

SEC Historical Society
Interview with Aulana Peters
Conducted on November 7, 2005, by Kenneth Durr

KD: This is an interview with Aulana Peters on November 7, 2005 by Kenneth Durr. I do want to start with some background and talk a little bit about your education. You went to USC Law School.

AP: Yes I did. I graduated in 1973. And USC Law School is the University of Southern California. Somewhere on Google they say it's the University of South Carolina, but that is incorrect.

KD: I guess they're trying to make a claim for that?

AP: I don't know; I keep meaning to write them about all the things they have wrong, but I have better things to do with my time.

KD: What about undergrad?

AP: I went to the College of New Rochelle. It's located in New Rochelle, New York. It's a Catholic women's college, a liberal arts school, almost a university actually. It issues BA degrees and it has a School of Nursing and it has a Masters Program as well.

KD: Is there something you studied at New Rochelle that led you toward law?

AP: Do you want to know what I majored in at New Rochelle?

KD: Sure.

AP: I was a philosophy major.

KD: I see.

AP: I majored in philosophy and I had enough units in science to have a minor in science.

KD: What led you to parlay philosophy and science into a legal career?

AP: I don't know that I actually parlayed my education background into a legal career. What led me to law school was the desire to obtain a graduate degree so that I could pursue a career outside of the home. At the time I decided that with a B.A. degree in philosophy, I would have to go back to school to be marketable. This was about seven years after I had finished college, because I did some traveling in the interim.

KD: I see.

AP: I was discussing the matter with my husband and tossing around ideas about what I might do and what I might study to qualify for a job. We were living overseas at the time. I was thinking education; he was thinking something else and he suggested law and I said, well, that's an interesting idea. He encouraged me to do it; he thought that I would be good at it and so I enrolled in law school when we returned to the United States.

KD: So you came and were you behind other students in your class as far as age coming in?

AP: I think the way I would put it is ahead of them, since I was older. Yes, I definitely was. Most of the students in my class at USC Law School were seven to eight years my junior.

KD: Right out of undergrad?

AP: Yes, most of them. There were some, who, like me, had pursued other interests before going into law school, but we were a minority. I hesitate to guess but I would think that there were fewer than 10 percent of the folks that were matriculating at the University of Southern California Law School at the time that had been off and doing other things. But there certainly were some.

KD: What was the process of landing a job like? I know that it's very competitive. Did you go right into Gibson Dunn after law school?

AP: Yes. I had not originally planned on a career in corporate law. When I entered law school, I thought that I would work in legal aid after graduation. I had a number of friends who were committed to that area. However, after volunteering for a legal aid office the summer after my second year and comparing that experience with the experience I had had clerking at a law firm after my first year, I decided that perhaps the best path for me would be to join a law firm and satisfy my need to give back to the local community by doing pro-bono work.

At the time in the early '70s, it was not only acceptable but also encouraged by the law firms for new lawyers to give some part of their time to pro-bono work. My third year, I started interviewing the law firms here in Los Angeles. Of course, I was married and settled with a home here in Los Angeles, so there was no question of looking outside of this geographical area for a job. I interviewed a number of firms, received a number of offers and I selected Gibson, Dunn & Crutcher.

KD: What made you choose them?

AP: Gibson, Dunn was one of the three largest law firms in the state at that time, one of the two largest in Los Angeles. There was O'Melveny & Myers and Gibson, Dunn & Crutcher. I focused on it because of the breadth and depth of its client base and because it would offer a very wide range of legal experience. I also wanted the environment of a large firm.

I had a life outside of my career and I just thought that, at a large firm, it would be easier to have both—a wonderful law career and a life separate from the office. The larger the firm—the bigger the pond to swim in. At that time, I think, there were 150 lawyers at Gibson, Dunn. Also, three of my best pals at law school had accepted offers at Gibson, Dunn and were encouraging me to join as well. Gibson, Dunn eventually grew to be the fifth largest or sixth largest law firm in the nation at 700 lawyers while I was there.

KD: Right.

AP: That's a pretty pond to play in. I felt that I would have enough of an opportunity to find people that I would enjoy working with and that would enjoy working with me where there was a pool of 150 lawyers as opposed to twenty or thirty lawyers.

KD: Right.

AP: I would also find people with similar tastes and similar interests to make up a - as broad as I cared to have - social life with my fellow colleagues at Gibson, Dunn. And that in fact proved to be the case. I didn't interview any firms that had fewer than thirty to fifty lawyers. They were all wonderful firms—top-notch firms and I'm sure I would have had a great experience at any one of them, but that was my thinking at the time.

KD: That's interesting. A lot of folks would sort of choose the opposite, the big fish in the small pond.

AP: The big fish in the small pond?

KD: Yes.

AP: Yes. Well, I never have been that much of a conformist.

KD: Was it corporate law that you were involved in from the beginning? Other than the pro-bono side?

AP: Yes, to the extent—I'm interpreting your question to focus on whether my clients were corporations?

KD: Yes.

AP: So, the answer is yes to that extent—right from the beginning. But I was a litigator—a trial lawyer; I was not a business lawyer and if you're using the term "corporate lawyer" to mean a business advisor or counsel—that was not me. I was a trial lawyer.

KD: What kind of cases did you work on?

AP: I was very much interested in doing litigation and so immediately focused on that although Gibson, Dunn had a rotation program where for the first two years you had research assignments and assignments from partners and associates—senior associates in their four primary departments—litigation, corporate, tax probate, and labor. They had a really big labor practice. I was immediately focused on litigation and I let everyone know that’s what I wanted to do. I did do the odd assignments—research assignments for lawyers in other departments but nothing really diverted my attention away from litigation.

As a consequence of being willing to accept all kinds of assignments—I think in retrospect and thought so even at the time – I progressed fairly rapidly to having experience in handling motions and making court appearances. By my second year I was assisting a senior associate—he wasn’t older than I, but he was senior by about five or six years—in a trial. So by the end of my second year at Gibson, Dunn & Crutcher, I had some trial experience under my belt.

That very first case was for an insurance company—AETNA – and it involved defending Goodyear Tire, which had been sued as a result of a street accident caused by a young man driving with Goodyear racing tires on his car. Goodyear was insured by AETNA. It was a very interesting case and I recall that the lead counsel, or first chair as we say, was

Tony Sinclitico, who is still a friend of mine, also retired from Gibson, Dunn & Crutcher, and I was his second chair.

I was off to the races after that. By the time I was a fourth or fifth year associate, I had tried a case on my own and my litigation experience had broadened from personal injury and breach of contract to securities litigation. Actually I think in my first or second year that I got involved in a major securities law class action, Equity Funding Securities Fraud Litigation. The Gibson team represented an insurance company—Pennsylvania Life Company – and a national accounting firm, Peat Marwick and Mitchell, now KPMG Peat Marwick.

KD: I've actually seen a reference to that case as being a relatively important one.

AP: Landmark case. It didn't go to trial but it generated a lot of law and motion decisions that established quite a bit of precedent in the areas of securities fraud litigation. For the rest of my career, I usually had some securities law matter or securities fraud case in hand. I also developed a special expertise in representing accounting firms, so in addition to securities fraud litigation, I also did accountant liability of work as well. Actually, I would try anything, so I was more of a generalist than most people in large law firms.

KD: But it does sound like you drifted into securities and accounting.

AP: Securities law and accounting liability matters were the mainstays of my practice, yes; that's where my big cases were.

KD: One of the interesting questions would be your progress as far as advancing in the firm. There are a number of things: your being a woman, your being an African American, of course, in a mostly white, male profession; and on top of that there's the idea of coming into the profession a little bit late. I'm wondering if any of those things presented barriers that you had to deal with.

AP: I can answer the answer about progress at the firm in this way: at the time that I joined Gibson, Dunn & Crutcher, they would hire anywhere from twelve to fifteen people a year. And at that time in the early '70s, I think it was anticipated that maybe 85 to 90 percent, which would mean maybe all but one or two, would eventually make partner.

KD: That's pretty good.

AP: If they stayed that long. As I came in that's what I perceived the history of the firm to be. I did notice, however, that people with whom I interviewed six or seven months previously as a third-year student had left the firm. I'd interviewed with a couple of African Americans that were no longer there by the time I joined the firm after graduation, and about half of the women I had met were no longer there.

So those departures could be viewed as an indication of something, I suppose, but frankly I didn't spend a lot of time thinking about it or worrying about it at that time. This is where I think being older was certainly helped rather than hindered. In any event, even though I was older, I was not at an age beyond which it would be difficult to make partner at Gibson, Dunn. Perhaps at the time, the firm might have been reluctant to invest time in a 50-year-old new graduate. They might hesitate to do that because of the time it takes to train and develop a new lawyer into a partner. Today, it takes eight, nine, maybe ten years – nobody makes it lock step anymore – to make partner.

But at the time I joined Gibson, Dunn & Crutcher I was thirty-one and that's not too old. I was seven years to eight years older than others but assuming that I had what it took to make partner - and at that time people were being considered for partner after being there for seven and a half years—I could reasonably expect to be a productive member of the firm for 25 or 30 years. So I do not think that age was a barrier.

I joined the firm knowing that it was expected that you bill a certain amount of hours—that you perform at a certain level, and that if you're good and the partners of the firm perceive that you are good and the clients like you—it does help to have the clients call and ask you to represent them. Then you could reasonably expect to make partner.

KD: Sure, bring in business.

AP: Yes. Well, at least keep it for the first couple of years. The expectation when I joined Gibson, Dunn & Crutcher was that you would make partner at seven and a half years. In other words, after being there seven and a half years, by November or so, you'd be elected to the partnership. There were seventeen people in my class and by the time we were up for partner maybe three or four of those people had left to pursue other career paths and I can only think about two people right now who were not elected to the partnership at the expected time. One left the firm and the other stayed and was elected the next year. I was one of the twelve people who were elected, as they say on time, at seven and a half years. I could not say that fact either proves or disproves that being female or being black was a barrier. I definitely think that being older helped me deal with the pressures better than I might have, had I been in my 20s.

I was raised to anticipate people not always being in my corner because of my race or my gender, and I certainly worked hard to be sure that my performance left no doubt in anyone's mind that I was highly qualified, maybe even super-qualified, to be a partner at Gibson, Dunn & Crutcher. Fortunately, I didn't have to suffer ultimate disappointment or rejection, which is a nice positive way to look back on my career.

KD: And it couldn't have been too much longer before your qualifications brought you to the attention of the administration.

AP: Exactly. It was about four years later. I was elected to the partnership in '79 effective January 1, 1980, so I was a partner for four years when I received the call from the Reagan Administration. That was a thrill, but when a senior partner came into my office and said how pleased and proud he was to have me as his partner that was also a real thrill. I have to say that.

KD: So the call about the SEC was second?

AP: The call from the administration came from somebody in the Reagan White House. I heard a story, which is hearsay, as to how the people who were looking for potential appointees to the SEC got my name. I'll put that aside because I don't know for sure.

KD: Let's hear it with the caveat that it's hearsay.

AP: It's definitely hearsay. I was told by the then Chairman of the SEC, John Shad, under whom I ultimately served at the SEC, that my name was surfaced by a prominent businessman in San Francisco who was a Democrat, that John Shad had met at a gathering in San Francisco. And as I understand it, it was at the Bohemian Club, that ultra enclave.

KD: I've heard the stories.

AP: When I first met Shad, he took one look at me and said, so you're Aulana Peters. He said he was talking to someone about the fact that there were two vacancies on the SEC and they needed two Democrats and he didn't know where to start looking for "good" Democrats. This gentleman said, well, I wouldn't mind helping you out on that. I'm a Democrat and let me see what I can do to surface some names of qualified people.

According to Mr. Shad, this gentleman sent him three names and mine was on the list. I got a call saying "would you be interested in an appointment at the SEC." By then, I had learned to say "yes," because, a few years earlier, I had received a similar call from the Carter Administration and responded, "I'll think about it." Of course that opportunity dissolved immediately. But I did say "yes, I would be interested." I thought it was a fabulous opportunity for a lawyer and I think I'm the only trial lawyer that's ever been an SEC Commissioner.

KD: That could be.

AP: When I got the call I talked to my husband who agreed to move to Washington with me if I got the job. In his heart of hearts he didn't think I would ever be appointed, but he promised that he would go. He'd confessed that to me later. Then I called Ted Olsen who had been a good friend and supporter at Gibson Dunn & Crutcher and was at the time an Assistant Attorney General under William French Smith. I have to say—I don't like the word "mentor" because people never understand the same thing when you use the

word “mentor,” but I do consider Ted Olsen, who has just stepped down as the U.S. Solicitor General, to have been a mentor in the best sense of the word.

I told him that I had gotten the call and he was just delighted. Once again, he offered me good advice. He said, “Have you talked to Dan Frost?” who was at the time the Chairman of Gibson, Dunn & Crutcher, the managing partner. I said, “No. I’ve talked to Bruce and I’ve talked to you and my mother.” And he said, “You go talk to Dan first thing tomorrow morning.” He also said, “And call Bill,” referring to William French Smith, the Attorney General, to you and me.

I talked to Dan Frost and Dan Frost was immediately positive and supportive. He got on the phone and spent the next two hours calling people all over the United States, in New York and Washington, trying to figure out what I needed to do or know to help secure this appointment. He really put a lot of time and energy into it, setting up introductions for me. He reached out to—who was the head of Citicorp at the time?—John Reed, and Pete Peterson, the head of the Blackstone Group. He was introducing me to lots of high-powered people who, if they would agreed to put in a good word, could have an impact.

He also helped me put together a list of references. I recall him asking me, “who do you know?” and my saying, “no one.” Dan looked at me and said, “Aulana, you can’t be a Gibson, Dunn lawyer for 11/12 years, and a partner and not know anyone.” Together we

came up with a list of prominent business executives who had been clients of mine, all of whom agreed to serve as references.

I called the Attorney General, William French Smith and told him about it. He acted and sounded pleased. I asked him if I could use him as a reference and he said “absolutely.” Probably there’s no better Democrat from the Republican Administration’s point of view than one that comes with the sitting Attorney General as a reference.

KD: It would be hard to imagine one.

AP: Right.

KD: And he had been associated with Gibson, Dunn?

AP: He was a partner at Gibson, Dunn when I was there. Or I was a partner while he was there. So he did know me, although we had never worked together.

KD: As I recall you didn’t have to wait too long?

AP: No, it was wonderful. I received the first call in early December and then I was called to Washington within a couple of weeks for my White House interviews. I remember I had to fly into Washington right around Christmas time. My husband and I had planned to

spend Christmas with very good friends in England; he left and went on ahead and I got snowbound in Washington, DC and sort of had to fight my way onto a plane after my day and a half or so of interviews. It wasn't more than a few months that I was advised that I would be nominated.

There was a one-year term and a five-year term available and I asked for the five-year term because I thought that if I had to move from California and my husband was quitting his job to come with me, I wanted it to be for more than a year. Also, to the extent that I could have a term of sufficient length so that I wasn't looking over my shoulder trying to figure out what to do to get reappointed, I would be more effective. There's nothing so freeing as knowing that you have several years to learn the job and hopefully make a contribution without worrying about offending anyone.

KD: What did you find when you got there and you sat down?

AP: I found that the SEC was a wonderful place to work. I enjoyed my colleagues, both the Commissioners and the staff. I probably was a little bit of a thorn in John Shad's side but I think that we had a good personal relationship. We got along, at least from my perspective. From his perspective, I was extremely independent and that probably caused him some grief at times. I found a fairly collegial group at the Commission—meaning the Commissioners. I got to be very good friends with everybody that served. Lindy Marinaccio was there only for a year; then Joe Grundfest replaced him and we got

to be buddies as well. I enjoyed Charles Cox tremendously, and Jim Treadway is to this day a dear, dear friend of mine.

My time at the SEC was a wonderful learning experience and a terrific all-around personal experience. The staff was extraordinarily generous with their time and their thought and their ideas. They were incredibly attentive to detail—to a person extremely bright, dedicated; I just thought I'd landed in "government heaven" if there is such a thing. I'm very proud to have been a part of the Securities and Exchange Commission. I found a lot of paperwork and tons of material to read. I had not anticipated that there would be a public speaking aspect to the job, but there was. John Shad as Chairman did not enjoy public speaking and avoided it; consequently, he would refer his invitations to other Commissioners. Within the first few months of my joining the Commission, he asked me to speak to the Harvard Alumni Club on insider trading, which was his big issue.

KD: Right.

AP: I did. He attended that speech. I gave the speech on insider trading and thereafter, it seemed whenever he was invited to speak to some group, whether in Paris or Canada or wherever, he would pass on the invitation to me. I think he would parcel invitations to all of the Commissioners, but I seemed to get more than my fair share of his speaking engagements.

KD: It's all about delegation.

AP: It is all about delegation

KD: It was intriguing that you said John Shad might have found you extremely independent.

AP: Sort of a thorn in his side, yes.

KD: I'm wondering what the issues....

AP: John had a very anti-regulatory bent. To me, he was deeply attached to his Republican roots and to his roots as a businessman. He was Vice Chairman of E. F. Hutton, you'll recall.

KD: Right.

AP: While I was fairly neutral, notwithstanding the fact that I am a Democrat, fairly neutral when it came to answering the question, "to regulate or not to regulate," I was never dead set against it or for it as a matter of principle. John and I did not see eye-to-eye in a number of instances, one of which really came to a head towards the end of—I can't remember whether it was in '84 or '85 but you might recall that there was a brouhaha or

scandal about the primary dealers, right on the heels of the savings and loan scandal.

There were disclosures about inappropriate behavior in the primary dealer market. As is Congress's want, the cry went out that the SEC should investigate the facts underlying the allegations of misconduct among primary dealers. Unlike the broker dealer community and the mutual funds industry, primary dealers were not regulated.

In addition, Congress demanded that the SEC not only conduct an investigation of the alleged problems in the area and report on our findings, but also make recommendations as to whether and to what extent the primary dealers should be regulated. I was very interested in this topic and followed closely our staff's investigation or survey—actually a study is probably the most appropriate way to describe the staff's work. The lawyers in the SEC's Market Regulation Division conducted the study. Market Reg issues were of considerable interest to me, as well as accounting issues. So I followed their progress and tried to stay abreast of what their findings and what they thought that their conclusions and recommendations to the Commission would be. By the time the study was completed and the staff report prepared, I felt fairly well versed in the factual underpinnings for the staff's recommendation.

Eventually the staff completed its study and presented their findings at a public meeting. The staff recommended that the Commission recommend that Congress adopt legislation that would subject the primary dealers to limited regulation, requiring registration with the SEC so that their books and records were open to our inspection and making them

subject to the SEC's anti-fraud powers. These suggested requirements were very minimal compared to what the stock exchanges and broker dealers have to submit. I can't remember whether they recommended capital requirements or not. You might look at that. My memory is not serving me well on that issue. They may have recommended capital requirements but I cannot recall that.

KD: Something that came out of the savings and loan issue was the matter of thrift conversions.

AP: Yes. That was a different issue though, because the primary dealers, of course, are those dealers who deal in government bonds and treasuries and that sort of thing. They're placing government securities with investors. I don't think that the conversion issue was part of the primary dealer issue. It was really "should we make them register and should we make them subject to the SEC's anti-fraud powers?"

KD: Did Shad have the majority of the Commission?

AP: Chairman Shad was opposed to any regulation in this area at all. And he and I lobbied for votes on the issue. I was in favor of this limited form of regulation and he was against it. We spent a lot of time talking to our fellow Commissioners trying to get each individual Commissioner to see it our way. Ultimately the vote was four to one I think—

it was four to one against recommending to Congress that the primary dealers be subject to limited regulation. I was the dissenting vote.

As it turned out of course, my views were aligned with the staff and the conclusions set forth in their report. I asked the Chairman at the open meeting—I made a joke of it which brought a big laugh even from John Shad - I said, Mr. Chairman, as you know, I'm dissenting. He said yes. And I said I would like your permission to file a minority report (the joke being the play on words with my being the only person of color and the only woman) and he laughed and said sure—then I made it clear that I intended to file a minority report with Congress. Now I don't know what John thought at the time, but I doubt that he thought that my report would hit Congressman Dingell's desk before or at the same time the majority report did, but it did because all I had to do was to take Market Reg's report and recommendations and make them my own. The staff were thrilled of course to have me do this, while they turned to and prepared a report and recommendation reflecting the majority view.

KD: So Shad couldn't have been terribly pleased.

AP: He never said anything to me. I had a report just as thick and well supported as the majority with the Congressional Committee. It was filed either a day before the majority report or right at the same time. As a consequence, Representative Dingell, who was

Chair of that Committee and Representative Markey—oh, Representative Markey was just thrilled with this—invited me to testify alongside John Shad on the issue.

I'll tell you a story that says a lot about John Shad. He and I marched up to the Hill together and sat side-by-side and made our statements: one in favor of regulation, one against, answered the questions, to the best of our ability. I recall him saying to me, “your mother would be proud of you today,” before we left and went home. As it happened, weeks prior to this day, I had invited John Shad to a dinner party at my house that very evening, and it just turned out that it was the same evening that we were both up on the Hill testifying against each other. Whether he was displeased with me or not, he came to dinner. He came and we had a nice time. I remember Ted Olsen was there and later commented on how gracious he was.

KD: So he hadn't had enough for one day?

AP: No. We had a wonderful evening and I think that says a lot about his graciousness. He probably mentally was sticking a voodoo doll of me full of pins that evening. The upshot of this story is, of course, that Congress did pass legislation requiring the primary dealers to register with the SEC and making them subject to limited SEC oversight.

KD: That's quite a trick for a minority report.

AP: How about that?

KD: Something that I would think must have been a matter of great discussion would have been the rise of hostile tender offers.

AP: Very much so. It was of discussion and of concern. However, as I recall, both at the Commission level and at the staff level—the Staff Directors, Deputy Directors and Assistant Directors—there was really a free market attitude both in Market Reg and in Corp Fin, and a great deal of reluctance, as I recall, to interfere with the market process. For me personally, it was a matter of concern because it just seemed to me that the hostile tender offers that were being made at that point in time weren't adding value really to the economy or the capital markets. They were just churning ownership of shares.

I came to understand the importance of not over-regulating the market with tutelage—I learned a lot from people like Linda Quinn and Richard Ketchum and others who really had believed in and didn't want to muck about with the free-market system—I came to agree with them. I never agreed that hostile tender offers were good because for me it's phony money.

KD: But that does go counter to the impression of regulators just looking for something to regulate?

AP: Yes. That was not this Commission. We're not going to regulate for the sake of regulation.

KD: Right.

AP: They really thought as long as people are fully disclosing what they're about and fully and completely disclosing what their plans and their objectives for the target company and why they're trying to take it over and why they're ginning up a takeover premium and that sort of thing, then we need to leave the process alone, at the federal level, at least. When I was at the SEC, the philosophy was "we will require disclosure and we will punish fraud."

KD: But there was a lot going on at the state level.

AP: Very much so, but that was the state level. That was one thing that I learned, that at the state level there was a lot of substantive regulation going on, meaning "we're going to make things work the way we think they should work or ought to work and preclude activities that we think are counter to the health and welfare of the shareholder or the corporation or other constituent communities." As securities law regulators, when you start promoting a free market system and focus on what is needed to enhance a free market economy and ensure that our capital markets are functioning well, at such a

philosophical level, there's very little discussion or focus on guaranteeing jobs to employees. It's all about returns to the investor.

KD: Sure.

AP: So I learned a lot in those four years.

KD: Well, something that happened during those four years. You were there for one of the glamour incidents in the life of the SEC and that was the Boesky case. And I understand that you even signed the papers authorizing charges against Dennis Levine, is that right?

AP: Yes, I did.

KD: Tell me about that experience.

AP: There's nothing to tell other than it was one of the things that John Shad was really devoted to: stamping out insider trading. As much as he did not want to interfere with the business and the operations of the capital markets, he was just as passionate about stamping out insider trading because, in his view and rightfully so, it was a practice that undermined the integrity of the market and investor confidence in the markets. He made it a platform issue for himself - to stamp out insider trading. Boesky and Icahn and others got caught up in that when we started enforcing Rule 13-A. We went after them for

insider trading and violation of the rules requiring disclosure of when you were operating as a group or with change-in-control plans.

We worked long and hard in investigating the facts against Mr. Boesky. Being a trial lawyer, I was particularly interested in litigation matters, and I followed the development of these cases very closely. I was the officer of the day on the day when the staff had the pleading ready – you never knew when the staff was going to get their case in shape and ready to be filed: it could be at any time of the day or night, over the weekend—so for that reason we always had a Commissioner on duty to sign off on filings or formal orders because, under the rules, a Commissioner had to sign a complaint or rather authorize the filing of the complaint.

And I was someplace and the staff called me and said when are you going to be home? We've got the Boesky complaint all signed, sealed, and we need you to sign the formal order. You said Levine.

KD: Dennis Levine—the Boesky case started with Dennis Levine.

AP: Dennis Levine, right.

KD: Yes.

AP: I'm trying to think who made that phone call to me and brought the complaint out to my house.

KD: Would that have been Gary Lynch?

AP: That was Gary Lynch, right.

KD: He was Enforcement at the time.

AP: Yes, Gary Lynch called and said are you home? I said I'm home. He said we got it done. I said great. He came right over and I signed the first complaint that was going to be filed against these no-good people.

KD: One of the interesting things of course is that one thing led to another and Enforcement made this deal with Boesky and then the publicity got out about essentially that Boesky was running around doing business wearing a wire for x-number of months. And I understand that the Commission got a little bit of bad press because of that.

AP: Yes it was always difficult to authorize or engage in any activity like that. When I was at the SEC, such activities were undertaken with caution and much trepidation because everyone involved was very sensitive to the issue of the government employing

subterfuge to bring people to justice. But in the end, I think we careful and judicious and got comfortable with it.

KD: Something else that's big on the radar screen is the October '87 crash. Tell me where you....

AP: Market break, we called it.

KD: What were you doing? When did you hear about it?

AP: I was in the office when the market started to fall. We knew that there was weakness in the market and we were concerned about the problems that could be brought about by passive program trading. I can't recall who came into my office and said "the market is falling and it's down 50 points" and now "it's down 100 points," but I do recall, with that news, I went downstairs to Rick Ketchum's office where there were monitors that would show you what was happening in the market.

KD: He was Market Reg?

AP: He was Market Reg—Richard Ketchum.

KD: Yes.

AP: One of the best and the brightest; and I remember sitting there talking to Rick and others on his staff and watching the screen wash red, so it did look like a blood-bath. It would wash red and then it would lighten up to yellow again and then it would wash red as these programs were being executed in the market drop. Am I right in recalling that that day, or in half a day, the market fell 500 points?

KD: That's correct.

AP: I know that Rick was there, but he was running back and forth talking to—Dave Ruder, Chair at the time and—and Ruder was talking to John Phelen who was the Chairman of the New York Stock Exchange. Rick was also talking to Mr. Phelen and Phelen's deputies in the NYSE Market Regulation Division trying to figure out what we needed to do to prevent panic. Ultimately, there was constant telephone communication among the SEC Chairman, the NYSE Chairman, the Fed, New York Fed, and Volcker, I guess, would have been head of the Fed at that point in time—about what our group reaction and response ought to be to this event. I don't want to call the market break a disaster, but it was pretty scary—we were very worried about liquidity the next day.

John Phelen, if you recall, kept the markets open and the banks came in and assisted in providing liquidity. There was a lot going on behind the scenes that kept our capital markets from just imploding with that market break—a lot of people putting their money

and futures at risk. As a result, we survived the day and I remember discussions about what was going to happen the next day and our concerns—now I don't want to say too much here without doing research.

KD: Sure.

AP: But I remember that they were trying to stave off the potential for a capital market's apocalypse and on that Monday. All concerned were also thinking about "how do we get it up and running and prevent the same thing happening again?" So the lawyers in Market Reg were already thinking about the solution to this problem. I think the Commission acted pretty quickly to consider and adopt staff proposals to control these breaks. We changed the rules of operation of the market in order to prevent 500 point drops in the future. As I recall, we required trading halts to take effect at 25, 50, 100 point drops in the market.

But what I can't remember is how things went the following day. I think the market improved. It never got below 500 points below—I think it started at 2,500 and it dropped to 2,000; am I right?

KD: I don't remember the numbers. I know it started bad the next day and then it turned around in the middle of the day for some reason.

AP: It turned around—yes.

KD: Which I'm not sure about.

AP: I think we probably told people just not to execute those program trades. [*Laughs*]

KD: The fallout from this fell to David Ruder's Commission?

AP: Yes. David Ruder—he was Chair for four years, no, I think three years, but I served under him for two years. I stayed for four years of my five-year term.

KD: Can you compare him a little bit with John Shad? What was the change at the top like?

AP: Well I would rather not go into the SEC Historical Society archives comparing the two of them. But I'm happy to talk about David Ruder. David of course is a Republican, too, but David, in my view, is a very practical person and someone who is very much focused on making things work right. For me, the thing about David that I responded to was that he wasn't ideological in his approach to market regulation. His approach was, if there's a problem, will regulation fix it? If it will, let's do it. On the other hand, if there's a problem that needs to be addressed in some other way, we'll do it the other way; we won't regulate. He was very practical and analytical in his approach to solving the problems that we faced at the Commission.

I'm trying to think what was the big chunk of legislation that we voted on in August 1988? I stayed to vote on it. Was that the market break stuff? I can't remember.

KD: There were a couple.

AP: There were a couple of big pieces of legislation that he and I were on the same side of.

KD: One was part of the fall-out of the '87 market break, which was “who is going to regulate the stock index futures—the derivatives?” That was going back and forth between the SEC and the CFTC.

AP: Yes.

KD: Tell me about that.

AP: The Shad protocol that was hamstringing us.

KD: Tell me about that discussion.

AP: I don't remember enough of it in detail; I'll have to think about it. I remember that we thought it was imperative for the SEC to regulate derivatives, and if I recall correctly we

still had to sort of negotiate our way out from under a deal that John Shad had cut with the CFTC. So I think we left futures to them and took derivatives.

KD: Yes, took options.

AP: Took options.

KD: That was one of the ones that you lined up with?

AP: I lined up with David; I thought that he had a very sensible practical approach and it made sense.

KD: I'm not sure what the source was, but at one point you were reflecting on some of your accomplishments and you felt that getting the SEC the power to bar repeat offenders from boards was something you were proud of doing.

AP: It was more than that actually but that was part of it. I began to believe that the SEC did not have enough powerful tools to correct and sanction some of the wrongdoing that we encountered. I also thought that suspending people, whose repeated offenses suggested that they were incorrigible, only to permit them to re-enter the industry eight months later or two years later was not the right thing for the capital markets in the long run. I made several speeches on this, arguing for, among other things, the authority to impose

permanent bars, and ultimately worked with the staff to prepare proposed legislation increasing the SEC's enforcement powers. It didn't get enacted until, I think, a year or so after I left. I'm pretty sure it was '89 or '90 when Congress finally adopted the legislation and added to what I called the SEC's arsenal of weapons.

The bigger controversy was that I also argued for the authority to impose fines—my position was that the SEC should be able to impose fines administratively and seek fines judicially and that we should be able to bar, for life, people who had demonstrated a total lack of respect or regard for the securities laws. It was controversial. The arguments against my position made by former SEC attorneys and people in private practice included that the SEC had no statutory power or authority to punish and that fines were punitive. My response was to go to Congress and get the power. There was also the sense that it was beyond the pale to bar someone for life from either serving as a corporate officer or working in the securities industry.

But I was not persuaded by those arguments because after four years of encountering instances of repeated securities laws violators—we all know that there are people who will cross the line as often as they think it's necessary to either line their own pockets or to achieve their purposes. The law does not restrain them and I thought that if you had egregiously violated the law three or four times then you should be subject to a bar.

KD: Sort of three strikes and you're out?

AP: Yes, but not three strikes for stealing a loaf of bread.

KD: Yes.

AP: That wasn't my point of view. So it wouldn't be three strikes for books and records violations, okay?

KD: Right.

AP: Say you're the head of a broker dealer and you have three or four or five or six books and records violations and they're not threatening to the investing public and they're not threatening to the integrity of the market, I wouldn't say "all right you're out and you can't own a broker dealer."

KD: Right.

AP: But if you had over a period of five to ten years or five to seven years organized a half a dozen Reg A offerings in which people were defrauded or with respect to which your disclosures were inadequate or more than inadequate—false and misleading—yes, I say you're out. That was my approach to the situation. And ultimately Congress did adopt that legislation. Of course, then I went back into private practice and had to deal with it.

KD: Watch what you wish for, right?

AP: Well exactly. There were some people at the SEC that were delighted in reminding me the things that I said as a Commissioner. It's come back to haunt me as a practitioner. But that underscores what made my experience so wonderful. I had my Commissioner's hat on for the whole four years that I was there. As a Commissioner, I think that I always try to do what I thought was best at the time, based on what I knew or believed—what was best for the investing public, for the integrity of the markets. I did not think, “gee, I'm here now; how can I rig this game so it will be easier for me or better for me or make me look good to my former clients when I return to the private sector?”

Trust me, on occasion some of my former accounting firm clients would call me and say, “what are you doing?” I argued for open enforcement proceedings against accountants and they had always been private. I thought “let's let a little sunshine in here.” They didn't refuse to hire me when I returned to private practice because I took a position that they didn't like and it was very unpopular in the industry. If anything, I think that I probably gained more credibility and respect.

KD: Why the decision to go back into private practice?

AP: Oh, why not? It was just time to do it. I loved the four years that I spent at the SEC and I enjoyed living in Washington and all that entailed, but after four years, I wasn't going to do it for the rest of my life and I didn't have any political ambitions or desire to do something else in government; it was time to go back into private practice. Plus, my husband had come back to California to rejoin his medical practice. He had to after three years; he was there with me for three years and I wasn't quite ready to leave so we commuted back and forth for a while for that last year, and that got old really fast. So that was sort of a logical normal step for me to go back into private practice.

KD: So it was back to Gibson, Dunn?

AP: Back to Gibson, Dunn; I didn't even talk to any other firms. I don't know why I didn't do that, but I went right back to Gibson, Dunn.

KD: And did you take up where you left off with the same sorts of cases?

AP: Well that's an interesting thing. I think that the answer to that is yes and no. I was able to attract business and mostly in the accounting area. The re-entry process was much more difficult than I thought it would be. I had been away for four years—not one and a half or two years, and so I found that I had to prove myself again as a trial lawyer, probably because I hadn't done it for four years.

I suppose that's not too unusual but I would have to say I don't think that my re-entry was seamless. There was some catching up to do, some re-persuading to do for my partners and clients, but mostly my partners. As a trial lawyer, people come to you with their problems. Being out of that loop, not being there as one of the resident problem solvers for four years, I think made some people question my capabilities and thus made it a little more difficult to get back into the swing of things. But I did and re-established my practice and started trying cases again and then it was time to retire.

KD: I don't want to quit without talking a little bit about another part of your career that intersected a bit with the securities industry and the SEC, and that was your role in the Public Oversight Board.

AP: Ah, yes. Controversy follows her.

KD: How long had you been on the Board?

AP: I met Mel Laird when I was a member of the SEC and he was a member of the POB. He and I hit it off and I liked him and he liked me. When I left the SEC, he introduced me to the folks at American Express Mutual Funds, which was then IDS Mutual Funds, and I went on that board. So I served with him for about seven years or so, and as a result, we got to know one another fairly well.

He contacted me one day in 1999; I don't know if he called me or we happened to be in the same place at the same time, but he suggested that he was ready to step down from the POB and that he would like to nominate me as his replacement. At the same time, my husband was urging me to retire. He had been retired for four or five years. He wanted to take long exotic trips and you can't do that married to a trial lawyer. Your life is not your own when you're trying cases or litigating. So he was urging me to retire and Mel was saying "the POB is right up your alley" because of my experience in the areas of knowledge of accounting and auditing. And I'm more knowledgeable about auditing and financial reporting. I thought, "this would be great, another public service job."

I retired from Gibson, Dunn & Crutcher at the end of 2000 and simultaneously or concurrently with that I was nominated to and elected to the Public Oversight Board.

KD: So you were there for two years?

AP: A little less than that because that would have been December 2000, so I was there from December 31st or January 1st 2001 through April 2002, so about a year and a half by the time the POB actually closed its doors and wrote its final report.

KD: From your perspective - the direction that oversight of the accounting industry went; is it looking like that ultimately is going to be a good thing?

AP: Yes. I don't think that it necessarily had to go quite as far as it went. The PCAOB is modeled after a white paper that was prepared by the POB itself.

I personally did not necessarily envision a full-time five-person board. I envisioned a five-person board working many more hours on the issue than the POB did, but I didn't necessarily think that you had to have full-time POB members. However, I did think that the industry needed a government run inspection program as opposed to peer review, and it was necessary to have an oversight structure that was statutorily based.

I found peer review, as a result of my work on the POB, to be ineffective in forcing and fostering changes where changes were obviously needed and necessary. I do think that in the long run that it's going in the right direction. My strongest belief as a result of my experience on the POB was that the regulator of the accounting profession in the United States would not have the clout and the authority that it needed to have without having its authority and its power being based in statute enacted by Congress, and the means to fund its activities. I wrote that part of the white paper that said that and I testified to that effect before the Sarbanes Committee. I thought that was very important. The PCAOB has that.

For the rest of it I think that it's okay. I wasn't wedded to the concept of the standard setting process being folded into the PCAOB, as it has been. But the proof of that will be in the pudding.

KD: You had the perspective on the POB to know what worked and didn't work and helped turn it into something that.....

AP: You bet we did.

KD: ... hopefully will work.

AP: I hope so. I think that there are good people serving on the PCAOB and I think that they're off to a good start. Based on what I hear from the people that I know in the profession, for example, about the PCAOB inspection program, it is a tougher, more rigorous process than peer reviews but they believe that they'll be better off for it and that's what I believed in 2002 when Chuck Bowsher and I and the other members of the POB decided to disband .

KD: A dramatic gesture perhaps but maybe appropriate.

AP: Yes it was. And we caught a lot of flak and criticism for it. Some people applauded it and patted us on the back, but it seemed to me more often than not people were saying we should have stuck with the old regime, you shouldn't have walked away—but you do what you have to do. Sometimes radical action is needed to bring about needed change.

KD: I appreciate your taking the time to talk to me about these things today. I wonder if there's anything else that we haven't touched on that you think we should.

AP: You're very good at taking people down memory lane. I'm sorry that my recollection was not as sharp and as quick as it had been. There probably are things that given a little time I would think about—while you've tickled my memory I should write them down because I can always do another oral history. Carla Rosati has been asking me to organize myself to do an oral history now for about five years and I haven't done it yet.

KD: Well now you have.

AP: Exactly; now I have. The only other thing in terms of my SEC-related career that I would note as a real high point is, I have to say how incredibly honored and privileged and touched I was when the Association of SEC Alumni nominated me to receive the William O. Douglas Award several years ago for outstanding contributions to the development of securities laws and to the SEC community and the financial community. That is an acknowledgement that I treasure, really treasure, and I can't think of any higher regard or accolade that I have earned to date or that I could earn in the future that I will treasure more than that particular award and acknowledgement of merit by my fellow SEC alumni.

KD: Well that's saying a lot and it's saying a lot about the institution of course.

AP: It definitely is—it most definitely is. It was a wonderful, wonderful four years and I made many, many wonderful friends and had an opportunity to work with truly outstanding people.

KD: Well it's been a great interview—outstanding as well; so thank you very much.

AP: Thank you.