

SEC Historical Society
Interview with Jane Jarcho
Conducted on January 6, 2023, by Kenneth Durr

Ken Durr:

This is an interview with Jane Jarcho for the SEC Historical Society's Virtual Museum and Archive on the History of Financial Regulation. Today is January 6th, 2023. And I'm Kenneth Durr. Jane, good to talk to you today.

Jane Jarcho:

Good to talk to you, Ken.

Ken Durr:

Let's start out at the beginning. I understand you went to, did your undergrad at Middlebury?

Jane Jarcho:

I did, yes.

Ken Durr:

I assume that was probably a liberal arts kind of a thing.

Jane Jarcho:

It was definitely liberal arts.

Ken Durr:

When did you get interested in law?

Jane Jarcho:

I think it was always on my mind. Somebody who from a young age I read the paper, paid attention to politics. I think I volunteered for my first political campaign when I was eight. So just interested in the world around me, world events, things like that.

Ken Durr:

Okay. So, then you went to Wisconsin, right?

Jane Jarcho:

I went to law school in Wisconsin, yes.

Ken Durr:

Any professors or programs that were influential?

Jane Jarcho:

No, I'm not sure I knew exactly what I wanted to do with law. I probably had, or didn't have, a great idea of all the things you could do with law. I think when you're 18, 20 years old, 22 years old, you don't realize that there are so many different things that you can do with any sort of degree, including law.

Ken Durr:

Any interest in securities law at that point?

Jane Jarcho:

It's definitely not any sort of specific interest in that. I think like a lot of people, I wasn't a hundred percent sure what I wanted to do. I went on to two law firms and did general litigation, more business type of litigation, and decided that I really was more interested in a practice that was in the public sector. And I talked to a number of people, and the two places that came up were the Securities and Exchange Commission and the Justice Department, and the Securities and Exchange Commission interested me more. So, I applied there.

Ken Durr:

Now was that to the Chicago office or did you apply to the Home Office?

Jane Jarcho:

That was Chicago. I was living in Chicago and applied to Chicago.

Ken Durr:

Okay. Tell me about the interview. How did that work out?

Jane Jarcho:

The interview was good. I really liked the people that I interviewed with. I interviewed with, although Chicago had both an exam program and an enforcement program, I interviewed with the enforcement program. I can honestly say I probably didn't know an exam program existed when I interviewed there and I can say that without feeling too badly because I think that's true for most people, at least most lawyers. And I really liked the leadership of the office. I learned a little bit more about what they did, and it was a good interview, and I was given an offer.

Ken Durr:

Did you interview with Bill Goldsberry, the director of the Chicago Office?

Jane Jarcho:

I'm not sure if you really interviewed with Bill at that time. I got to know Bill later, so probably not, if my recollection is right. I'm thinking, gosh, I'm thinking Anita Nagler was the head of that office at that time. If she wasn't, it would have been soon after, but I can't remember. So, I interviewed with her. I interviewed with Mary Keefe, who would later on become head of the office, and I interviewed with a couple of other people. I liked them, I liked the way they described the office, the work that was being done.

Ken Durr:

Okay. So, I assume you came in as a staff attorney or something like that.

Jane Jarcho:

I did. I came in as a staff attorney

Ken Durr:

Working in enforcement.

Jane Jarcho:

Yes.

Ken Durr:

Talk about some of your early work, some of the way the personnel there brought you up and gave you more and more authority.

Jane Jarcho:

So, I had had a couple of years of litigation experience, and I think one of the things that sent me on a trajectory of my 28-year career at the SEC was, pretty early on I got thrown in on some litigation, and I was asked to write, I don't remember what type of motion, but it wouldn't have been sort of a major motion. It's something I had done in private practice, and I sat down, and I did it and I turned it around. And I think that I made a decent impression on being able to just get the assignment and turn it around and do it.

So, I was assigned more responsibilities in that area, doing some litigation, and then added onto it the investigative work that is done in enforcement. So, I had sort of a balance of those. And I do think that probably the area I made my mark or impression was sort of stepping into what was a pretty big litigation matter and at least being able, as a relatively junior person, to be able to handle some of the work that was being done, which I think that particular litigation was looking for a junior person to step in and help out.

Ken Durr:

Are you able to talk about that litigation a little bit? What kind of case it was?

Jane Jarcho:

Yes, let's see. It was a market manipulation case with somebody who had a pretty bad history, and as is true with some litigation--particularly at the SEC, you'd see litigation in which there were very aggressive attorneys on the other side who sort of knew how to really litigate and knew how to, I hate to say, but some of litigation is just sort of throwing mud at the chains so that they don't work well or efficiently. And so having that, versus sometimes having people who don't have the resources or the knowledge quite to go that path.

And we had serious attorneys on the other side who were throwing a lot up of obstacles. So, it was time consuming in that sense, to have to always be responding to motions, and filing motions. The litigation practice, which is filing motions to compel to get answers to discovery and lots of steps that to do the basic things that you need to move litigation ahead. Which is all unfortunately, at least in my opinion, part of the game. So I think that was in some ways the topic, or the area, or facts were in some ways less important than that process stuff that was very time consuming.

Ken Durr:

Interesting. So, at some point you must have gotten the lay of the land and figured out how the Chicago office worked. My understanding is that all the regions kind of had their own character. If you had to characterize the Chicago office, how would you do it?

Jane Jarcho:

I think Chicago was a pretty aggressive office. And again, at least for this part, in my early career I talk about enforcement, and it was, and I think have no reason to believe it still isn't, the second largest regional office. So, it definitely had the experience and resources to handle complex cases, novel cases, which isn't to imply that other offices didn't, but being a little bit larger and having more resources makes that a little bit easier sometimes. So, I would say it was an office that was very much interested in making its mark and looking for impactful cases to recommend to the Commission and bring.

Ken Durr:

Okay. You moved from enforcement into the trial unit, or I guess the trial unit's part of enforcement, is that right?

Jane Jarcho:

That's right.

Ken Durr:

Talk about the work there, how your career took that path, and what kind of work you did in the trial unit.

Jane Jarcho:

Okay, so again, I can't speak for offices other than Chicago because I think it does, or at least back then did differ slightly. I think that the biggest difference that at least I perceived, and I'm not going to claim to describe the home office, the Washington DC trial unit office a hundred percent correctly because I wasn't part of it, but at least the Washington DC office, which was referred to as the Home Office, was quite a bit bigger than the Enforcement Division than any of the regional offices and had a trial counsel unit that was quite a bit bigger as well. And my sense was that the trial counsel unit in the Home Office was more a separate unit than the investigative unit of enforcement. Not to say they didn't work together, but they operated with separate management, separate reviews, things like that. In the regional offices, including Chicago, anybody in a trial position -- and there usually weren't that many of us -- was just part of the Chicago enforcement team. It really had to do with the work that you were assigned, which was always going to be litigation as opposed to investigation.

So, the other big difference, at least what I heard from speaking to people around the country, was some offices had fewer of the investigative team members, so if a matter they investigated went to litigation, in some offices it was really handed over primarily to the trial unit. In Chicago, this was not true. What really changed more was the trial unit person became sort of the manager of it and worked with the investigative team. Not to say that everyone on the investigative team always stayed on, but it was more common that there would be members of the investigative team working with a trial unit member.

Ken Durr:

Any notable cases that you handled from that position?

Jane Jarcho:

I did a lot of temporary restraining orders, so emergency actions, during that time and those tended to be offering frauds, Ponzi schemes, maybe some market manipulations. They have a very different feel and pace to them. And I guess if I'm thinking about the most memorable, I did an oil and gas Ponzi scheme that was out of Detroit, and it was memorable for a couple of reasons. One, I didn't know much, well much might be even saying too much. I didn't know anything really about the oil and gas industry. And I think one thing that I always loved about working at the SEC, whether it was in the trial unit or wherever it was, although the law was the same, if you were looking into some sort of fraud, you had to understand the underlying business. So, you couldn't describe what was wrong unless you understood how it was supposed to operate.

So, in order to be able to go in and talk about why the projections and reserve estimates, and what that meant, and why they were being misrepresented, I had to get my head around those things. And so, although we were able to get the TRO pretty quickly based solely on the movement of money and showing that in a Ponzi scheme you can really follow the money flow, we had to hire an expert witness who knew that area. And as part of being able to put an expert witness on the stand to testify, again, you have to understand what you're going to ask them.

So, it's really an interesting lesson in that and was an experience I had that was similar to other things I did while I was at the SEC. But I do remember I think we got, not at the TRO, but maybe at the preliminary injunction, the people running the Ponzi scheme had—which was very common and probably still remains common—had told all of the investors that they had all the money, and it was the SEC's fault and they'd get the money back if only the SEC would stop. And I went into court and literally was sort of booed by a pretty mean crowd. So that was a sort of interesting experience.

Ken Durr:

I've heard of cases like that. Yes. Speaking of, you're talking about learning curves. This is a period when internet-based scams are taking off and you started an internet focused and enforcement effort there. Tell me a little bit about that and the cases that you were working on.

Jane Jarcho:

Yes, I think we found ourselves, like everybody in this new world, very few people really had any understanding of how the internet could be manipulated to commit fraud. And the investigative techniques we had were not sufficient. So, the ability to track, for instance, where emails or where any of the postings that were done on online were coming from and track them back to a particular computer or particular place, I think if I'm remembering correctly, that's called the IP address. That didn't mean anything to the vast majority of us. So we had a new investigative technique we had to learn, to understand, which was key to proving the test, and of course the wider reach that the internet had, the ability to put things behind walls that you had to identify who you were to get behind, and the rules, the current rules at that time of the, at the SEC, of requiring you to actually truthfully identify yourself, which would again be an obvious stumbling block.

And so internally, I think the SEC had to think a lot about what all that meant. And if we could start to understand how to follow an IP address and to detect who that was coming from, then maybe the people on the other side could do the same. So, there were interesting things going on. I think we had a standalone computer somewhere that you could make requests to that were you wouldn't link it to the SEC and there was a process obviously, anybody couldn't just sit down, but you had to have that approved and give a reason why you didn't want to be traced. And so, it was an interesting time to learn

about something that was changing all of our lives dramatically. No, I did some insider trading cases, but mostly, I think mostly again sort of your more basic frauds, offering frauds, Ponzi schemes and said that.

Ken Durr:

So, during this time you're moving up in enforcement in the Chicago office and you started to come into the newspaper headlines a little bit. I noticed that you were involved in a case enjoining the Midwest Stock Exchange, which sounds like it would've been pretty important.

Jane Jarcho:

Yes, it was definitely a unique case, and one that could have significant importance for, although albeit a smaller stock exchange, but a stock exchange. And really we investigated the case, and what it showed was that the stock exchange, which needless to say had funds coming in, waiting for clearing and that sort of stuff, created a sizable income off of the float of when they receive and when they pay out, and an income that was pretty much necessary for their existence. And so, in which needless to say they hadn't disclosed that they were generating money during those admittedly couple of days—but was that money rightfully theirs and per the securities laws, was that disclosed? So, it was determined that they hadn't made the right sort of disclosure around that issue. And we sued them, which was unusual at the time, and I'm almost sure they closed down eventually and that was probably the beginning of the end.

Ken Durr:

A bigger corporate case, Phar-Mor. Tell me about that one.

Jane Jarcho:

Yes, that was a sort of big box retail store across, at least the Midwest, maybe other parts of the country. And that was a financial statement fraud case, and it really focused on an inventory manipulation scheme that, again, overstated assets that was hiding a significant shortfall, and possibly, I don't remember a hundred percent, but there was also, possibly, the improper payments of expenses to senior people and things like that. And at that time, I know it probably feels hard to believe here as we sit in 2023, but at that time million-dollar financial fraud cases were not as common as they are or multimillion dollar. So it was, at its time, the largest financial fraud case SEC had brought to unfortunately be eclipsed hundreds and of times since in numbers way bigger than Phar-Mor was at the time.

Ken Durr:

Okay. Probably the biggest systemic one was late trading and market timing, which you were heavily involved with.

Jane Jarcho:

Yes.

Ken Durr:

You were still in enforcement at that point, is that right?

Jane Jarcho:

I was. I was still in enforcement and that broke, and teams were put in place across the country to look into that. It was very widespread, and each investigation had its own perhaps, little different quirks, but I was involved with a company called Strong Investment, which was a large Midwest advisor and had a mutual funds out of the Milwaukee area. And its principal, Richard Strong, I think his first name was Richard, was the person involved in the potential market timing-late trading, which made it different than some of the other cases in which there were more like customers doing it.

And perhaps because of that fact, it got the attention of the New York Attorney General's office, which also was very interested in that case. So, I worked a lot with that office in pursuing that case against the individual as well as the entity and a couple of other individuals who held senior positions, although not as strong as the head, Richard Strong himself. So spent a lot of time and energy. Unfortunately, at the time, it was right after 9/11 and the New York AG's office was right around the World Trade Center, which I spent a lot of time in a hotel that looked into the hole that was being dug and then rebuilt.

So, I have a very vivid memory of that time because of all the time I spent down in that area. So that was probably the case I put the most amount of effort and resources into. It did end up in the shuttering of Strong Capital Management, I think it was called Strong Capital Management, as Richard Strong was given a, I don't know if it was a permanent bar or a time bar, but a bar. So, it caused the end of that firm.

Ken Durr:

So, the late trading and market timing investigations must have given you some new experience in the whole investment management area, is that right?

Jane Jarcho:

Yes, it's hard for me to remember my timing exactly. I had already had some experience with an action called Moneta Financial. The Chicago office had a very aggressive investment advisor examination program. So, we had, in enforcement in the Chicago office—I believe I had heard at the time that Chicago did more investment advisor enforcement cases, than either all the regions, or at least proportionately to our size. I don't remember which it was. So I would've had some work already in the area and as a result, also worked with people who were in the examination program. And so, I don't believe that was by any means my first. As a result of that Strong case, which I was describing, there was also a second Strong case. So, it definitely brought up some other matters in that area that I was involved in.

Ken Durr:

Why the switch to the exam side? You were building up a pretty strong record in enforcement. What took you over to the other side?

Jane Jarcho:

I had enjoyed the investment advisor work that I had done and I had had contact with, and was learning about the examination program as opposed to the enforcement program, which again, I think not merely just people who don't work at the SEC, but even plenty of people in the SEC probably didn't know exactly what the exam program did. And I think earlier I've expressed some of the frustration that is involved in litigating, and the same frustrations that even touch on enforcement investigations. And it felt to me like there was, perhaps, a lot of good work that could be done in protecting investors and working to improve compliance in industry participants before, maybe, some problems happened that just felt like it might be more satisfying to do that work without the hassle of, or the regular hassle that comes with doing litigation and enforcement work.

Ken Durr:

Okay. So how did that work? Did a position become open, and you just decided to go for it?

Jane Jarcho:

Yes, pretty much. Chicago, unlike most of the regions with the exception of New York, which is the largest regional office, has an exam program divided into two parts with two different senior managers. And so, one was in the broker-dealer area, and one was in the investment advisor investment company area, and the investment advisor investment company area opened up. And another part of the investment advisor, of that area that was a particular interest, was the industry was really moving, shifting, from the broker-dealer model to the investment advisor model. So, it had a path of sort of growth with a changing industry just to really see how these changes were playing out and was an area that frankly could only grow just because of the sheer numbers of registered investment advisors and the growth year to year in that area.

Ken Durr:

Why was that? What was your sense of what was taking place in the larger business world to make that happen?

Jane Jarcho:

Well, I think that depends on who you ask because I think there are two answers, both of which probably have grains of truth in them. And one would be that the compensation model is different from the broker-dealer to the investment advisor, an investment advisor as is compensated on assets under management. So, it produces a steady stream of income, whereas the broker-dealer is based on commission. So, a client that buys, and holds, and rarely trades, doesn't generate as much income. That's one view.

The other view is that the standard of conduct is different between the two. So an investment advisor is held to a fiduciary standard, and so has to disclose, has to always put its interest behind that of its client. Whereas the broker-dealer is held to a non-fiduciary standard, has to act in the best interest of its client, but under the law, that doesn't always require that they put their interest second to the client. And that that's, over the years and particularly, I think the year is 2019 has gotten closer, the standards have gotten closer, but it has affirmatively not been adopted that they be the same standard. And that's a fight that's both political, and in the industry, and investor advocates that's been ongoing and will continue to be ongoing.

Ken Durr:

Yes. Tell me about the way exams were done when you came in. There must have been sort of standard procedure.

Jane Jarcho:

Yes, I think the two key pieces, at least on quick thought, had to do with how exams were chosen and how exams were conducted. So, there was a risk rating of each firm that was based on its form ADV, and the form had has multiple questions, and answers to questions were assigned different risk points, and ultimately you had a risk score. And like every government agency everywhere, the SEC doesn't have sufficient staff to examine every investment advisor every year, let alone, frankly, every five years. So, you had to decide on where you were going to do your exams and a certain amount of your resources

were obviously set aside for emergency types of things. But in planning, that risk score was very key. And as a result, that risk score meant that there was a large number, and a not insignificant number, of investment advisors that had never before been examined, never been examined by the SEC because we just didn't have the resources to get to the score point that they were at.

So, the one thing that was happening was, some offices were trying to come up with creative ways to deal with that, but it was just a fact and as a result of resources. So, there was clearly a risk component to making the decision, but one that was leaving a gap, that frankly the SEC was being criticized for by Congress among others. And then the second was the process of conducting the exam. There was a template-like area for exams that listed, I don't remember, eight, ten areas to review when you went in to do the exam.

And although I think people would tell you that it wasn't required that all areas on every exam be reviewed, in practice that was happening. So that meant that you had to commit the resources on every exam to look at all of the eight or ten areas. So that was the process. And my time in exams was greatly impacted by the Madoff scandal where there was a real necessity to examine and look at how we were conducting exams, and if we were using our resources correctly, and what we needed to change to rethink that. The two things I just described, how do you determine risk, and what do you do with that pool of never examined registrants? And then how do you decide what areas to examine at a registrant when you go in, due to resource constraints?

Ken Durr:

So, we're talking about moving into the late 2000s here, 2007, 2008, going into Madoff. Was Chicago basically doing exams the way the Home Office, OCIE was requiring? Was that the way it worked, or did you have leverage as to how you did things?

Jane Jarcho:

Well, I think different people would have different views of the answer to that. So, I think the Home Office would say that, like I described, that maybe you didn't have to do all of the sections, but in practice that was what was being done. And certainly, I think that was what the regions felt that they were supposed to do. Whether that was a miscommunication or not, I can't tell you. The Home Office was very involved in confirming what registrants would be examined. And my sense was that the Home Office—that there was less autonomy. Not to say that there was none, but that there was less autonomy in the regions.

Ken Durr:

For example, Gene Gohlke was running IA/IC in the home office. Did you speak to him a good bit? Did he touch base on a regular basis?

Jane Jarcho:

My contact was more with the people who reported directly to Gene.

Ken Durr:

Okay.

Jane Jarcho:

There existed regional liaison type of people. And so, they were really the people that, at least my experience was when I started to head the Chicago office, more of my contact was with the liaisons.

Ken Durr:

Okay. Anything else we should talk about having to do with your time in the Chicago office before we start to move to OCIE and the Home Office?

Jane Jarcho:

Yes, I think there were two things that went on in the Chicago office. And again, this is pretty close to when my last, maybe, year or so in the Chicago office before I moved to the national part of OCIE, and I'd have to look back at the timing of when Lori Richards left, and Carlo Di Florio came in. But I believe with that change, as always with upheaval comes the opportunity to do different things and try new things. And so, the Chicago Regional Office had started an attempt that we called the "Never Before Examined Registrants" to look for a way to get our hands around that part of our population and get that number down.

I don't mean to say that other offices weren't doing the same thing, maybe I was willing to talk about it a lot, I don't know. And so we were really trying to develop—when you're in that world of very limited resources, almost like my guiding principle when I talked to people in OCIE, whether they were in DC or Chicago or another regional office, was that you made a choice every time you used a resource to do one thing, it meant that a resource wasn't available to do something else. So, you really had to think about how you allocated those resources and there was always going to be some risk involved in the allocation of resources. So in deciding to tackle the Never Before Examined, we really wanted to think about how to get, with limited resources, to get at least some touch that would be give us some meaningful insight into the firm, but not have to devote a large number of hours because we didn't have a large number of hours.

So we developed a process, which over time, both while I was at Chicago and then when I became head of the IA program nationally, got refined as we did it to have a better approach, to look at that population. The other thing, again from a timing point of view, I think we started in Chicago, but then my last months or year in Chicago was we started working on an electronic workbook to do many phases to document many phases of the exam process. It had been a paper process and so we're now talking 2000 and, I don't know, 2012 say give or take a year, and really needed to change to get out of paperwork. It just didn't make any sense. It's an enormous change, but it needed to be done. And so in Chicago we developed what we call sort of a workbook, and that over the years developed into more, but at a minimum it was an attempt to capture sort of major exam decisions like scoping decisions, findings, the most important things you would, basic things you'd want to be at your fingertips about an exam.

And that was really important because obviously most of the time you can't lose electronic information and it also meant that things were available to many more people. So, it wouldn't be unusual for somebody in the position I was in Chicago, and frankly when I went into the national, that you could get a call from anywhere in the SEC asking you specifically about something that did or didn't happen on an exam. And it meant you could just fire up your computer and find that workbook and read it through and maybe get your answer, but if you didn't get your answer, it meant that you could exactly where to go. It also served to document in a way that was consistent, the things we did, which was important particularly after Madoff, and particularly after Madoff, the supervisory signoffs of all of the decisions. I mean, as I said before, and I can't really sort of minimize this, every decision that was made, meant that

something somewhere else wasn't going to get done. And fairly, that decision should rest with a supervisor, and so we wanted to document that as well.

Ken Durr:

Okay. Did Drew Bowden call you up and ask you to come to the Home Office? Is that how it worked?

Jane Jarcho:

I don't know if that's true. I had discussions with Drew. Again, I'm not going to remember my timeline exactly, but it would've been at the beginning of Carlo's time in OCIE. He brought all of the senior officers to DC for discussion about OCIE, and the direction, and things to change. And really it was strip everything off and let's rebuild. And so, it was my personality, to not necessarily sit back and be quiet in those meetings. So I think I spoke a lot, and I didn't really know grew or before then, but I met them through the things that I expressed, some of which they agreed with and others which they didn't agree with, which was fine, but the fact that we were just having that discussion. So, I think what happened was with Drew's promotion, the position opened, and he and I had conversations about me taking that job.

Ken Durr:

Okay. So how did you start to implement this national program?

Jane Jarcho:

There were a couple of things that I think, having a regional perspective where most of the work was done... The way OCIE was set up was a little different than enforcement because I think the largest number of staff members in enforcement were in the Home Office, and that was not true for OCIE. The work of exams was primarily done in the regions. So, having that regional experience—and DC was helpful in coordinating all the things that happened internally in the Home Office in working with the regions. But having the practical experience of conducting the exams, I think at least we thought out in the regions that we had ideas that could improve the program.

So, there was a combination of ideas that we thought could improve the program, and the fact that the program was under pressure to change to still exist. I mean, it was certainly at that time there was a genuine concern at post Madoff that the SEC might not survive. And so, everything and anything was on the table to change. And so, change was going to occur because of that pressure, I think. So, there were a handful of things that really, and I'll probably miss several of them, but I mean, one thing is we tried to take on tackling that never before examined population nationally. And as I mentioned, we had started that process in Chicago—again not to say other offices weren't doing something, but I was familiar with the way Chicago had started it. And Drew had started what he called the presence exams for private funds, and we sort of married the two together to come up with an approach, a national approach to the never before examined population.

And again, that was all about making decisions about resources and risk. And the decision was made that the never before examined registrant, we would pick one or two or maybe on occasion three areas to go in and do a deeper dive into those areas and ignore other areas. The view being that if we could try to determine what the riskiest areas might be for that particular registrant based on the registrant's ADV and some preliminary interviews and discussions, we would, by looking at the highest risk areas, get a sense of, if they were handling those areas well, they were probably handling other things well. So, it was trying to do a limited exam to get a feel for the registrant without committing huge resources to

them. So that was one thing we took on nationally and we were pretty successful nationally and we rolled it out nationally.

And that again, I think would be a second part that I would highlight is we started to roll out national types of exam programs, exam focuses. And I think the significance of that--again, I think that people who were in the Home Office prior to me getting there would tell you we already did those sorts of things, but I think we probably did it a little differently. The significance of that was we really thought about it in a way of trying to get consistency, whatever the topic was, trying to get a consistent approach across the country to how we were going to approach the focus area of those national exams. So, as well as being able to get the findings of those exams and pull them all together to get a national look at those issues. So, the Never Before Examined was a simpler focus than some of the other national exams we did.

But again, it had a lot of value to go through the never before examined and see which of the registrants, perhaps when we did this nationally, was there a type of registrant we were risk rating improperly, maybe from our old risk process. I mean, a lot of thought into that and somewhere during that time, I know, the risk rating based on the ADV was tweaked and improved. And so that information could flow to help all of that, as well as give us other information that was valuable. And there was a view, and it was my view, among others, some might disagree, that just even interacting with a registrant was super valuable.

And it was funny because one thing we learned from some of the registrars was, which I think is a really different part of the exam program and fundamentally different from the exam program than enforcement, is that we were not the opponent, we were not the other side, although I know that they felt that way a lot. But we did seminars across the country for new registrants and registrants that had never interacted with the SEC and tried to provide them information and about our exam process, about the biggest risk areas where they might want to consider the resources, they might consider putting in those risk areas. And the feedback from the registrants was generally helpful. Nobody wants the SEC at their door, but this was a great way to get information. So, I think there was more of a give and take. We were also trying to help them build stronger compliance programs. I think a number of restaurants saw that at least as one thing we were doing, and it brought value to them.

So, we began these national programs, national focus areas for exams. Another in line with what I just said, another thing that came out of those national, consistent exams, was as we examined the information we gathered, we started to put out risk alerts to assist the industry in saying, we've looked at the industry, here's some weak points we saw across the industry when we looked at this area. Any individual advisor might not have that weak point, but others might, and they should improve it. So that was not to say risk alerts hadn't been done before, but we started putting them out more consistently, I believe.

Ken Durr:

Okay. Let's talk about some of the externals that came at you. It was a lot to rebuild things. Cyber, cybersecurity, which became an issue around 2013 with Target. And you started to take some action there. Tell me about that.

Jane Jarcho:

Yes, it's a little like the internet. Cyber was all around us, and we didn't necessarily have a huge number of people who really understood cybersecurity at the Commission and frankly, from Target, and I forget how many financial institutions, and government agencies that were getting hacked into, across the country and across industries. The hackers knew more than the people who were running the show at

these places. So, we took on a national cybersecurity exam program and examinations, and it really had two purposes. The two purposes were for us to learn what the state of cybersecurity was in the industry and for us to offer, based on what we were focusing on, some assistance as to what the top priorities might be for a registrant thinking about a cyber program.

And in this case, it went beyond the investment advisors. Broker-dealers were involved also. And in the industry, you had industry participants who were pretty savvy in cybersecurity, they had experts. And you had some that had no idea at all. For example, from the simplest thing of if you don't upgrade and put in every time you're notified when there's new things to your program, at some point, that's going to lead to vulnerabilities. There are no more patches going in, there is no more security going in. Even things that, to be honest, I hadn't thought about. That wasn't my area of expertise. I was as ignorant as anybody. So, what we did was we had to go out and find some expertise. And we looked not just internally, but we worked with some other government agencies to talk to people about what should be our focus. And industry groups, some industry groups who had spent some resources and time and had people who were valuable in this area.

So, we did a lot of work trying to really think about where we were going to look when we went in to do these exams. And we made the decision that we were going to publish our document request before or at the time that we started. And that decision was made, primarily to help the industry think about cybersecurity, particularly those who didn't have a lot of resources yet spent there. And so, if they weren't examined, they could still pull up our document request and go, "Wow, these are the areas that we need to focus on." It was very, very well received. The industry was really, really happy about that and created down the road. It created a lot of, "How come you're not doing that with everything?" And there was some internal view that we shouldn't do that, we're going to tell everybody where we're going and they're going to change that.

And I sort of was like, "Great." I mean, in some ways it was a nobody loses situation. Nobody wanted cybersecurity to be a vulnerability, you just had to pick up the paper and know that if it happened, it was a huge embarrassment. Nobody wanted it. It was an embarrassment, it was costly. Depending on where it happened there could be private information that was in the wrong people's hands. Everything about it was bad. So probably more so than anything else I did at the SEC, I viewed that as really something that was done in partnership with the industry to help improve the industry for everyone's benefit. Nobody was hurt besides the scammers by us improving.

Ken Durr:

This information that you developed, did this feed into the creation of Reg SCI?

Jane Jarcho:

I can't answer that. And I don't know whether the people developing the Reg already had those resources to know that sort of information. So, I don't really know.

Ken Durr:

Okay. So, there wasn't a transmission from the exam program into the rulemaking.

Jane Jarcho:

I mean, they would've had, like anybody else, our findings and all of those things. I can't think specifically on this particular cyber, and there were multiple cyber reviews. Typically, before we undertook a national targeted exam, we would have engaged with other divisions of the Commission

that would've had an interest or knowledge to help us think about the issue. So, there could have been back and forth there.

Ken Durr:

Some other things that you looked at during your time. Alternative mutual funds, for example.

Jane Jarcho:

Yes, alternatives, there's always a hot product right in the market. And alternatives became a hot product at one point. Alternatives had existed in the private fund area, and they started bleeding over into '40 Act registered mutual funds that were available to anybody. And it posed a unique situation in that the portfolio managers who had experience in the area were not experienced with the full '40 Act regulations. They hadn't had to operate under that. The mutual fund complexes that wanted to add that as a product to offer people, weren't experienced with the risks involved in alternative products, the assets underlying alternative funds. But they both desperately wanted to sort of jump in together because it was a big area in the market that was opening up. So, everybody was very speedily heading into it, and it kind of created the possibility for the perfect storm for perhaps not the best set of compliance and understanding. Each of those two key components had a big knowledge gap.

And so, we felt it was really important because it was becoming a hot product that was being sold to the average investor, to make sure that there weren't some significant gaps when they came together in their compliance programs. Hard products to understand, the underlying assets are confusing, the risks are much greater, all needed to be disclosed. You had to make sure, whenever you got a complex product, your compliance people could at least have enough understanding, or put a person on that compliance staff program, to understand if those risks were being dealt with. There was a concern that it could implode because of the sort of holes in each of their knowledge base, each part of their knowledge base.

Ken Durr:

Another initiative you took on was the share class initiative. Tell me about that one.

Jane Jarcho:

Yes, fees associated with mutual funds and different share classes of mutual funds also became a significant disclosure issue. And there was always a conflict-of-interest issue. There was always this tension, as we had multiple share classes, this tension about when you're a fiduciary, which share class do you put your investor, your client, in? If they're in a share class that's slightly more costly—which in and of itself, the Commission has said over and over and over again, cost is not the only factor—but were they getting something for paying a little bit more?

And I think we got to this situation where there were certain shared classes that cost more, where it appeared that in some of those situations there really couldn't be anything that they were getting more of, except for paying more, and more compensation was going to industry participants. And there was no disclosure around that, which at heart the securities regulations are about disclosure. Although when you get into your fiduciary duty, there's also the requirement to put your interest second to your client. And there was a lot of money involved with that, and like a lot of things, pennies maybe for some investors, a couple of dollars, maybe \$20, whatever it was over the course of year of the year, maybe not a lot to any one individual, but huge sums of money when added up. And so, there was a real focus on that to make it more transparent and to stop that practice when there was really no advantage.

Ken Durr:

So, was this an exam initiative or was it like the risk alerts where you put out the word, this is what we expect, this is what we want to see?

Jane Jarcho:

I believe that we would picked up, over the years before that, we would've picked up in individual uncoordinated exams that were going on throughout the country, the issue. It became coordinated as a national focus with an interest by the enforcement focus on investment management. So, I think that there would have been almost, enforcement was investigating some matters in this issue. We, at the same time, had seen it had probably referred some of these cases to Enforcement, and now we're rolling out a larger look at it with their interest in what we found.

Ken Durr:

Okay. We've talked about a lot of things that you were concerned with during your time at OCIE, but we haven't picked up again on really on the whole growth of the investment advisor, investment company sector. Talk about the options. The SEC was entertaining a lot of options at this period. And talk about where you and the OCIE directors were on things like third party auditors, new user fees, SROs, those kinds of things.

Jane Jarcho:

Yes, I think that across the board nobody could deny, you had the numbers, you could look year to year, the number of registered investment advisors and could see that growth was significant year to year. And you could see that one of the primary goals of the SEC across as the SEC as an agency is to protect investors. And as that became, if not the biggest, probably the biggest, but if not one of the biggest areas that was growing in the securities industry, how did you get your arms around it as a regulator, to regulate it? Because you didn't get an automatic growth in internal SEC resources with the growth in the industry. That would be one way, but that wasn't what was happening. And in fact, there was a period of time where there were hiring freezes while this was growing and all those sorts of things.

So, all the things you mentioned, an IA SRO, user fees where the money from the user fees would be used for the SEC to hire more resources, third party audits. They all were given a lot of discussion in the SEC. I mean, there was high level discussion about the viability and the usefulness of all of them. But the outside pressures, I think, had brought in the realities that there were people on the pros and cons of each of them. And that started with, not surprisingly, as we sit here today in a relatively polarized political situation, our polarized Republican and Democratic party views on all of those, which no matter which issue you looked at, they fell on different sides. And of course, we had five Commissioners that are, by law, from different political parties. The Chairman is appointed by the President who gets two more appointees, and the non-power party gets two appointees.

So, there's a political tinge to the Commission no matter what. That's the reality. And so, it expressed those sort of polarizing opposite views on all of these in the Commission itself.

Ken Durr:

How about the industry? Where was the industry on this?

Jane Jarcho:

So, then you have the industry. The thing they wanted the least was an SRO, right? At least that was my impression. They may tell you differently, but that was my impression. The thing they wanted the least was an SRO. So, in some ways, where they would never want fees, they were perhaps more open to fees, because at least that meant there wasn't an SRO. They would happily, at least in my impression, have had our budget increased. They would be like, "You guys do a great job," somewhat self-serving on their part. I don't think that was necessarily a truthful expression on their part, but they knew us, so, "You guys do a great job. Why don't you just get more examiners?"

As we examined the third-party auditor, there were so many complications with that, who would do it? If the big accounting firms undertook that, they would then have problems with being independent. What liability and what powers they would have seemed, at least in my opinion as I sat in those discussions, in some ways the hardest to get done. So, all of these things were considered and all of them had very strong opposing positions when you looked either from a political, industry, or frankly investor group, point of view. And it was just the reality of being at the SEC, and I'm sure plenty of other agencies, when there really wasn't a consensus on what the best approach to things is.

Ken Durr:

Was this in Marc Wyatt's tenure at the head of OCIE that these discussions were taking place?

Jane Jarcho:

Now you're testing me, testing the memory of mine, which involves placing things in a timeframe, which is really bad.

Ken Durr:

Well, he made the decision to reorganize substantially.

Jane Jarcho:

Yes. Okay.

Ken Durr:

And tell me about implementing the decision, and as much as you remember about actually making that decision which was a pretty big step.

Jane Jarcho:

So, the one thing we in OCIE had power over was our own resources. So, let's take a round number because at certain times this would've been accurate, a thousand people who made up OCIE. So, our numbers, as they broke down for broker-dealer and investment advisor examiners no longer reflected the change in the business model in the industry. So, we hadn't changed those resources to change what we've discussed. And we had the reality that on top of that, of course there is an SRO in the broker-dealer area.

So, I think Marc, completely correctly assessed, we can only change the things we can change in OCIE, right? So maybe that's really, at least the first thing we can do is try to take resources primarily from the broker-dealer area. But we also had some other small areas of OCIE with smaller, fewer staff members, and reallocate them to the investment advisor area. And in almost all ways, that made common sense, everything about it made sense. Of course, you're talking about individuals at this point. So, you have to deal with at least some individuals who may have spent a significant number of years or in some cases

the majority of their career focused on something and then were going to be asked to learn something else.

And you're dealing with individuals. So, some of the people were going to be super excited and some people were going to be not excited at all to do this. So, we had a simple solution, reallocate resources, which all of a sudden had an enormous impact on individuals. So, we had to figure out how to do that. And of course, the SEC staff had been unionized for a long time prior to this. And so, any sort of major reorganization would require the consent, and working hand in hand if you wanted it to go smoothly, of the union and the union support.

And so, Marc, from the beginning, felt that we should reach out and work with the union to see how we could implement this solution. And that's what we did. And I sort of headed that, and worked with a member of the union—the two of us headed it, I should say more correctly, to think about how to get people to volunteer and what they needed if they volunteered, what were they worried about individually, sort of a lack of knowledge in how we were going to approach that, they might have. Just what it meant for them individually and how to make that transition worthwhile to them.

And our goal was an all-volunteer, and not have to require somebody who wasn't interested. So, it took a lot of work. It took a lot of work. There are so many things that come into play when you're doing that. There are going to be, let's just say since it was primarily from the broker-dealer side. If you cut that staff, cut a third of it off, were they going to lose management positions? I mean, these are the things that, rightly, the union had to think about -- who was going to get management positions in the IA program?

Those were the sorts of things that the union properly wanted addressed. And so, we had to work through so many things to do it and get it done. The relationship was really great. Not to say that I agreed with every position they were taking, or they agreed with every position I was taking on behalf of management, but I do think that we recognized—the fact that we agreed to disagree on some things and figure out the best solution and what were things we really had to go head-to-head with, and what were things we could live with giving up. But it was a very positive relationship that I think, and I appreciated the union recognizing that the change had to be made. We couldn't exist the way we did.

Ken Durr:

It sounds like in some respects you were working on a case-by-case basis on this.

Jane Jarcho:

Yes, there were surveys. We had to put out polls and surveys and ask people first if they would be interested. But whoever answered yes, they weren't committed. First you get an indication of interest, then what do the numbers look like? And it looks okay. But then after you get an indication of interest, which again, is from a survey, so everybody's all case by case getting input, but each one of those people has different concerns about what it means for them. And so, you had all of those types of things that just took a lot of time to get it done.

Ken Durr:

And it sounds like training's part of this whole process as well.

Jane Jarcho:

Without a doubt. Training. If you had had been in the broker deal program and you were a senior person with a lot of knowledge and you were at a certain government grade, where you got to your position in

the SEC, I think it was a grade 14, were you going to be judged when you came into the IA program as the grade 14 IA examiner? Because that was, as the union pointed out, kind of unfair. I mean, you just asked me to change my job and I don't know anything about it, but you're going to judge me as if I had the same amount of experience. So, the number of issues were in some ways almost endless, and we had to address those. And the union did a great job of representing the interests of the staff to make sure all those things were addressed.

Ken Durr:

Okay. We've covered a lot of great stuff here. Is there anything else that we should touch on?

Jane Jarcho:

I don't think so.

Ken Durr:

Okay. Talk about the decision to leave and go to Promontory.

Jane Jarcho:

Well, the two are unconnected. It wasn't a decision to leave to go to Promontory. It was a decision to leave. I will say that in my brain, somewhere during my career, I picked a random number based on how old I would be, maybe of about thirty years at the SEC. And I'll admit, it's sort of random. I had a couple of things like all of us do in our lives that impacted that decision. Family deaths, health scares, those sorts of things, that I got to a point just a little bit shy of that point. The kids were almost out of college. All the things that go into deciding.

And I happen to be somebody who loves to travel. I like to take sort of adventure trips. I go backpacking in Chile, I go biking. I do lots of things like that. And I got to the point where I sort of said, "You know what? There's no reason to stick here for another year and a half just because I had this random thirty years." And really that's what happened. I had a great career. I loved my time. I was super lucky for somebody who in some ways stumbled into the SEC. Super lucky to have multiple jobs that were always interesting. And I just felt like it was a time now to do something different with my life. I really retired without thinking about the next job.

Ultimately, I felt like I didn't want to work full time. So that took off a whole series of things. You can tell from this interview, how many times I've said how much I love litigation, that that wasn't going to be what I was going to do. So, I had some conversations. I had liked looking at compliance programs and things like that. And one of the firms I had conversation with was Promontory, and I went in as a consultant there. I was not an employee. That ended this past December. So, I was there for four years. In those four years, frankly, I got started to get calls to do expert witness work. And really that's what I do now, is I take on expert witness assignments. It is not full-time by any means, and it works well with my varied experience at the SEC. It wasn't just in enforcement; I was also in the exam program.

Ken Durr:

Right. Sounds like a great arrangement. I'm glad that we could arrange to have this interview. I really appreciate the talk.

Jane Jarcho:

Sure.

Ken Durr:

Thank you so much.

Jane Jarcho:

Okay. Yes. Good luck with your project.