization? Are they organizations where we've gone in and done exams before and found problems? What do their public communications and statements look like? Does it appear to be changing its focus and is it financially stable? A long list of factors, but we tried to be systematic in the way we went through them. I participated as often as I could in those sessions, particularly with the investment advisor, investment company exam program, which was really where we had the biggest resource issue.

KD: Investment advisors are taking off at this point. Right?

DG: Yes.

KD: Okay.

DG: They're taking off and the resources are not taking off.

KD: Okay. One of the things I'm always interested in about your job is you're working two sides. Enforcement, I would assume, you had a really good sense of because you were carrying a stick and enforcement's carrying a stick. Is that fair to say?

DG: Yes, enforcement was certainly the area where it was the easiest for me to sit down with enforcement teams, talk through cases, and feel like I could contribute immediately. The exam program work in a lot of ways was more interesting to me. In part because it was new and in part because they were doing the kind of work that if we got it right meant we'd have less work to do on the enforcement side. And in part because I knew I had this learning curve. Particularly at the beginning, I really tried to spend a disproportionate portion of my time with the exam programs and sit in on their planning meetings. I participated in exams from time to time just to learn how the process worked, spent time thinking about enforcement referrals, participated in conversations with the national exam programs about strategy. But I think that ability in the regional offices to see both the exam and enforcement side of the SEC's work is really very valuable for the commission. And it creates the ability to really help use those two tools the Commission has in tandem.

KD: Interesting. In the end, both Enforcement and Exams are in part working for the Home Office too, for the divisions. Was there a managerial stress point there that took some getting used to?

DG: It was certainly a very different model than DOJ. DOJ has 93, 94 different attorney's offices. Each is run by a presidentially appointed US attorney who is the king or queen of that realm and basically has a fair amount of freedom to go tell Justice to go jump in a lake. Not quite like that, but very little central control. The SEC is a regulatory agency, and a regulator can't function that way. You can't have everybody choosing their own music and their own dance

style. And in a lot of ways it's a model that delivers better and more consistent results and creates an environment where the communications to the regulated community are more consistent and more thoughtful. And there's sort of a program to it, which is really hard to do within DOJ.

The challenge is that that can sometimes be a really cumbersome process. Things just take longer at the SEC when you have more people making decisions. I think at the end of the day, the decisions tended to be more thoughtful, and people would regularly consider the collateral impact of decisions. You get advice from the different divisions, and different perspectives, but it's a process that is time-consuming.

KD: So you just kind of stick with it, I guess.

DG: Well, you stick with it and you push it along. And that was, I think, part of what Mary Jo and Andrew in particular, they understood the value of the Commission's processes, but they were also very focused, I think, because of their own backgrounds with DOJ in ensuring things happened.

KD: Speaking of cross-cutting Exams and Enforcement and all that, the other thing that's happening is the new units, which are involving many regional offices and the Home Office. Talk about setting up, contributing to those units and how they worked with the Chicago office.

DG: I think the unit relationships generally were really positive. They allowed the Commission to develop more specialized expertise to handle more sophisticated cases. That had been a challenge for the Commission, and I saw it particularly in the litigation space. If you are in the US attorney's office, you're trying, if you're a line prosecutor, at least two or three or four cases a year in most busy offices. If you're handling investigations at the SEC, you're lucky if you have one case that goes to trial maybe in a decade. And so, the SEC doesn't have, didn't have, seasoned trial lawyers until they created a special trial unit, which is kind of the litigation version of the specialty units. You had some people who maybe by dint of chance or because they had experience elsewhere before they came to the Commission had some trial experience, but the Commission didn't have an organic way to build significant trial experience.

The same was true with these areas of specialization. And if you're just a general enforcement attorney, you could be doing all kinds of different things depending on what the river brings you. And if the Commission wanted people who've got the capabilities to go head to head with sophisticated misconduct at sophisticated firms, it really needed to up the game. And the only way to do that was by creating a specialization and supporting that specialization by tying these people across the country by providing national level support and allowing the resources to make that happen. And it creates some management challenges in terms of how you get to some of these people in regional offices; they're remote from their supervisors, how do you work with them? But we managed to work that out, I think largely. And the positives, I think, far outweigh the management challenges, and I can't imagine how the SEC could have handled a lot of the really highly specialized, highly complex work that it's done over the last decade or so without those units.

KD: I want to get a sense, you talked about working the management challenges out. How did you do that? Did you talk to other regions?

DG: You get to know the leads of the different units. My office in particular did a lot of work with the, it's changed its name a couple of times, but originally the municipal bond group, now I think they're public finance. LeeAnn Gaunt ran that group while I was there, and I think still oversees it now, she and I work quite closely together and communicated regularly with the other specialty unit heads and would talk. And then there was also really a very strong community among the regional directors. We would get together a couple of times a year in person in D.C. We talked regularly. It was a really tight-knit collegial group. And as issues arose, we would reach out to each other and talk them through, where does the case go? Or I'm butting heads with the specialty unit chief on a particular issue. Have you seen this, and how did it play out?

KD: You mentioned municipal bonds. We haven't talked cases, and I want to talk about a few of them. You were involved in some big public finance fraud cases, State Street Bank and Trust, for example. Talk about that one.

DG: Right. So that was a case where the individual who at State Street, essentially responsible for their line of business that included public pension custodian work, entered into a relationship with the deputy treasurer of the State of Ohio where the bank hired a lawyer extensively as a lobbyist who's an immigration attorney, no background in lobbying or anything relevant, but he had a relationship with the deputy treasurer. And the payments to this essentially sham lobbyist were then funneled to the deputy treasurer who spent some of it for personal purposes and some of it was passed as campaign contributions to his boss. And then, there was a lawyer at a national law firm who facilitated some of these payments as well. That was a case that the public finance group worked. But in part because I had experience in this space, I worked very closely with them. But it was a strong team in Chicago and good support from the national unit and a very collaborative effort that resulted in that case.

KD: Okay. Was this essentially a pay to play kind of thing? Was State Street getting the Ohio treasurer's business?

DG: Yes, they were paying for lobbying work by a non-existent, essentially a sham lobbyist. And the lobbyist was passing the money to a public official who influenced the awarding of business to State Street.

KD: Okay. Another public finance case was the city of Harvey, Illinois.

DG: To anybody who is familiar with the Chicago Metropolitan area, Harvey has had a history—it's been a troubled, at least at that point it had been a troubled municipality with a variety of challenges over years, and municipality that had significant financial challenges. It was not at all an affluent area but had a history of public corruption problems that went back kind of well before this. But in this instance, the city was attempting to develop a hotel, issue municipal bonds to support a hotel that they believed would support development in the community. And there was an individual who was the controller for the city of Harvey. He also performed a similar function for a variety of other south suburban municipalities. And he also served as the city's financial advisor on the municipal bond deal.

And what turned out to be the case was that there were significant undisclosed fees going to this individual, and then bond proceeds were being used for purposes other than what had been represented to investors. So not just the undisclosed payments to the controller and financial advisor, but city payroll and a variety of other purposes that hadn't been disclosed to bond investors. And this came at a time when there was a real push by the municipal, by the special

unit, handling these cases to clean up municipal bonds. It was, I think, maybe the one and only time that the SEC ended up getting an emergency order to halt a bond offering. We got an injunction to stop the sale of the bonds and then the rest of the case played out after that. But the SEC order required them to hire a consultant for a period of time and then to oversee its municipal bond issuances and ensure that any future issuances were consistent with the regulatory requirements and fair disclosure to investors.

KD: Did SEC settle this one?

DG: Yes. Both the State Street and the City of Harvey case were settled.

KD: Okay. While we're on municipal bonds, you co-authored a handbook on public finance. How did that happen? Is that something that was part of your job description or did you want to do it?

DG: It was something that came out of conversations with the municipal bond team at the time. What I think we realized was that the people at the SEC doing municipal bond work had a good grasp of the securities requirements, not as good a grasp of public corruption law. Understanding how the two related was important.

And so combining those two skill sets and drawing on both backgrounds, we created a handbook for people investigating these cases to help them understand what kinds of issues to be alert to, potential public corruption significance to certain activity, the regulatory implications.

And the goal was for this to be a resource both within the SEC and potentially for DOJ people to help them understand where things that they might be looking at could implicate securities recommendations.

KD: Okay. So your particular input was public corruption law, I guess?

DG: Right.

KD: Well, let's move into cybersecurity. We talked about that earlier. We talked about early forms of cyber issues. Cybersecurity wasn't even a word, I think, back in the early 2000s. How had that developed? Talk about how you dealt with cybersecurity and improved the SEC's ability to deal with it. And then I want to get into the Cybersecurity Working Group.

DG: Sure. On the exam side, the focus was first on educating our own staff on control issues and practices that they should be looking for on exams. Part of the challenge for the SEC, particularly early on, is that we didn't have a lot of staff with cybersecurity experience.

So it involved finding out who those people were, leveraging them to train others to get a base level of skill that we could use then to go out and collect information and review practices and then target. If we found an issue that looked significant, then we could bring in one of the handful of people who had deeper expertise and target where we'd use them.

We also worked to craft risk alerts and other communications to the investment community. The goal was not to catch people in exams or enforcement actions, but to help them understand what the expectations and regulatory requirements were of the space and empower them to do this on their own. So there was a lot of work and discussion both locally and nationally that went into that.

And on the enforcement side we identified issues that typically surfaced during exams: How do we think about which of those merit enforcement action? When you bring the enforcement actions? How do you communicate about those to sort of send a broader message?

KD: Okay. Earlier you made a distinction between two kinds of cyber. Cybercrime, which I assume the SEC's learning to go after as well, and then I guess what is called cybersecurity, the measures that regulators can compel companies to implement. Is that right? Is cybersecurity really just the latter?

DG: Yes, I think different people use the terms in a variety of ways. But I think the Commission, the regulatory focus is on ensuring that our registrants had protective measures for their own systems and for their customers' information that were reasonable.

And then the cybercrime part, and these would typically be cases that will be done jointly with DOJ, was more people engaging in hacking activity. They're coming from outside the regulated community and they're attempting to insider trade with stolen information or manipulate markets or engage in other kinds of fraud.

KD: Let's talk about a cybersecurity case. R.T. Jones appears to have been one of the more important ones. Talk about that one.

DG: That was one of the early ones, and the issue was identified after they had a cybersecurity incident. And it turned out that the company, that the firm had used a third party to host its digital platform.

They put customer information on this third-party platform, instead of having servers and computer facilities in-house, they went to a third party. But they didn't vet the third party, and the third party turned out to have really poor, to the point of almost non-existent, security measures. And that made it very easy for somebody to come in and steal a bunch of customer information.

And the messaging around that case was if you're going to use a vendor to provide digital services, and whether they're hosting or whether they're doing something else for you, as a registrant, you have an obligation to ensure that they are following basic security protocols. You would have those applications if you did it internally. You can't avoid those applications by outsourcing.

KD: Okay. Did this one happen because the third party did let information out?

DG: The third party was hacked.

KD: Okay.

DG: So it wasn't a voluntary letting out on their part, but their poor practices made it very easy to hack them.

KD: Okay. You became chief of the Cybersecurity Working Group. This is not one of the post-Madoff units, but later on. Tell me a little bit about that one.

DG: So my recollection is that Chris Hetner and I were co-chairs. Chris was the first external cybersecurity expert hired by an SEC Chair. Mary Jo White brought him in.

He had a long private sector career that had been very focused on cybersecurity. And his role was to help lift the agency's game and expertise. Both to provide expert guidance to the chair, but also to be a resource for the divisions in the regional offices.

And the SEC, Mary Jo and other leaders at the Commission at the time wanted a group within the Commission that would regularly talk about that, and that they could go to on significant cybersecurity issues.

This group was a sounding board for policy decisions within the organization. It was a group that had no distinct authority, but it was a collection of people with experience in the space, or roles that naturally intersected with the space. And the goal was to foster coordination and to talk through the issues we were dealing with together.

KD: Where did you get the individuals from? Talk about forming this group.

DG: I don't recall specifically who all was on it, but it included leadership from different programs within the Commission. There were Exam representatives, there were Enforcement representatives. I think there were a couple of other regional directors who participated. There were, I think, in addition to Chris, a couple of people who had significant cyber experience within the commission who participated.

But it was a group that served, I think, a useful function for a period of time. And then as the commission got more sophisticated in the space and began to institutionalize a lot of these practices, there really wasn't a need for it. And then, I think, Chris left and then I left, and the group just sort of naturally had kind of served its purpose and faded away. But it was a useful group. And Mary Jo's idea of creating it at the time made a lot of sense and it was a very helpful bridge to help get us to a more mature spot.

KD: Great. You mentioned early on that there was a loose relationship between the Chicago office and the US Attorney's Office. Did you manage during your years, did you manage to tighten that relationship up a bit?

DG: I think so. And that was partly just by making sure that as we saw matters that might be of interest to DOJ, we referred them. When they had issues or ran across things they thought might be of interest to us, they knew me, they knew that I understood their concerns, and they have special rules relating to the protection of grand jury information that can't be shared with the SEC.

And I think the development of that trust. And then as we did more work together more people across the two offices became more familiar with each other. We also had a relationship with the US Attorney's Office in Minnesota, which was one of the states we covered.

But we had a SEC enforcement attorney who served as a special assistant US attorney on a number of matters and worked closely with them. I don't know whether it was a coincidence or not, but the people who kind of led this work for the Minnesota US Attorney's Offices had started their careers in Chicago.

KD: Anything else we should talk about in regard to your time at the SEC?

DG: I don't think so.

KD: Okay, great. Well, I want to briefly discuss your work at Citadel and then coming into Exelon.

DG: Sure. At Citadel I served as the chief compliance officer for the hedge fund, and came in at a point where they were looking to reassess, and they wanted an outside leader for the compliance program.

And I came in, did that. Terrific experience. Interesting to be on the inside of a regulated entity. And it's an organization that attracts really extraordinary people, and it was a fascinating time, a complex and interesting organization, and a good opportunity to understand how a compliance program works from the inside as opposed to the outside.

KD: Okay. Just to get it on the record, you left the commission in 2017?

DG: The very end of 2017.

KD: Okay.

DG: December 2017.

KD: Okay. So you had an interlude at Citadel and you moved on to Exelon. And this is an interesting one because you're coming in after something of a scandal. Talk about your work remediating that.

DG: Yes. I came in to lead the compliance and ethics and internal audit programs at Exelon as the company was preparing to enter into a deferred prosecution agreement.

KD: A deferred prosecution agreement?

DG: Yes. Exelon's largest subsidiary, ComEd, which is the utility in Illinois, was preparing to enter into a deferred prosecution agreement. There was a very public investigation. And at the time I came in that was sort of hot and very public. The company was dealing with it.

And my mission was basically to assess the compliance and controls programs and make the changes needed, number one, to ensure that nothing like this ever happened again, and number two, to set up processes so that not only do we not have this issue, but we're better at spotting and avoiding other compliance issues going forward. So partly to fix this problem, but then more generally to assess and strengthen the compliance and controls program at the company.

KD: I would assume there are a lot of specific things that you would take into account and a lot of specific controls. What's the principle behind that or the core to this group of techniques you use to implement a program like this?

DG: That would be a very long discussion, but I think of it as a form of behavioral engineering where you're trying to influence behavior so that people don't do things you don't want them to do. And there are a bunch of different ways you could do that.

And part of it is by setting clear rules that govern behavior and communicating those and making sure people understand them and that they're enforced. They need to be rules that people can actually comply with and still do their day jobs. You can't create compliance processes that are so baroque that people drive around them.

You need to ensure that you've got messaging from senior leadership about the value of getting these issues right. You need to have a process that is regularly looking at compliance risks across the organization and making sure you're tailoring your program and resource allocation to those risks.

You've got to have a strong program to investigate issues that arise and deal with them quickly and fairly, because no matter how good a program you have, you're always going to have people who are going to make misjudgments or do bad things. And you've got to be able and equipped to deal with them and deal with them in a way that people trust within the company.

You've got to make sure that people are comfortable raising issues. No matter how well-resourced a compliance group is, or an audit group is, you're never going to find all the issues out there, so you really depend heavily on the eyes and ears of people across the organization to raise concerns.

So its creating an environment where people feel safe in raising concerns, that they trust that we'll deal with them effectively, and they understand what we need them to raise to us. All of those kind of things put together, they're at least the basics of what we work for.

KD: And are you still monitoring this process?

DG: Yes. I now oversee compliance and ethics, internal audit, and our enterprise risk program. We have a chief compliance and ethics officer who's actually also an SEC alum who runs the compliance and ethics program day-to-day. We have a chief audit executive who runs the day-to-day of the internal audit program, and then we have a director of enterprise risk who runs our enterprise risk program. But I work closely with all three programs and they all report to me.

KD: Okay. Well, this behavioral engineering sounds like a really interesting job.

DG: It's a lot of fun. And yes, I'm fortunate to be at a company where people recognize the value of this work, and it's a strong team. We had this issue now back a number of years ago. The company has learned a lot from it, there is a very different leadership team at this point, and a really strong commitment to compliance and controls at this point, which makes it a great place to be doing this kind of work.

KD: Great. Well, this has been an excellent interview. If there's nothing else that you'd like to bring up, I guess we can wrap it up.

DG: Nope. Well, thanks very much. I appreciate it.