Securities and Exchange Commission Historical Society
Interview with Gary Lynch
Conducted on July 19, 2006 by Kenneth Durr

KD: This is an interview with Gary Lynch on July 19, 2006 at Morgan Stanley in New York City, by Kenneth Durr. I'm interested in starting out at the beginning and getting a little bit of background on how you got in the SEC. I understand that was close to being one of your first jobs.

GL: Yes, I joined the SEC a little over a year out of law school. I joined the Enforcement Division, and so immediately started doing investigations.

KD: Was there some reason that you got into that?

GL: I can't say that it was one of the things that I had necessarily wanted to do coming out of law school. Someone I had worked with as a summer associate, between my second and third year of law schools, was working at the SEC -- she had moved from a law firm to working for the Commission and loved it, so she encouraged me to look there.

KD: She was in Enforcement?

GL: Yes.

KD: So you knew that's what you wanted to do?

GL: I was also interested in litigation, so it was, I guess, the most similar kind of function to a litigation job.

KD: You worked for Stanley Sporkin. Tell me a little bit about that. What kind of department did he run?

GL: What kind of department did he run? I joined in the time of the foreign payoff era.

KD: Is that how he made his reputation?

GL: That was receiving a lot of attention as I was coming onto the staff. But in fact I think I only did two foreign corrupt practices cases. For the most part I started out doing manipulation cases and then insider trading cases and then along with that change of control cases: tender offer, proxy contest, kinds of cases.

KD: We're looking at the late '70s here?

GL: I joined in '76. Sometime during'78, I became a Branch Chief and started supervising cases. So relatively soon after, within two years of joining the staff, I was a supervisor.

KD: In Washington?

GL: In Washington, working for Ed Herlihy, who in turn reported to Ted Levine, who in turn reported to Stanley Sporkin. That was not the group I was in originally. I was in another group but when there was a reorganization, and they created a couple of new branches, I was moved over to work with Ed and Ted.

KD: They had a good bit of experience in insider trading, didn't they?

GL: People didn't really have any experience in insider trading in '78 when we started doing that. There were a handful of cases.

KD: Any of those notable?

GL: Most of those cases were small cases in the '78 to '79 timeframe. It wasn't until the Swiss cases--the Santa Fe case and St. Joe case--that the numbers started getting pretty large.

KD: So we're looking at $10,000?

GL: $10,000--$20,000--$50,000 cases for the most part. Obviously, there was Texas Gulf Sulphur in the '60s. So yes, there were some insider trading cases, but there just weren't that many until '78. That's when there started to become more of those. Most of those were concentrated in the Ted Levine, Ed Herlihy group. I did a few of them and there was another Branch Chief by the name of Jim Mann who worked for Ed who was doing insider trading

cases. But there wasn't a heavy batch of them. My recollection is the cases started getting bigger and more numerous in the '80--'81 timeframe.

KD: Was this before John Shad made his famous pronouncement?

GL: Yes, this all started when Harold Williams was still the Chairman and Stanley Sporkin was the Director.

KD: You were quite aware that something was happening to create all these insider cases and were watching them develop?

GL: Yes, although again, I would date it more with the big foreign trading cases, the Swiss or other foreign bank trading cases, where the numbers were much larger than in the other cases.

KD: Were you involved with the Santa Fe case?

GL: I was involved on the periphery of Santa Fe. I don't think Santa Fe came out of my group; I think it came out of another group. St. Joe was out of New York as I recall. I think Santa Fe was out of Washington; I think it was Michael Mann who worked on that.

KD: These groups you're talking about?

GL: This is the branches.

KD: Did groups of people take different cases?

GL: Yes and there was no real assignment system.

KD: So you're not specializing?

GL: No. My group, when it was formed in '78, was called "Changes in Corporate Control" and it was supposed to focus on the Williams Act and proxy cases, which it did, but since most of the insider trading cases related to tender offers and proxy contests, there was a good dose of insider trading as well.

KD: I don't suppose anybody foresaw that, though, back when they created the groups.

GL: I think by '78 there were run-ups prior to takeover announcements. The period of big takeover activity was just starting and accelerated into the '80s. But I don't think one of the branches was the branch of insider trading, although it was 26 years ago or so. There could very well have been. Ted Levine and Ed Herlihy, at least in the Washington office, tended to do most of the insider trading cases. In fact, I remember --particularly as the insider trading cases got more attention--there was some resentment as to whether or not they should be farmed around the Division more.

KD: That's interesting.

GL: Yes.

KD: Because I've heard almost the opposite—that people sometimes weren't interested because they were hard cases.

GL: Early on, yes. I'm talking by the time we got to '85--'86. Then the insider trading cases were deemed to be interesting cases to work on.

KD: People were getting their pictures in the paper.

GL: Yes.

KD: The big thing I want to pull out in this period though is, was it in any way a surprise that this developed or were people watching it and expecting this glut of insider trading? How much did the SEC anticipate and how much did it just react?

GL: It was certainly reactive by the time they got into the '80s. You were reacting to huge option trading. The thing that really exposed it as a real abuse was less stock trading and much more option trading.

KD: That was the Santa Fe case?

GL: Santa Fe and St. Joe were both big options trades, although in most of the tender offer cases, if there were listed options available, that's where the big activity was obviously because of the leverage afforded by the options. So it kind of slapped you in the face when you just saw the huge volume and options, and obviously whether it was the CBOE or the AMEX people were getting burned badly on the floor who were on the other side of these big option trades.

KD: The Chiarella case was in '80 or so, correct?

GL: Yes.

KD: Which in one sense knocked the props out from under how everybody had been prosecuting or setting up insider trading cases.

GL: Yes.

KD: Around that time period, was there a sense from the people who were handling these cases of grappling for new ways to approach it?

GL: After Chiarella, yes. The misappropriation theory developed. Prior to that time, there really wasn't a focus on the duty issue. After Chiarella, it wasn't enough just merely to show that the trader possessed insider information. You had to show it was in violation of a duty of trust or confidence. And misappropriation developed. I don't recall people spending a lot of time thinking "well gee, we're on really thin ice with the legal theory here." When Chiarella came in, it didn't take long to develop the misappropriation theory which became the central theory on which these cases were prosecuted.

KD: How much did you and your people actually think about these theories anyway?

GL: We thought a lot about them after Chiarella. I think going into Chiarella, maybe there was someone in the Commission who was thinking a lot about it, but basically the focus was on that you showed someone had confidential information and showed that it was material and there wasn't a lot of focus on showing that they got it through inappropriate means.

KD: Texas Gulf Sulphur essentially said "hey, if it's insider information, then it's prosecutable."

GL: Yes, exactly. But on the other hand I don't know how many weeks it took to develop misappropriation and proceed with that but it wasn't like it was a long hiatus between the time Chiarella came down and other insider trading cases were brought.

KD: Some of this was coming out of the cases in the District Courts.

GL: Yes.

KD: So you were there for the transition from Williams and I guess the concern about insider trading is already starting.

GL: Yes.

KD: Shad decides to make his name on that.

GL: Yes.

KD: Tell me a little bit about that. You discussed what was happening and what you were seeing as far as these run ups in the market. What were some of the other things behind Shad's decision to go that way?

GL: John spent his life on Wall Street prior to coming to the Commission and he had a gut feel that insider trading was rampant. I was trying to think of the timing of it; when did he come in with it in relation to St. Joe and Santa Fe--probably right around the same time. But as I said, in the big option trading cases, you couldn't help but see that suddenly somebody traded 2,000 option contracts the day before the announcement. It didn't take a genius to figure out there was something amiss. But Shad had a view that it was more prevalent than that --that there were a lot of people trading two weeks, three weeks, four weeks before.

KD: Did you find that to be the case?

GL: Yes, definitely. But I think of the real focus on insider trading beginning with the Swiss cases with the big numbers, so whether it was '80 or '81---somewhere in that timeframe -- and continuing into '85 when I became Director, at that point it hadn't abated at all, frankly. If anything, the run ups were still as big and there was a lot of stock trading and some option

trading but it was still a huge problem. And that was in spite of the fact that there were some fairly notorious prosecutions during that period even and, still didn't seem to affect conduct. People were still willing to take the risk. The Foster Winans case came along in '84 or so; Paul Thayer, the former Chairman and CEO of LTV, who was Deputy Secretary of Defense, when we brought the case.

KD: You had a couple of Reagan appointees, didn't you?

GL: It seems to me there was one other.

KD: Reed?

GL: Yes, Tom Reed. Actually, that was a case I developed as a Branch Chief. That was early on.

KD: Tell me about that one a little bit.

GL: Unless you mentioned that, I would have forgotten about Tom Reed completely. I don't even remember what the trading was in; I just remember that it was a fairly big case at that time, little things stick in my mind. I remember he was from Walnut Creek, California and I don't even remember what the source was of the information now. I just remember that that was a big case.

KD: Did most of these come out of a tip--somebody saying "hey look into something"?

GL: No, they almost all came out of surveillance by the exchanges. For the big option trades, you didn't need sophisticated surveillance. But as time went on in the stock trades there was a lot of surveillance, two, three, or four-week periods prior to the announcement. I think it's fair to say we got better doing that and the exchanges got better doing that as time went on. I remember back then you'd blue sheet a stock, which means you'd ask for the buyer and seller of the stock. Some of the stuff would come in with handwriting where people would fill them in by hand, which you think about today how crazy that is because now it's all done basically on an automated basis. The request goes out automated and it comes back automated, so it's much easier to analyze the information.

KD: It seems a little late in the day for that even back in the '80s.

GL: I don't know when that ended but I do remember looking at blue sheets that were in handwriting when I was a young staff lawyer.

KD: So you'd think a lot of this would involve just crunching numbers and looking at how the numbers played out?

GL: Yes and a lot of it was just looking at sort of a gut feel. You'd look at it and say, that's a big trade. What is that person doing? Another big case was Barry Switzer; remember the football coach?

KD: Was that one of yours too?

GL: I don't think it was. I may have been the Associate Director by the time that was brought. I think it was brought out of a regional office.

KD: That's one of those cases that people like to invoke though, hearing a tip in a public place and how do you prove that.

GL: I think it was out of the Fort Worth office. Did they eventually lose that case? I don't remember. I do remember though that one where it was obvious that there was all this trading out of Oklahoma prior to a major announcement. But a lot of it was just looking at zip codes and seeing concentrations of trading and taking it from there. Paul Thayer was trading out of the Dallas, Texas area.

KD: I'd like to talk a little bit more about that case because that's probably one of the first ones that really gets the headlines for the Commission.

GL: It got a lot of headlines and around about the same time--I can't remember which one was first--the Winans case got a lot of headlines as well mainly because the press made it into such a cause celebre. The initial take of most newspapers on that was that the Commission was somehow invading freedom of the press.

KD: In the Winans case?

GL: Yes, it was a huge uproar. In the several weeks after it was first brought--and I remember that this is back at a time where our Public Relations Office was not as well-staffed as I'm sure it is today—but I remember developing the mantra which I just delivered over and over again, "there is no First Amendment right to defraud" and just saying that over and over again in defending our bringing the case against the reporter. But the Reporters' Committee for the Freedom of the Press filed amicus briefs and I remember there was an editorial in the *New York Times*. It became a very big issue.

KD: I would think reporters would be interested in quite the opposite: in not having people making money off of their stories.

GL: I could never figure out why everyone got so whipped up about it but boy, they were. Just for fun, if you want to go back now and take a look at it, it would be easy to find from the Commission records when that case was first brought and take a look at the *New York Times* editorial. I remember because it was stinging. I remember also going back and being challenged by the Commission about were there real First Amendment issues here that we somehow walked into.

KD: This was with the Commission sitting down. Were you generally sitting in on those meetings?

GL: Yes

KD: You were the Director of Enforcement then?

GL: No, I was not. I was the Associate Director but the Director of Enforcement, John Fedders, was recused on the case. So I was the most senior person in the Enforcement Division who was working on it. I think his old law firm, Arnold & Porter, was representing someone, so he was not in the case. But yes, I think back on it, there was this huge hoopla about whether there were First Amendment rights that were somehow implicated.

KD: I've seen the newspaper stories. I always wondered how genuine that was.

GL: Oh, it was a big deal. I remember a number of meetings where a variety of lawyers came in representing one reporter's group or another about what we were doing. I think that was the whole concept of trying to get behind why an article was being written.

So I think that was what was concerning is the fact that the article was going to be in print, and why did Foster Winans think that some stock was going to go down or go up and what right did the Commission have to probe his sources, which is a secondary issue obviously. The real issue was that his friend knew what was going to be in the paper the next day so then he went out and bought stock or shorted it or whatever.

KD: The Thayer case was around that time.

GL: I think Thayer was a little earlier actually.

KD: It seems like the Santa Fe case just wasn't quite that sexy. There was a lot happening.

GL: It was more of a lawyer case; a lot happening and interesting to lawyers because of the freeze orders and everything else. But yes, you're right; it got some attention in the press but clearly not as much as Thayer.

KD: Were the things interesting to the lawyers, things that were helping develop definitions of insider trading or understandings of how it could be prosecuted?

GL: No, I think that the Santa Fe/St. Joe case was interesting because of the Swiss bank secrecy issue and an effort to pierce this bank's secrecy.

KD: And this was something that John Fedders took up.

GL: He did very much so, yes. I'd say he led the charge on that in the early '80s.

KD: Did that grow out of these cases?

GL: Absolutely, yes. The memorandum of understanding with the Swiss Banking Commission was, I think, negotiated in 1982. That wasn't that long after John arrived. I think John came in 1981, somewhere in that timeframe. The big issue was basically because the Swiss banks

obviously wanted a protocol in place; they did not want, every time there was an insider trading case, to have their assets in the US frozen. That was not a good way to do business. It was an incredible achievement to negotiate that MOU and be able to get access to confidential information on the Swiss banks. You really think about it; up to that time I don't think anyone had been successful--certainly not tax authorities or other governments -- in getting access.

KD: What was the key to that?

GL: The key was these decisions that basically, if you want to trade securities in the US markets, you have to give up information that would reveal wrongdoing by someone who is abusing those markets.

KD: And freezing assets?

GL: Freezing the assets was the lever on the banks to come forward and say who the customer was who traded.

KD: Depending on who you talk to, you get the sense that there was sort of a sea change in the Enforcement Division between Sporkin and Fedders.

GL: Yes.

KD: Would you agree with that?

GL: No; I would not. I think there were some cases on the margins that were influenced by the change; there is this debate about qualitative versus quantitative materiality.

KD: Tell me about that.

GL: It was the big thing. You can go back and read articles about it from that era. I'm sure Stanley would love to talk to you about this. His view was that you could have something that would be qualitatively material to an investor and therefore required to be disclosed even if quantitatively it didn't mean much. Say you had a $10,000 bribe. In any other circumstance, could that be viewed as something that would be material to the stock? I think

the argument would be: qualitatively, it reflects on the integrity of management and therefore it doesn't matter that the number is so small; as a qualitative matter you could bring a case saying that people were defrauded by virtue of not disclosing the $10,000 illegal payment. The other argument was, at some level if there is no quantitative impact at all, then it's just not material. So that was sort of the push and pull.

KD: Things had to rise to a certain level?

GL: The bribe itself may not have had to have been big enough to be viewed as quantitative material but let's say it was $100,000 bribe but it was for a contract that was 10-percent of a company's revenues. I mean maybe it was quantitatively material just by virtue of the business that it related to but there had to be some quantitative hook to it to say that it was material to an investor's decision.

KD: You weren't just going to get wrongdoers because they're wrongdoers?

GL: Yes, or require disclosure of everything. Where did you draw the line if a CEO was aware, or a company made, a $10,000 payment that wasn't material to any line of business and senior management wasn't aware of it? What was the argument that somehow the company's filings were not in accordance with the law? The argument was that no investor would have their decisions whether to buy or sell stock be affected by that.

KD: Why not penalize somebody if what they're doing is wrong?

GL: The argument wasn't whether you penalize them or not; the argument was whether you constructed a fraud argument when there was no line item requirement for disclosure of that information. There wasn't a specific requirement that it be disclosed; there's just quantitative versus qualitative materiality.

KD: How much of your agenda was being shaped by John Shad and his priorities, Fedders and his priorities, and just sheer expediency?

GL: I always thought that the 98.5 % of the cases that you did, you did because they came in the door. They were there and you devoted resources to them and you brought the cases. Stanley's view, I think, would have been--again he can speak for himself--that you should

use the Enforcement program to make new law or at least publicize a view of the law that might be novel and unique. I think when John came in the thought was, you have specific disclosure requirements. One should not be novel in creating new theories of fraud. Of course, the irony of all that was that Chiarella came down and said all those insider trading cases that were brought were based on a novel theory of what the law required.

KD: Right.

GL: I always felt by the time I was Director there were a few areas out there where we were interested in maybe pushing the envelope a little bit. I think back to the one area where we clearly were pushing the envelope and that is in the tender offer area where there were companies that were doing these—Becton Dickinson being the best example of a company that had made a tender offer but did it in a novel way so they didn't register--they didn't keep it open for the required time under the Williams Act. And then I remember following that we worked on Carter Hawley & Hale which was again another tender offer case; at least the part of it I worked on was the tender offer case. I think it was a company trying to acquire Carter Hawley & Hale where they had gone out and initiated a big buying program to buy up stock.

KD: And this is to fend off a takeover?

GL: No, this was basically to take over another company but to do it sort of in a lightning raid as opposed to keeping the offer open and giving shareholders a lot of time to evaluate it. I think my approach was to apply the law as Congress wrote it--not to premise the program on making new law. Of course it's inevitable that you do end up making new law as you're bringing these cases.

KD: Particularly in something like insider trading where the law is not written down.

GL: Yes, it wasn't written down.

KD: You said earlier that it wasn't terribly difficult to come to the idea of misappropriation. It didn't take long?

GL: I remember sitting down after Chiarella came and people were trying to figure out what do we do next? Do we go for a legislation? Do we go for a legislative definition right away? And

my recollection is that Paul Gonson--I don't know what Paul's title was back then; he eventually became Solicitor for the Commission but he may have been Deputy General Counsel back then--is one of the people who came up with the misappropriation theory. Jake Stillman was involved as well as I recall. It was one of the good partnerships between Enforcement and the GC's office to come up with a workable theory.

KD: So by the time you got to Thayer and the Foster Winans case, that's the avenue you were taking?

GL: Certainly by Foster Winans we were, because that case was the case that went to the Supreme Court where the misappropriation theory was upheld. So I think it was the theory that we argued and Thayer, as well.

KD: You were going into a lot of personal relationships with Thayer.

GL: Yes.

KD: Which some people thought was something you should have avoided.

GL: I don't know how you avoid it.

KD: It dug up some unpleasant details.

GL: It was obviously a notorious case at the time. When that case fell into place it was one of those cases that you just could not bring. I think there were five securities that Mr. Thayer's friends had traded on and he was the only common link. He was the CEO of LTV and was on the board of a couple of companies. People who weren't terribly sophisticated suddenly had bought just before major corporate announcements in five different events and he was the only common link. Again it was a long time ago; my recollection is what really nailed that case was, as we were investigating it, we got a call from someone who was a friend of Mr. Thayer's friend who really just laid it out. She said, this is the story and then it was a matter of basically just bringing the case.

KD: Really?

GL: I can't remember her name even anymore but we got a call and then I remember getting on a plane and going down to Dallas to interview her just to get the story firsthand. It was a case that had to be brought. The facts clearly just jumped out at you. I remember going over to the White House to tell them that we were going to bring the case.

KD: Who did you talk to over there?

GL: I want to say Fred Fielding--I think he was the White House Counsel at that time. I remember John Fedders and I went into his office and briefed him the day before the case.

KD: And what was his take on it?

GL: Stunned, I mean everyone was stunned. Never any effort to say no, or postpone it, or whatever; it was basically you have to do what you have to do given the evidence was just overwhelming. It would have been overwhelming even on a circumstantial case and then when you couple that with the friend of the friend and of course at the end of the day he eventually pled guilty to perjury--I think.

KD: So by '84--'85 you must have been getting pretty good at these insider trading cases.

GL: I think so. We were getting pretty good at the ones that we were making. How many cases did you not make that you should have made? That was always a question I had. How many of these cases did you miss? I remember one case—it was an investigation that went on when I was Director; it went on forever. It was like one of those cases where you could not close it, where it was absolutely clear that there was an insider trading ring. And we could never figure out the source of the information.

KD: Did you feel like you had the members of the ring?

GL: We felt like we had accounts, most of which were accounts that traded through foreign banks. But we couldn't ever tie it back to someone who would have had possession of the inside information and that was a case involving very large amounts of money and we just could never put it together.

KD: I guess the Levine case could have been that way if circumstances had been different.

GL: The Levine case could have been exactly that way if it hadn't broken our way. At least two books out there have told the story about the big break; to me that was the break that really led finally to a crackdown that was effective on insider trading. Up to then, all these cases were being brought--Paul Thayer, Foster Winans--if anything it looked like there was more insider trading than before. And then by the time you got done with Dennis Levine and Ivan Boesky and Mike Milken and Marty Siegel and everything, those cases started having an effect and the run-ups before announcements went down, the apparent level of insider trading went down. And I think it was effective for some period of time whether that was five years, ten years, or whatever but we're now seeing another period where memories are short and where insider trading cases again seem to be on a little bit of an upsurge. It's nothing like it was in the '80s but somewhat of an upsurge.

KD: Part of it I guess is the scare factor. You let people know that we're serious and we can get people. Here's what we've done. Could some of it have been that the circumstances have changed; things were very different going into the '90s than they were in the mid-'80s?

GL: There wasn't as much takeover activity. But there was some although there wasn't the kind of level of activity beforehand that there was in the '80s. I think even now the level of activity isn't like it was in the '80s. In the '80s it just slapped you in the face that somebody who knew about this announcement was trading on it before it happened. And again a lot of it occurring through foreign bank accounts--offshore bank accounts.

KD: You talked about why this was possible--because of the takeovers and the increased number of takeovers, secrecy in foreign banks--

GL: Leverage of options.

KD: Right. But on the other hand why would so many people take advantage of it at that point? Was there something culturally going on, do you think?

GL: I think the amount of money that could be made was huge because, as opposed to earlier cases that were brought, a company has a good quarter or a bad quarter--people buy or sell stock beforehand but as a percentage of stock price, the movement wasn't larger. In takeovers, there were premiums that were 30, 40, 50-percent--sometimes higher over the then

stock market price and you couple that with the leverage afforded by options and you could buy $5,000 worth of options and make $1,000,000. So the temptation was just too great. I don't know if cultural is the right word--but it was "why not me." "Who does this really hurt," which was a big debate back then. "Why not allow someone who has inside information to go out and make $1,000,000 if they want to?" And I think there was a lot of rationalization that there is nothing wrong with this, that the people who were selling stock wanted to sell it; so why not let them sell stock and why can't I buy it? I'll make a lot of money off of it; I didn't force them to come to the market to sell so who is really getting hurt here?

KD: Was there any of that in the SEC?

GL: Within the Commission?

KD: Yes.

GL: There was a little bit of that. There was a little bit of that. Actually there was a debate back and forth with the Chief Economist when I was there, Greg Jarrell--

KD: Jarrell?

GL: Wonder what ever happened to him actually--good question. There was a little bit of that that got played out. Some of it got played out publicly.

KD: In what format?

GL: I remember there was a *Wall Street Journal* editorial which I still have a copy of somewhere that had a chart in it about the stock market as it is now where you had a run-up before the announcement but nothing fell off a cliff--to something that was the fully "Lynched" market, which is what they called the market as Gary Lynch would want it, where it went along and then there was an announcement and it would go straight up and the suggestion was that that wasn't a good thing, that it was better to let the markets gradually price in non-public information. And I remember John Shad and I had lunch in New York with a couple of the senior people from the *Wall Street Journal* just to try to convince them that insider trading was a bad thing and that our spending our resources on this was a good thing for the

markets, and they weren't buying it. But again I think the Chief Economist at the time, Greg Jarrell, had some sympathy for that argument. I don't know if he was a full-bore fan but he had some sympathy for that argument.

KD: Shad would have brought him in.

GL: Yes.

KD: I guess the question is whether there was any support there.

GL: I don't think so. I think there were areas maybe where he had some support but as you pointed out, the hob-nailed boots was the Shad thing. I never sensed that John wanted to withdraw from that.

KD: Let's talk a little bit about some of the drama in your career. You were working pretty closely with John Fedders.

GL: Yes, I was one of two Associate Directors, Ted Levine being the other.

KD: So would you confer everyday?

GL: Oh sure. My recollection is that by the time we were in 450 5th Street. John was in the corner office and I think Ted was next to him for the time that Ted was there. Ted eventually left and then I was in the next office. I can't remember who was on the other side of me but yes, we were 40-feet apart.

KD: Did John Sturc come in at that time do you remember?

GL: I don't think so. I think I appointed John Sturc but I could be wrong. I think Bill McLucas maybe succeeded Ted.

KD: How prepared were you for what happened or how quickly you ended up in that seat?

GL: I obviously didn't anticipate it.

KD: Obviously.

GL: I had been Associate Director for about three years as I recall and I was 34 years old when it was the spring of '85. And 34 years old is pretty young to be in that job. So all the sudden I was there--first as Acting Director for I think a couple months and then the Director. I think there were articles written about how young I was, and I was. At the time I didn't really think that. I guess you always think you're more mature and experienced than you actually are. But to me it felt like I had worked in the area a long time. I had worked on a number of high profile cases; I mentioned Foster Winans where I was the voice of the Commission because John Fedders had been recused from it where we took a lot of heat, so I had been the face of the Commission on that, taking the heat interacting with the Commissioners and so I felt like I was ready for it. Although you look back on it, that's pretty young to be in that job. That's basically the time you're starting to make partner at a major law firm. But obviously it was just a fabulous opportunity for me.

KD: What did you want to do with that opportunity?

GL: I loved the work. I actually just loved the work and I loved making cases, investigating cases, and as the years went on to basically broaden my skill set by managing a large group of people, interacting with foreign governments as a result of the globalization of the markets and our need to put in a Memorandum of Understanding with foreign governments, so we could exchange information. So it was just a fabulous experience but also frankly at the time it wasn't all fun. I remember getting kicked around at Congressional hearings, but even that was a great learning experience.

KD: And was it John Dingell that was upset with something you were doing at the time?

GL: John Dingell was frequently upset with almost everything that we were doing, and before that Senator Proxmire. But I got a lot of experience testifying before Congress. Some of the hearings were friendly; a lot of them were not. Frankly, even if they were friendly, there was always someone who was hostile but it was a great experience and I think a very exciting time in the Commission's history because you look back on that period; we used to talk a lot about globalization then but it was really in its infancy and was just starting and now you look at the markets today and they are truly global markets.

KD: I'm sure it was also exciting because the SEC Enforcement Division was getting in the newspapers.

GL: Yes, we were. Yes that's absolutely right, on a consistent basis for the first time. The media loved the foreign payoff era and so they liked to write about it but it wasn't something that really connected with the man on the street--I don't think so anyway, whereas everyone loved reading about insider trading cases. Although you might have an economist who questioned why were we doing it or the editorial board or the editorial page of the *Wall Street Journal*, the man on the street loved insider trading cases.

KD: He wasn't likely to say, maybe it's a good thing?

GL: Unless they got in on a trade, they weren't likely to say it's a good thing. To them that was like a rigged deck. That was an awful thing. So we got a lot more media attention when those cases started heating up.

KD: And I would imagine that the Levine case is the one where your visibility took a quantum leap?

GL: Yes, it took a quantum leap. Dennis Levine started it. Other than the fact that the case was what gave us a key to bringing the later cases, it was a $12,000,000 insider trading case which was a huge case at the time but obviously what came later was much bigger. But I remember sitting down after Levine was brought with people who were just staggered by it --this investment banker working with several other investment bankers exchanges information to the ring. I remember knowledgeable people saying this is the biggest case the Commission has ever brought in terms of notoriety and of course at that time, hearing all this, I knew what was going to come.

KD: Did you?

GL: Yes, because by then Levine had started cooperating and started naming people and in particular Ivan Boesky, so I wasn't certain that we were going to make those cases by any means but I knew one way or another that we were off onto something which if it panned out would make the Levine case not necessarily look small but would be far more significant.

KD: Were people surprised to hear that Levine had pulled this off or were they surprised that you caught it?

GL: I actually don't know. Probably both. Just the size of it, all the trades that he had done and then the fact that we had actually managed to get through Bahamian secrecy. Back then, I remember, I was very worried about the deal we had cut with Bank Leu to get them to cooperate. We gave Bank Leu and their employees criminal immunity, although it was pretty clear that someone at the bank knew precisely what the scheme was. There were a number of people who were concerned that we were setting a terrible precedent and everyone was going to ask for immunity and what would we do?

KD: Whose idea was it to do that?

GL: I don't really know. I remember the people who worked on the case at the time, some one among the three or four of us who were really involved in it. It was me, Sturc, Paul Fisher, Terri Pritchard, I think Michael Mann because he was the international guy that was very involved in it. But it was one of those things where I was worried that if things didn't go well we could really be criticized and there was always the issue of if we had really hard-balled it with them were there other schemes or other things we would have learned on Bank Leu? But it was clearly the right thing to do in terms of like breaking that case open. And then by virtue of breaking that open, the whole thing came together thereafter.

KD: You didn't get a lot of criticism for cutting that deal?

GL: No, almost none in retrospect; in fact I don't know that we got any because it panned out well. We did get Levine; we then went into bringing these other cases. I remember actually there were people on the staff who thought it was a bad idea. I think even some members of the team frankly thought it was a bad idea and thought we ought to insist on getting some kind of plea deal from them.

KD: I guess the Commission would be a little more conservative in its tactics than the Federal prosecutor?

GL: Yes. Again, there wasn't precedent you could point to where you had an institution against which you had a good case that at least some people within the organization knowingly

engaged in criminal conduct and the government was saying we were going to give you a complete pass. Of course by the time we got to Boesky and we didn't give him a complete pass and there was still a huge amount of criticism--well I think he pled to two felony counts or I don't know--it may have even been one; I don't remember anymore--but that wasn't enough and then the money wasn't enough, although I think it's clear in retrospect that between what he paid over to us he did not come out of that as a wealthy man.

KD: He kept some nice real estate though.

GL: Did he keep it or did his wife keep it?

KD: I guess maybe his wife.

GL: Yes, because she was from a wealthy family as well.

KD: My understanding was some of the concern was over that period in which he was essentially wired and trading and closing out some accounts.

GL: That was one of the big issues: whether we allowed him to trade on inside information. I guess the inside information being what was going to happen thereafter and it's funny; at the time I remember there being a real focus on making sure that we did not go into the public announcement of that with him holding huge positions because there was a concern that if we went into a public announcement of that with him still holding--I think he had like $3 billion in positions—was the fact that an overhang in the market could exacerbate whatever went on in the market. But there was a lot of criticism of that. A lot of the experience I got in giving Congressional testimony was over that issue.

KD: That was probably a lot worse than the Foster Winans thing with the reporters wasn't it?

GL: That was a lot worse because it was demoralizing to the staff having to deal with that and actually we spent a lot of time defending ourselves as opposed to pursuing the Drexel, Mike Milken investigation.

KD: So Drexel and Mike Milken sort of slid for a while?

GL: They didn't slide but you can only do so many things and we were preparing Congressional testimony and getting ready and responding to requests and everything else and the same people who were in the position to do that were the same people who were trying to do the investigation as well.

KD: Getting back to the slippery subject of defining insider trading, I notice that at one point the SEC actually tentatively tried to offer a statutory definition.

GL: Yes.

KD: And it didn't go anywhere.

GL: Yes; it didn't go anywhere. I remember at the time even and then thereafter you read things about how we opposed an insider trading definition and John Fedders actually had opposed an insider trading definition. I did not and we had a definition that we eventually proposed that I thought was very workable. Frankly it didn't do much other than reduce to statute the misappropriation theory. But we made it absolutely clear that we were prepared to go with that—and it's just another Washington story. There were a lot of people who were taking the position and whispering in Congress's ear, well you can't do that. It's a bad thing; if you define it people will find a way to trade inside information with impunity.

KD: Was that Fedders's position?

GL: Yes, but John wasn't the one working in Congress on that issue. I think John's view was we were doing pretty well in the cases. If you try to get too specific you could create a window--a loophole -- and I just didn't see it although I think that was the reason why ultimately there wasn't a definition passed by Congress. It was funny; it was one of those things where there was a call for a definition. We came up with a definition but there were a lot of competing definitions.

The Senate was working--

KD: Alphonse D'Amato.

GL: There were competing definitions. I remember Harvey Pitt had a definition at that time that he was advocating and the long and short is it could have been defined. And it wouldn't have hurt the program and that definition still would work pretty well in 2006.

KD: But why did it all peter out?

GL: I think frankly because, as I said, there were people whispering and I think there were people who were concerned that smart people and clever people would find a way around it. I think this was going on at the time that Carpenter was pending before the Supreme Court. If you look up the chronology of that and see that and I think it may have been that once Carpenter came down effectively blessing misappropriation, then it went away for that reason; it was pretty clear that the Supreme Court had signed off on something.

KD: How much of your time were you devoting to the Levine case, the Boesky case, and all these insider trading cases? Obviously, there was other stuff for Enforcement to do.

GL: I was devoting a lot of my time to those cases. I want to say probably from the spring of '86 to the spring of '89 when we finally settled Drexel, I bet 30% of my time. It may have even been higher because there's still all the other cases that were going through the Commission and then management responsibilities and working with our regional offices and everything else, but I was very involved in those cases and there wasn't much that happened in those cases without me touching it.

KD: Was there any fundamental change in the way you were handling these cases--either in the investigation or even in explaining to the public or the Commission from the early '80s to the late '80s? There must have been a heck of a learning period.

GL: Well I think what happened is we got the Southern District of New York interested in these cases and they became a partner with us. We worked very closely with Charlie Carberry in the U.S. Attorney's Office and it was the threat of spending time in jail that really got people in the cooperating mode. And I think we had a good working relationship or decisions could be made pretty quickly as opposed to going through Main Justice and writing up long criminal referral memos. It was a question of having a conversation and saying okay, "Can you do that deal. Yes, we can do that." "Charlie you ought to get involved in this and call

this person." We just had a great relationship. That lasted though for a relatively short period of time.

KD: Really?

GL: It was a key thing because we worked together on Levine, then on Boesky and then there was Wigton-Tabor-Freeman in, I want to say, February of '87 when those arrests occurred.

That did not go well. The U.S. Attorney's Office went out and arrested one of these guys, I think it was Tabor, thinking that he would just roll over on the other two and that didn't happen. And that was not something that we had worked on and coordinated closely as we had in all the others and it kind of blew up and without question hurt the relationship between the offices. But nevertheless we still worked together and I think that was key to welcoming them in as a partner, getting them very involved and also on their side their ability to react quickly and to commit to things was really critical.

KD: Now was the Milken case still going on when you decided--?

GL: When I left, the Drexel case had settled. Mike Milken as an individual was still out there.

KD: What was behind your decision to leave the Commission?

GL: I was a little burned out. Frankly, I knew after having worked on those cases for the three years there was nothing that was going to compare with that. It was like there was nothing--not once in a decade, maybe like more than once in you know half a century that you'd get those kinds of exciting cases that got that kind of attention from the media. And we settled Drexel and once we settled the case against the firm, I knew all the action was going to happen in the criminal arena, because Mike Milken would have come in and settled--given us an injunction, be barred from the business--if that were the end of it. On the criminal side, the issue was whether that case got tried or whether he pled. Obviously at the end of the day he pled. I knew you know that as part of that he would do an SEC deal but really the action was within the U.S. Attorney's Office. At the same time we settled Drexel, I wasn't even thinking of leaving frankly. But then, two or three weeks thereafter, I thought--well I was traveling and I was working on some international agreements and it suddenly hit me that the office was working just fine without me. I was in Europe and things went ahead and cases

were being presented to the Commission and it was okay for me to leave if I wanted to leave. It wasn't as though I was critical to the operation. In fact you make opportunities for others by departing, so I did. Bill McLucas then succeeded me, so that was it.