Securities and Exchange Commission Historical Society
Oral History Project
Interview with William McLucas
Conducted on March 5, 2012 by James Stocker
Introduction by Jane Cobb

JS: This is an interview with Bill McLucas for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm James Stocker. Today is March 5, 2012. Welcome, Mr. McLucas.

WM: Good morning.

JS: I understand that you are from Western Pennsylvania.

WM: I grew up in a very small town between Altoona and Johnstown in the coal mountains in Western Pennsylvania.

JS: Did you always plan on becoming a securities lawyer?

WM: I never planned on becoming a securities lawyer. (Laughter.) I fell into it, basically. I worked at a banking agency for just less than two years after law school. The old Federal Home Loan Bank Board, which regulated the S&L industry, was on a case that had been referred to the SEC. I met the Enforcement staff over there. That was the vehicle by which I ended up getting hired in the Enforcement Division.

JS: Did you study business or anything like that as an undergraduate?

WM: No, I was a liberal arts major. I also never had a securities law course, which a lot of people observed over the years was quite evident, but basically learned it as I went. I had had all the basic courses in law school, including corporations, but I wasn't a securities law student or aficionado or anything like that.

JS: Why did you decide to go into government service instead of private practice?

WM: Basically, because it opened more doors than it closed. I was not prepared to go to a law firm and commit to any one particular area of practice. It seemed to me that the opportunity and the doors that were opened for a young lawyer coming out of law school then were just far broader if you went into public service than if you joined a law firm.

JS: When you joined the SEC, did you expect to stay as long as you eventually did?

WM: No, I expected I would be there four or five years, learn quite a bit, and then move on and get a job in a law firm and practice law.

JS: What did you think of the SEC before you joined it? I mean, what was the image in your mind if you think back?

WM: This was 1977. It was the tail end of the Foreign Corrupt Practices Act, or what I would call the foreign payments program, just shortly after the passage of the Act. The agency

and certainly its enforcement program were really on a high note. It was viewed as the best agency in federal government; Stanley Sporkin had a reputation that was well-known throughout the country. The division was populated by very young, very aggressive lawyers. The cases they brought and the things that the agency was doing at that point in time were extraordinary, largely because of the questionable payments program, after the Committee to Reelect the President was revealed to have funneled hundreds of thousands of dollars in black bags from public companies to support the campaign to reelect the president. It was just a fascinating agency, and for a young lawyer that wanted to be involved in aggressive, prosecutorial actions, it was a very attractive place to go.

JS: You mentioned that Stanley Sporkin was the Director of Enforcement at that time. Was he the one who hired you?

WM: I got hired by a group of people. I didn't meet Stanley until months after I joined the agency. I got hired in the ordinary manner, after interviewing with a series of people. The guy who actually hired me was a young lawyer by the name of Richard Brodsky, who is now in private practice in Florida.

JS: How big was the Enforcement Division at this time?

WM: My recollection is that the entire division was probably around 220, maybe 230 or 40 – that would be an approximation. It certainly wasn't much larger than that. Comparatively speaking, it was quite small.

JS: Was there any sort of training program when you first got there, or did you just start working on cases right away?

WM: There were training programs. You went to seminars. You got the materials you were expected to read. You were trained somewhat in how to take testimony. It was not nearly as sophisticated as it became. With my first real witness, my branch chief sat in the room with me for approximately forty-five minutes. We took a break, and he said, "You look like you know what you're doing. Don't screw it up." And that was it.

JS: What sorts of issues were you working on when you first got there, or what sorts of cases?

WM: Early on, I did a number of accounting cases, and I did some cases in the area of insurance. Remember, insurance is not regulated at the federal level. There was, at the time, a wide-spread perception that there was a fair amount of abuse in the insurance industry. So the SEC started looking at a lot of insurance companies by way of the holding companies that were public. I did a number of those kinds of cases.

JS: Did you have any contact with the Commissioners during these early days?

WM: Oh, yes. The process was conceptually similar to what it is today, but the environment was very different. I went to Commission meetings, just to sit through the meetings and

see what would happen. I met with Commissioners. When my case was going to the calendar, I would get summoned to a Commissioner's office with the Commissioner and the legal assistants. I would walk through the case, answer the questions. Back then, the people I worked for insisted that the staff lawyer go and answer the questions themselves. They may go with you, but it was a far more open experience in that my exposure to and contact with Commissioners early on was significant compared to what I think occurs today.

JS: It sounds like you had quite a bit of responsibility at that time compared to what a young lawyer in private practice might have had.

WM: That's true, and it's a product of two things. It's a function of being in public service, because you are pushed, and pushed to do things sooner rather than later and take responsibility. Frankly, the more you will do and the more assertive you are about trying to learn more and take more responsibility, the more you're likely to get, because there's more work to do than people to do it. Secondly, I think the agency, by dint of the work load and the personality types there, was inclined to allow you to take on more responsibility and do more, if you were willing to do it and had the appetite to be aggressive.

JS: Can you walk through the process of rising up the ranks in the Enforcement Division at this time? Was the next step from being a junior lawyer becoming an assistant director?

WM: No, at that time, you were a staff lawyer, and if you were to get promoted, you would become a branch chief. A branch chief then would have perhaps six or seven lawyers that reported directly to him or her. Then usually two branch chiefs would report to an assistant director. There were only two associate directors at the time, and there would be three assistant directors reporting to each associate director. That was the hierarchy of supervision in the division.

JS: Did you ever serve outside of the D.C. area?

WM: Well, I did temporarily. In 1987, there were some issues in the New York regional office, and the head of Enforcement resigned first and then the Regional Administrator resigned. David Ruder was the chairman at the time. I had been an associate director for a year, maybe a little longer – a year and a half. David called me and said, "I'd like you to go to New York for a few weeks and help run the office."

I was not particularly anxious to go to New York and I said, "Can I think about it overnight?" He said, "Sure." I said, "Well, how long do you think it'll be?" He said, "Six weeks." I said, "That means four months." He said, "That's right." I agreed to do it. I would spend three to four days a week in New York and then two days in Washington. I kept my regular group in my branch here. I went to New York for that period of time with Jim Clarkson to try to stabilize that office until they selected a new Regional Administrator.

JS: We're going to go back in time just a little bit. Tell me a little bit about working with Stanley Sporkin. What was he like?

WM: He was wonderful. Stanley has and always had a particular style of doing business. He is extraordinarily perceptive and smart, in ways that I think sometimes people don't quite appreciate, because he's also somewhat idiosyncratic. Stanley could absorb an enormous amount of information in a very abbreviated time period. He read quite a bit.

His combination of aggressiveness with compassion was what was quite extraordinary about him. If you talked to people on the outside of the agency at the time, everyone thought the agency was too aggressive, and that Stanley was too aggressive. There was just a cadre of young, tough lawyers there, and it was difficult to deal with people. The truth was – for very successful defense lawyers and people who understood the process – if you could get into Stanley's office and get a meeting, Stanley was an extraordinarily good listener and he could size up a case, but size up people.

If you, as a staff lawyer, were really committed to a certain result in a tough enforcement action, the thing you hated was to get the defense counsel or, worse, their clients in a meeting with Stanley, because Stanley had a very soft heart. He would always figure out a way to get to a settlement or a deal that would concede something. It was one of the things that made him a really effective director. He was probably one of the best leaders that I've ever worked for or been involved with. If you define leadership as the capacity

to get people to follow you, in the face of almost anything, he was capable of doing that in a way that very few people I've ever worked with or for was ever able to do.

JS: Do you think that defense lawyers that were arguing cases with the Commission–do you think that they were aware that it might be in their interest to sort of get in the office with him?

WM: It worked when you were good, when you knew the facts, and when you had a genuine case. It did not work for people who were slick or who played games with the process. I saw him in meetings dress down lawyers in ways that were quite remarkable. He was not a pushover, but he could read the room well, and, if he had to err in a tough case, it would be on the side of being more compassionate, rather than less, more reasonable, rather than less, and yet, if somebody pushed the wrong buttons or played games in the process, he was pretty tough. He would be pretty dismissive.

JS: How did his leadership style compare with someone like John Fedders or Gary Lynch?

WM: Well, they were very different people, John Fedders and Gary Lynch. John came in from private practice, was an extraordinarily smart and able lawyer. Early on, he reflected a slight level of distain for the tenured staff, and that took a while for him to overcome. But he was very able, and he had an extraordinary work ethic. He had a leadership style that was just very different from Stanley's.

Gary was somebody who had come up through the ranks. He had been the key supervisor on the Dennis Levine, Ivan Boesky, Marty Siegel, insider trading investigations, which if you recall, by 1986 or so, had really become the core of the agency's most visible and aggressive enforcement agenda. Gary was only thirty-four or thirty-five years old when he became the director. He had a reservoir of support within the division, simply because he grew up in the division. He was there; he understood the process. He understood how to get things done, and he was somebody that could get whatever he needed out of the staff. He was somebody who was very quiet in terms of his leadership style, but very, very effective.

JS: You just brought up the issue of insider trading. Was this a priority when you joined the SEC?

WM: There were cases, but it was not a priority. The back story on insider trading at that point in time is quite interesting. John Shad became the Chairman during President Reagan's first administration. John had been an investment banker. He was very much a product of Wall Street. He understood the securities markets, and he also had what I would characterize as a deep level of skepticism about the Enforcement program.

Early in his tenure, there were philosophical debates within the agency about whether we should be suing public companies at all. He had commissioned research by the General Counsel's Office on the notion that perhaps we should only name individuals and not companies, because the cost associated with those cases came out of the pockets of

shareholders. If you examine the first few years of John Shad's tenure, you will find very few cases brought against the securities industry, the big firms based on failure to supervise, because John's theory was if one person in a big firm does something bad, you name that person, you don't name the firm.

These were huge philosophical debates. Part of the reason we ended up in the insider trading business to the extent that we were, was that we were shifting resources out of investigating accounting, and financial fraud and disclosure and into investigating insider trading, which the common wisdom was, was only behavior engaged in by rogue individuals at isolated firms or public companies or people who were bad people.

JS: Was everyone supportive of that decision?

WM: No. There was enormous unhappiness and to some extent there were morale issues in the Division of Enforcement. This is an agency that historically responds extremely well to political change, and I say that with a small p. That's why we have elections; there are philosophical perspectives on the role of government. The division dutifully soldiered on. These were decisions made by presidential appointees about how and where to deploy Commission resources, and we did what we were supposed to do.

When the Dennis Levine case broke and that led to Boesky and to Marty Siegel – and then Boesky led to Drexel Burnham and to Michael Milken – it took a while for the Chairman to process what this meant, because we now had taken a can opener to the

industry, the investment banking community that he'd come from. It was very difficult for him to come to terms with this and accept it. There was more than one long conversation that Gary had with the Chairman, explaining, "John, this really happened. We didn't make this evidence up. This is what happened."

It was a turning point in a sense for the Commission and for the Chairman, in terms of his philosophical approach to law enforcement, because it was – I think – a sad turn of events for him. We, in my view, backed into those cases and to that scandal, because we were backing out of doing some of the more conventional law enforcement things that, frankly, had upset a number of people prior to the Republican administration coming in 1980.

JS: Even prior to these big cases that you mentioned, the Boesky, Drexel, and Milken cases, the Commission had already begun to work with Congress on a variety of new laws that governed insider trading.

WM: The Insider Trading Sanctions Act of 1984 followed, I think, the Paul Thayer case. I don't know the date of that case, but there was a series of cases. If you remember, we went through an enormous uptick in merger and acquisition activity in the late seventies, early eighties. That was in a sense the environmental backdrop for all this insider trading, enormous opportunity for profit and for people to take advantage of information.

JS: Did the SEC work closely with the Congress on the Insider Trading Sanctions Act of 1984?

WM: I believe we did. I was not that involved in any of the legislative efforts at the time. In 1984, I would have been an assistant director. But yes, there would have been a lot of coordination between the staff on the Commission, particularly in the legislative affairs and the General Counsel's Office, and the Hill staff.

JS: How important was that law to these prosecutions that happened during the mid-1980s?

WM: It was critical, because you ended up having more than just an injunction, which essentially is a court order that says, "Go and sin no more, and pay back the profits." You now had the prospect of real economic deterrents being attached if you got caught.

JS: In 1988, there was another law passed, the Insider Trading and Securities Fraud Enforcement Act, which expanded the penalties available to the SEC. Did the SEC also work closely with the Congress on this law?

WM: Absolutely, and that would have been under David Ruder. The most significant part of that legislation – which again emerged out of the cases involving securities professionals and market professionals – were the requirements that registered entities, investment advisors, and broker dealers have written policies and procedures to prevent and detect insider trading, and then the potential for vicarious liability as a controlling person, if one of their employees actually traded or was engaged in insider trading.

JS: Were the relationships between the SEC and the Congress primarily at the level of the Commissioners or did the staff also have contact with the Congress, as well?

WM: The staff had a lot of contact at the division director level with the senior staff on the oversight committees, as a routine matter. There were always tensions, no matter what administration was in the executive branch, and what party controlled the legislative branch and the oversight committees. When John Shad was the chairman, John Dingell was the Chairman of what was then the House Energy and Commerce Committee. John Shad testified so many times, I don't think he could even count them. But there's nothing he hated more than having to go to the Hill and testify in front of John Dingell.

They actually got along, in a certain way, but philosophically they saw the world differently, but it was always an unpleasant experience for the Chairman to go over there and testify. That process, which has changed a little bit. I think under Mary Schapiro, it is a lot more civil and professional. But over the years, that process has always been one where there has been a certain amount of tension for the agency Chairman and the Commissioners who get summoned to testify in front of those committees.

JS: At this time during these big cases in the mid-1980s, did you feel like Congress was pushing you all to be more aggressive, or were they pushing to back off a little bit?

WM: My sense is they were pushing us to be more aggressive. It was a process in which the agency had to come to terms with the fact that the enforcement program had uncovered

these abuses. We now had to deal with them and maybe legislation was going to be needed.

JS: Right before you became Director of Enforcement, or possibly right afterwards, the Congress passed the 1990 Securities Enforcement Remedies Act, right?

WM: Right.

JS: So clearly you had already worked closely with the Congress on the language of this bill. Was it generally the case that the SEC would just draft the type of legislation that they would like to see and send it on over to the committee, or was it not so direct?

WM: It would be far more a process of discussion and collaboration, and the Remedies Act was the product of Richard Breeden's experience when he worked for Vice President Bush at the time in the first Reagan administration on the Financial Institutions Task Force. But Richard had a view of particularly the banking and thrift industry that was not very flattering. He's seen the worst of what had emerged in the S&L crisis of the eighties.

He'd also seen from afar – which is frequently a very valuable vantage point from which to assess an agency – that the SEC lacked any remedial power, other than injunctive relief. You had penalties available on insider trading cases and that was it. In other civil cases when you dealt with violations of the federal securities laws, you were without a

remedy. The deterrent was that most companies worried about shareholder litigation and class action lawsuits.

Breeden came into office and spent a fair amount of time discussing with people on the oversight committees the reality that if we were going to have an effective program and deal with law violators in a constructive way, we really needed to have penalty authority at the SEC. He was the architect in a sense behind the thinking about moving the remedies statute before the Congress and getting it passed.

JS: Did you work with Richard Breeden while he was on the Vice President's staff?

WM: I didn't know him until the day he walked into the SEC.

JS: Just one more thing about this period of the 1980s. You probably found yourself reading about the division in the newspaper quite a bit. Did you find that the press generally got it right, or did they romanticize these issues of insider trading?

WM: A little bit of both. In some of the cases, there was a fascination – when you look for instance at Paul Thayer, there you had at the time the deputy secretary of defense, who had gotten caught up prior to his tenure – and he was a war hero – in insider trading. It was a case that was bitterly fought until a certain point when the evidence was overwhelming. The press loved this idea, as they still do today, of going out and getting the bad guys. So there was a certain romanticized perspective on the cases and it was

great to read about when you were there. Sometimes you read some of the stories and you thought, "Gee, I wish it was as glamorous and exciting as it sounds." It was a period of time when Gary was likened to Eliot Ness.

I did some traveling globally then to foreign countries to deal with securities regulators. It was fascinating to see the way we were perceived around the world. I mean, people thought we must have carried guns and busted down doors and arrested people. That was a product I think of the general image that the press had created about the program. It was humorous in some respects.

JS: Do you think that all this attention had an impact on the way the SEC worked? Did it go to anyone's head in the division?

WM: There were some people who got carried away. I mean, there are inevitably, when you have that kind of romanticized view of the work of the agency, and you have the aura created of the good guys and the bad guys. You run the risk that some people pay less attention to the rules and more attention to, "If we're right, touching all the bases is important, but it's not really critical." That was a worry.

JS: Do you think that this attention and all this public sentiment and the release of films like *Wall Street*, do you think that had an impact on Congress' interest in the subject?

WM: It did. And it also had had an impact on the agency. The agency, in terms of recruiting and in terms of its stature in the public eye, was never higher. Even with the issues the agency faced then and some of the problems that it faced in its overall approach to regulation, it was fundamentally viewed as a law enforcement agency. Of all the other things the agency does – many of which are critical to the capital markets, capital formation, investor protection – the widespread perception was, "it's a cops and robbers agency."

JS: You mentioned that you traveled abroad and worked with foreign governments. How was the globalization of finance at this time affecting the work of the Enforcement Division?

WM: The earliest window I had on that was in insider trading. If you recall in the Dennis Levine case, there was a bank in the Bahamas that Dennis Levine had used. What became apparent was that for a small group of very sophisticated people, Switzerland was an extraordinarily convenient vehicle to set up a bank account. You conduct trading through a brokerage firm that may have an office in London or in Paris or in Switzerland, and shield everything about your trading through those bank accounts.

Michael Mann, who was the first director of what became the Office of International Affairs under John Fedders, began the effort on behalf of the SEC and to some great extent the United States. He worked with the Department of Justice and with the Office of Legal Counsel at the Department of State in negotiating the first agreements with

foreign governments, which we called memoranda of understanding. They weren't treaties; they were regulator to regulator agreements pursuant to which we established a protocol to get information.

Those were instrumental in opening the doors to relationships with a lot of governments. Because the SEC was in the midst of this cops and robbers, romanticized image in the press, there were many doors that were now open that had previously been closed. There was an appetite by foreign governments and foreign regulators, within limits, to strike up agreements and arrangements with the SEC, because the law enforcement people on the other side of the ocean now saw this as something that made sense.

Now, that wasn't a universally accepted view. There was a lot of resistance in Switzerland. That door opened only when in a pending case in the southern district in New York, one of the judges imposed what at the time was a huge fine of $50,000 a day on the bank until they turned the information over. It had an enormous effect on the agencies, including the opening of the doors by the agency to foreign regulators and the IOSCO becoming basically a forum for the establishment of a framework for the globalization of markets.

JS: Within the Division of Enforcement, were there cases where you sometimes felt that if you'd had a memorandum of understanding with the government, you might have been able to pursue them, but because there wasn't a memorandum, you weren't?

WM: Well, you never knew what you missed, and you always had this sense that there might be a lot more out there, but you just can't crack the nut and get the information.

JS: So Richard Breeden took over the Chairmanship of the SEC at the end of the 1980s, and he was the one who eventually chose you to be the Director of Enforcement?

WM: Right.

JS: Did this happen right away?

WM: No. I don't know the date. I think Richard was sworn in in September of 1989, and he – quite patiently in his view and in a maddening sort of level of uncertainty for a number of us – did nothing with respect to the director's job until the end of December. We had three associate directors at the time, and each of us would be responsible for the Commission calendar for a week or two weeks at a time. Richard just waited and waited, and then on December the 22nd or 23rd, as I was getting ready to leave for the Christmas holidays, he summoned me to his office at 5:00 on a Friday night.

I had no idea what for, and I don't know if you know Richard, but he's a brilliant guy who does not suffer fools. I was summoned to his office and brought into the conference room. He came in and sat down and said, "Look, I've made the decision to make you the director. It's been a tough process and there are a lot of able people. Your colleagues down there are quite able, but I think you would make the best director." I think he asked

me to return to the SEC two days after Christmas, had a press conference, and announced that I was going to be the next Director of Enforcement.

JS: Did you have a set of priorities that you wanted to accomplish?

WM: The Chairman had already focused on the S&L industry and it was quite clear that we were going to do that, number one. Number two, he had a very clear sense of the need for a presence in accounting and financial disclosure. He had a sense of how we ought to interface with the mutual fund and advisory business. He and I would sit and talk, but Richard is a guy who had and still has very definite views of the world. His view was, "I'm going to set the priorities and you and I are going to work on them, but the door is open, and if you disagree or you have a view or a thought, I expect you to be in here and we'll hash it out." That was basically the relationship.

JS: One of the first big things that happened under your directorship was that the Commission settled its case against Michael Milken. I think he agreed to pay about $600 million in disgorgements and penalties?

WM: Right.

JS: How was that number arrived at?

WM: As I sit here, I couldn't tell you. It was not scientific. It was a product of discussions largely with the Chairman's office and the key senior staff on the case, which at the time included Barry Goldsmith, Tom Newkirk, Jim Kaufman and Toni Chion. I think we went back and forth with the Chairman. The Chairman basically gave his input and said, "This is where we are, this is what I'd like to see." He was also very direct – he was not a negotiator in a lot of these things. He said, "Look, here's the number. That's not a number to negotiate from; that is not a bid, that's it.

JS: A few years earlier, some people had criticized the Boesky settlement as being too little. Do you think that influenced the amount of the settlement?

WM: I don't know that that affected the way Richard looked at it. That criticism didn't really bother me very much, and I don't think it frankly bothered a lot – other than thinking that we just broke the biggest insider trading case in history, we just took the veil off a whole series of relationships that will give us the ability to clean up a lot of misconduct in the industry, and now people are now carping about the money.

That's very typical when you're in the middle of the battle looking out, saying "Give me a break, folks, you're criticizing us while we're down here duking it out trying to do God's work." I don't think that criticism particularly affected the thinking on the penalty. A lot of what colored Richard's view on the financial settlement, I think was affected by the S&L crisis, and where he saw much of the fallout from a broader level of what he characterized as market abuse and misconduct.

JS: So the SEC, as it always had, continued to bring a mixture of both big cases and small cases in terms of insider trading each year. How did you decide which cases you were going to pursue?

WM: We had an inventory and you wanted to have a certain level of presence in insider trading, accounting, financial fraud cases, nuts and bolts supervision, and failure to supervise cases and operational cases involving the financial services industry. Then you always had program areas where there was an emphasis, whether it was the S&L industry, or the municipals securities industry, that largely emerged either from what was going on at the markets at the time or from a reasoned decision by the commission or the chairman, about their view that there was an area of the marketplace that we ought to put resources into.

In theory, you could take every lawyer, accountant, investigator in the division and put them in any one of those areas and there was still more to do. The trick was to try to have a presence throughout most of the areas of the market, and bring some real cases that sent a message, while recognizing that you were simply not able to do all the cases and find everybody that was breaking the rules. It just was an impossibility.

JS: One of the most notable insider trading cases that you all pursued during this period was the O'Hagan case. There was a quote from Richard Breeden during this period that this

man "should be left naked, homeless, and without wheels." There seemed to have been a conscious attempt to throw the book at him, right?

WM: Yeah, and it's interesting because I remember like it was yesterday how and where that comment was made. It was actually made in a closed Commission meeting and should never have seen the light of day. But like many other things, when something that interesting and colorful is uttered, it rarely stays within the room. I mean I remember the O'Hagan case quite well – it was one of my cases.

In fact, some of the lawyers that initially defended Mr. O'Hagan were in this law firm at the time. I think the Chairman was stunned by what he had done and by the sheer nerve of it. As it was in many cases; he was not a shrinking wallflower. He said what he thought and that's what he believed. Believe me, he meant it.

JS: Had the SEC also been looking for a chance to try to retest the misappropriation theory?

WM: No. Those decisions are made once you're faced with a set of circumstances and you think, "All right, what are we going to do here?" The O'Hagan case was a case where, in the broadest sense, the sentiment was, "If this isn't illegal; if we don't pursue it, shame on us. If a court wants to say it's legal, then let a court do that and then the Congress can deal with it, but we're not going to sit by and let this go."

It had a long, tortured history until it finally found its way to the Supreme Court. We participated in the mute court preparation by Michael Dreeben, who argued the case in front of the Supreme Court. He was absolutely spectacular. There was a fairly unwavering sense that we'll go after this one for as long as it takes, and if somebody wants to say that what he did is perfectly appropriate, then let them say it and then the Congress will have to deal with it.

JS: One last thing on insider trading during this period, was there any talk of moving towards what would become known as Regulation Fair Disclosure at this time?

WM: No, that emerged far later, in the late nineties, with Arthur Levitt. We went through this enormous metamorphosis in the marketplace. If you were to trace from 1975 to 1985 to 1995 to 2000, the number of individual investors in the securities market, and if you were to look at the impact that CNBC had on the popular interest in the stock market, you would see a shift in the pattern of what American families did with their wealth, which used to sit in passbook savings accounts. It basically moved from that form of "investment" or savings into the equity markets, driven in large part by the enormous returns that were generated in the eighties and into the nineties.

When the tech sector exploded in the nineties, the attraction for individuals in the stock market was just irresistible. As that went forward, we had the information revolution. We had real-time information on a twenty-four hour basis. We had cell phones. Simply the availability of information in a technology-driven society to be worth what it was,

even if you beat the market by an hour, all led to the sense that what was perceived as routine business in the securities industry – with the market professionals and the analysts getting a heads up and literally beating the market – was just wrong.

I have my own skepticism that FD was the right way to go about it. I don't know that there is a perfect way to go about it, but FD really emerged as a very populist-oriented solution to a problem of people cheating or being perceived to cheat by beating the market with the information.

JS: So by the early 1990s, the SEC had begun to look into municipal bonds in a new way. There was new attention being paid to what were called pay-for-play scandals. What were these?

WM: The issue of pay-for-play was driven by, I think, the Chairman at the time, Arthur Levitt's sense that there was a very nontransparent underside of public finance. You had state, local and municipal governments, as well as pension plans and quasi-government managed retirement funds, that had to turn to professionals for advice on financing, managing investments, and raising money for all sorts of public finance projects. What went on in that arena involved an enormous amount of inefficiency in the sense that because it was public money, taxpayer dollars and/or public funds where there were tax-exempt status granted to the investments, there was a loose sense that nobody is really hurt if we all basically take care of ourselves.

Whether that implicated the return that was granted to investors, the fees that were paid to the advisors, or the conflicts that existed between the advisors to the municipal enterprise and the people that were structuring the investment product and setting up the financing vehicle, there was an enormous amount of money that was basically being paid to advisors and professionals. Investors and taxpayers were getting cheated. That was the genesis of the interest.

JS: Then in 1993, the MSRB drafted a new rule, rule G-37, that prohibited the bond dealers from accepting underwriting contracts from politicians within a certain amount of time. It was later rewritten. But I was just wondering how closely did the SEC work with the MSRB on this new rule, if at all?

WM: As I sit here, I just don't recall. We at the time had an Office of Municipal Securities Regulation that the chairman had set up. It was headed by Paul Maco, and I don't recall what or the degree to which we had input with the MSRB on the drafting of those rules.

JS: There are a number of big cases in the mid-1990s. Probably the biggest one was Orange County and its bankruptcy. As the SEC begun to pursue that case, was there any pushback from politicians, either on the state or local level, or within the federal government?

WM: I don't remember particular pushback, other than skepticism, and a sense of "How dare you?" or "Who are you to be sticking your nose into the business of exempt securities?"

Nobody really challenged us and forced us to go to court. I had always looked at the Orange County situation as one in which you couldn't win. Here we had a very politically conservative county where the county executives seemed to be working miracles and generating enormous returns and reducing taxes and serving the people. And here was the government suddenly monkeying around trying to look at it.

Then we found out that, indeed, there is a much bigger problem and the investments aren't secure. Then there were actually politicians criticizing us for not having done more in advance. It is reflective of a broader issue in the American public: you want lower taxes, you want maximum efficiency, you want the police service to be great, the highways to be clean, the water to be clean, but you don't want the government fooling around in it, because that costs money. This was particularly coming out of Orange County, based on some of the criticism that the agency got from some of the political leaders at the time.

JS: That's probably not going to change any time soon. Another big investigation by the mid-1990s was the one into the NASD. Could you tell me a little bit about that?

WM: What drove the investigation was a sense that there was a level of, again, an absence of transparency and largely price inefficiency in the pricing of securities in that market. A sense that, because you had a bid and an ask, and a certain spread that were built into the transactions, that investors weren't getting the most efficient price for their dollar. While we're talking increments of pennies, or pennies on a trade, you're also talking over time

hundreds and millions, and ultimately billions of dollars in inefficient profits that are going into Wall Street. There was an enormous amount of resistance to the investigation, as well as to the conclusions.

The conclusions were driven largely as much by economic analysis and pure economic research as they were anyone coming in and saying on the record, "Oh, yes, we do this, we do that." The area where it was clear that there was some collusive behavior was in the penalties and the retaliation that were visited on firms who in any given security would narrow the spread to be more competitive or to capture more business.

JS: Many of the records that you were using in this case came from these phone conversations they were having, right?

WM: A fair number.

JS: Was that unique to this case at the time?

WM: At the time, it was pretty unique. There were cases where we had similar kinds of tapes: the old Bankers Trust Case, and the derivatives fraud that we had alleged against some traders at Bankers Trust and against the firm were based largely on tapes. These were pretty good, but you had to go through thousands of hours of tapes and come up with a handful of conversations that were indeed critical. Not because people weren't doing it

most of the time, it's just that it was a convention where you didn't need to say a whole lot to get done what you needed to accomplish.

JS: They didn't have the same electronic discovery methods that they have today. Was it mostly just young lawyers who were doing all this work?

WM: Lawyers.

JS: Did you have other staff, too, that were doing research?

WM: We'd have anybody who could get time to listen and it took hours and hours.

JS: Tell me a little bit about working with Arthur Levitt on the Commission.

WM: I worked for five Chairmen, two of them as the director and both of them were brilliant. They couldn't be more different than night and day, Arthur Levitt and Richard Breeden. Arthur was probably the most politically astute Chairman, certainly in the modern era of the SEC. On difficult issues, he had a capacity to deal with people who ideologically were completely opposed to a perspective he had, or an initiative he wanted, and he could bring them around in a way that was remarkable.

That's because he was pretty tough, but he was very patient, would spend a lot of time with people on the Hill. He and Phil Gramm became quite good friends, even though

philosophically I would suspect they were quite different in their views of the world. He was somebody I got along with really well. He would drive me crazy some days, but he would always listen. He was somebody I could always contact. It wouldn't matter the time of day or the issue, I could just walk into his office.

I never made appointments; I could always go in and just shut the door and say, "Can we get ten minutes on something?" He was a listener, a really smart guy, very perceptive about the markets. I credit him with the sense that the NASDAQ market needed to be reformed. He had the vision with respect to what was wrong in the municipals securities market, just based on his intuitive sense of the way industry works, and the absence of a window on what goes on in that marketplace.

JS: In 1998, you decided to leave the SEC and go into the private sector. Was it difficult to make that transition?

WM: It was hard to leave, but only in the sense that you get used to doing something for as long as I'd been doing it. I'd never been in private practice, but I probably stayed even a few years beyond when it would have been advisable for me to leave, but I was having so much fun I didn't want to go. I decided I had to go do something different. Once I walked out the door, the transition was not hard at all.

One aspect of the transition from a job like that to private practice is you have to recognize that the day you walk out the door, whatever illusions you have held about how

important you are, how smart you are, how much everybody wants to hear what you have to say, you'd better be prepared for the fact that you are just another lawyer. The press, the markets, people might remember your name, but you are of no grand significance in the scheme of things, because it's not you, it's really the agency and the title you had. That's a far bigger, sobering aspect of leaving a job like that than the transition to private practice. I did not find the transition difficult at all.

JS: You might be downplaying your role just a little bit in some of the events that followed. For instance, in the Enron and WorldCom cases, you ended up playing a pretty important role in those two events. Tell me a little bit about how you ended up as chairman of the special investigative committee of Enron's board of directors?

WM: Well, the chairman was Bill Powers. I ended up being the lead lawyer and Wilmer represented the committee. It came about in a way, we were not initially hired to represent the special committee; we were hired by Enron. I was at Dulles Airport on a plane to the West Coast for testimony the following day. It was a Sunday. My cell phone rang or I had a message at work and I returned the call, and it was a lawyer saying that Enron was trying to reach me, and wanted me to see if I was available to represent them. I explained my schedule, said I'll be on the West Coast. Everybody said, "We'll talk to you first thing tomorrow."

I flew to San Francisco, got on the phone the first thing the next morning, spoke to the general counsel Jim Derrick at the time, who was trying to have a private jet pick me up

in San Francisco to bring me to Houston. That didn't work out. I came back to Washington. On Wednesday evening, Joe Brenner, my partner at the time, and I flew to Houston. We met with the general counsel Jim Derrick, Ken Lay, Robert Causey, who was the chief financial officer, and then a host of other Enron executives.

They wanted to hire us to represent Enron. We cleared conflicts and we sat for hours and got the Enron perspective on the problem and the issue and what was involved. The SEC was fairly aggressive. Within forty-eight hours, Joe and I had spent some time looking at all this, and Enron really wanted us to get on top of it, go in and explain it to the government, and explain that there was no problem.

We consulted with a number of our partners here, and I went back to them and I said, "Look, here is our advice. You should form a special committee, and you should empower the special committee to take a look at this report to the board and report to the government. If you do that, you can hold the government off and probably get this done, and get it done far more quickly than if you go through the old-fashioned way. But if you sign up for that, it means you sign up for it. It means whatever the special committee finds will be reported to the government. So you've got to understand that going in, and the special committee's got to be independent. We can't have management people in."

So we went around. They agreed that made sense to them, given all the alternatives, they thought that was the wisest thing to do. We pushed to have the composition of the committee such that it was truly independent. If you went back and looked at the time

period, this was September, October of 2001 or 2 – I'm not sure which – the press coverage of Enron was escalating. Every day they were new stories, new revelations, and new concerns. We were successful in getting Bill Powers, who was recommended by I think Jim Derrick to be the chairman of the special committee. He at the time was the dean of the University of Texas School Of Law. That's how the special committee came out.

We were hired to represent the company, and we told them if their objective was do it quickly, do it transparently, and regain your creditability with the markets and the government, you've got to do it independently. And the only way to do it independently is have a special committee. And if you buy this, you buy it, whether it turns out being the golden egg or a rotten egg. That was the genesis of the whole matter.

JS: Did you participate in the investigation of the special committee, too?

WM: Oh, yes. We were down there for weeks and weeks and weeks and weeks. We interviewed people. We looked at all the accounting records. We hired Deloitte & Touche and had some forensic accountants, including a quantitative guy who was able to take these purpose entities apart and follow the structure all the way through. The routine was pretty grueling. We would leave the Four Seasons at seven, seven-thirty every morning, we'd go the eight or ten blocks to Enron, we'd go in, we were there till eight, nine, ten, eleven at night. We'd go back to the hotel and then back again. It was an extraordinary few months.

JS: Then based part on your work with Enron, when WorldCom began having problems, they also contacted your firm, right?

WM: Right.

JS: In this case, there also ended up being a special committee?

WM: Right, and that was headed by Nick Katzenbach and Richard Breeden was an ex officio member of the committee. I'm trying to remember who else was on the special committee at WorldCom.

JS: As I understand it, the committee ended up finding some similar problems as was the case at Enron, but in this case it also assigned some responsibility to Arthur Andersen for its failure to audit appropriately.

WM: On the WorldCom one?

JS: The WorldCom one. Were you surprised when Andersen ended up going under later?

WM: Not really, given the press of the publicity and the blame that was being just shoveled around to everybody. There were some structural issues with the way that firm addressed some complicated, difficult issues. At the time, Andersen's approach to dealing with

significant issues at the client level was to leave the decisions to the engagement partner. You can consult with the national office, but at most other firms, once an issue hits a certain point on the radar screen as a big issue, the firm's national office dictates the position on tough accounting and GAAP issues. Andersen was the reverse, and in some respects, there were probably other cultural issues, but that was a problem for the firm, deferring to management on some of these things.

JS: Was there any point when you were working on the Enron case or the WorldCom case, when you felt, "Gosh, maybe there was something we could have done at the SEC, maybe there was some regulation that could have been issued that could have prevented these cases from happening."

WM: No, never for a second.

JS: So it was mostly just a human issue?

WM: Enron and to some degree WorldCom were in my view caused by arrogance and hubris and a belief that – certainly in Enron – that technical accounting structure, saying the right words, turning around three times and throwing salt over your right shoulder could somehow transform something without economic substance into something with economic substance. It was an arrogance that really overcame any skepticism or any common sense concern that a number of people could have and should have expressed.

There was a culture of distain for the government, distain for competitors, and a belief that we are – the book that was written by Peter Elkind and Bethany McLean called *The Smartest Guys in the Room* pretty much captured it. They thought they were the smartest guys in the room.