

**Securities and Exchange Commission Historical Society**  
**Interview with Mauri Osheroff**  
**Conducted on June 8, 2015 by William Thomas**

**WT:** This is an interview with Mauri Osheroff for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is June 8, 2015, and we are in Rockville, Maryland. Thank you very much for agreeing to speak with us about your forty years at the SEC. Why don't we begin with a little bit of your biographical background, where you came from, how you became interested in law, and ultimately, how you ended up at the SEC?

**MO:** I was born in Washington, D.C., and grew up in the Maryland suburbs. I went to college at Radcliffe, which is now part of Harvard. Sadly, they lost their name. Then, I went to Yale Law School. When I was at Radcliffe, I majored in the history and literature of England, which I enjoyed very much. Of course, my mother said, "What will you do with English?" And I said, "I'll speak it." But I did know I had to make a living, and so what do English majors do? They go to law school, and back then I don't think women were necessarily as imaginative about careers as they are now. My father was a lawyer, and although I didn't necessarily have a conscious decision to be just like him—especially since he was a patent lawyer, which involves a large scientific background—that was probably in my mind.

So, I went to law school, and I have to tell you I never had any interest in economics or any issue that you might think would be related to the SEC. I did not necessarily want to

go into that field at all. I'm not sure what field of law I wanted to go into, exactly, but I took a corporate law course, not because I expected it to be interesting, but I thought it was probably a good basic thing to have, and I in fact did find it very interesting.

Then, when it came time to apply for summer jobs—I ought to go back and say that when you live in Washington, D.C., you generally think of the government as an employer, and I did have summer jobs with the government all the way through college, starting in high school, as a Grade 2 clerk typist. I would have been able to get a Grade 3, except that I failed the typing test. I not only failed the typing test, but I dropped my typewriter and broke it, so this was not a good day.

But I did work for a number of government agencies, and in my first year of law school, I worked for the Department of Transportation. Between my second and third year, I did interview with law firms as well, but the best job offer I got was with the SEC. Stan Sporkin and Alan Levenson came to the law school and interviewed, and so it seemed like an attractive offer.

These were not unpaid internships, the way they do things now. This was a Grade 9, and that was a pretty good salary. To me, it was actually not that far off what I might have made with a law firm. So, I did come to the SEC, and I really enjoyed it. They treated me like a new attorney, which is nice when you consider that they didn't know that they were going to get any more out of me than two or three months, although it turned out they got a lot more.

They showed me how to review a proxy statement, how to review a filing. The filings were likely to be a post-effective amendment to a Form S-8, which for employee benefit plan now is automatically effective and nobody looks at them at all, but in those days we looked at them. Post-effective amendments we looked at, so they weren't necessarily the most important filings, but it was a little bit of a thrill to me. I would write up my comments, my branch chief, Phil Farnsworth, would review them, or maybe one of the more senior people in the branch. Then he said, "Okay, go ahead and call and give comments to the attorney who's listed as the contact person." And of course, here I was, a summer employee giving comments, and the law firms didn't let their people talk to the SEC until they had more experience.

The first time I gave comments on a registration statement, the attorney said, "Well, these comments are very easy for us to take care of. I assume you'll let us do that in the 424," which to anybody who'd been at the SEC longer than a month or so, any attorney, you would know that means, "We don't have to file a formal amendment, do we? We can do it in the final prospectus file under Rule 424." However, I didn't know what he was talking about, so I had to say, "Well, I'm not familiar with that. Let me talk to my branch chief, and I'll get back to you." So, this was pretty funny.

But in subsequent years, when I trained people myself, I always explained this to them. I had a colleague who said he made the mistake of asking, when he was a new attorney, a company for their fourth quarter 10-Q and saying, "Well, I see the first three quarters. I

don't see the fourth quarter." And, of course, there is no fourth quarter 10-Q. It's a 10-K for the whole year. So we all go through those things, but I did feel very pleased that I was allowed to actually work on filings and talk to people on the outside.

One interesting thing that shows you how our ethics rules have changed is, when I first arrived as a summer employee, I was told, "Oh, call up these financial printers, and they'll send you—they're Bowne, they're Ticor, they're Charles P. Young—call them up, tell them you work for the SEC, and ask them to send you sets of the rules." They all had different services with SEC rules and forms; the SEC did not have its own. Now, of course, in addition to the fact that everything is available online, there's also a special CCH set that SEC professionals have access to. But back then we didn't have our own, and so you called the financial printers, then you got their set, which would certainly not be allowed today.

I ended up enjoying the job very much, and then I decided I should take a securities law course at Yale. And so, in the fall semester of my third year, I took a securities law course, and I actually did not like it at all. I think the professor focused on the national market system, and not on Corp Fin-type issues. So, if I had just taken that course and never come to work for the SEC, I would probably not have done so. But I remembered that I had enjoyed the disclosure work for the SEC.

**WT:** What is it about the corporate side versus the market side that you find particularly appealing?

**MO:** It is hard to say. I like the idea of dealing directly with companies. As I said, I never did have that big an interest in economics, so the market side seemed to be more economics-driven, in some respects. I think it worked well for me, because at the SEC the Division of Market Regulation, which had gone through many names, is very specialized. There are different specialized aspects, and I just enjoyed the Corp Fin side.

It was rare that I thought about changing divisions, and in the end I never did change divisions. Ideally, I will say, from the perspective of my career, maybe there should have been more variety, not only different divisions of the SEC, but also the ideal career would have a mix of government service and private practice. I certainly respected the people I worked with who did have private practice experience, and I made a point of trying to learn from them, but I didn't have that variety myself.

At any rate, when I was applying for permanent jobs as opposed to summer jobs, getting ready to graduate, I was happy to get an offer from the SEC, and I was very pleased with my salary of over \$14,000 a year. It was not that much less than what law firms were paying at the time. Had I known the difference, maybe I would have been more inclined at some point to seek out private practice, although whether I would have ended up in fact making some of those spectacular amounts, who knows? But I really liked the idea of the public service, and the salary was fine for me. I got started, then, in what they call a branch. I guess they still call them branches, but now they call that part of the division,

operations, which was not a term that was used when I was first there. But I was in ops, I was in a branch, and my first branch chief was Charlie Leber.

People thought it was very funny, because in addition to a secretary who was a woman, I became the, I think, third professional woman in his branch, and this was really quite startling. There was a woman accountant, who may have been the only woman accountant in Corp Fin at the time. There was a woman financial analyst, and then there was a lawyer. People would make jokes about Charlie's harem, because he had the three professional women in his branch, but that was a long time ago.

**WT:** Just to put some signposts on this, what year did you join?

**MO:** I was a summer employee in '73, and I joined in '74. We'll come back to the position of women, but this might be a good time for me to mention my first SEC Speaks conference that I attended, which was I guess in 1975, a few months after I joined. It was a little bit of a revelation. I walked in, and I signed up as a staff member, and they handed me a card with my name on it across the top. I said, "What am I supposed to do with that?" They said, "Put it in your breast pocket." Well, if you were wearing a suit that didn't have a breast pocket, or maybe not even wearing a suit at all, this was not convenient, and they certainly didn't have pins or other things that women could use.

Then, having been sensitized to this issue, I looked around the room, and there were hundreds of people, and I began counting the women and there were fewer than ten. It

was very odd. There were a few women I knew who were at the SEC. Then I was saying to myself, “Okay, there’s the woman in the red dress over there. There’s a woman in a blue suit.” But there were, I think, fewer than ten, and it was a surprise to me, because in my law school there weren’t as many women as there would be today, but there were a lot of women. We were not rare, and I felt that we were rare in the SEC Speaks setting.

I also thought to myself, “Gee, everybody’s white,” which again, was very different from my law school, and I began counting the African-Americans and Asians. I think there was one Asian. Maybe there were five or six African-Americans, most of whom were also women. So it was a very different era.

**WT:** Atmospherically, was it a respectful atmosphere?

**MO:** I felt it was a respectful atmosphere. Not everybody necessarily had the same experience, but I didn’t feel that my work was respected any less for my being a woman. The work I did was a nice follow-on to the work I did as a summer employee, so my training did prove valuable. I was reviewing filings, transactional filings, 10-Ks, proxy statements. I particularly learned to love proxy contests, which are very interesting because both sides are hostile to each other, and the staff ends up being a little bit of a mediator. The two sides may be fighting over what color proxy card to use, because we had an informal rule that they could not both use the same color, and so if one side picked a color the other side wanted, there would be some resentment.

When proxy contests first came in, when you were first aware of a proxy contest, because a piece of opposition material was filed—this was before public filings; proxy material was not public, and in fact, since we didn't yet have EDGAR, which I'll come to, even when filings were public it would take a while for people to know they existed. So the staff practice, when we became aware of a proxy contest, was to send telegrams to both sides saying, "We are aware there may be a contest for control," and basically saying, in nicer language, keep your mouth shut. Don't make any inappropriate statements that could end up being violations of the proxy rules. It's funny to think about those telegrams, but the proxy contests were definitely among the work that I enjoyed the most. Because they were hostile, it was fun, and they're very fast moving.

Two developments that occurred in operations while I was still in operations were industry centralization and selective review. Industry centralization meant that instead of the industries being scattered randomly among the branches, which had been true with a few exceptions—real estate and mining I think were treated separately when I was there, but other industries were random. But, instead, they decided that putting a select number of industries in each branch would work better, because the staff members could get familiar with the industries and know the disclosure issues, but at the same time, they wouldn't be so specialized they only worked on one industry -- they would have enough of a variety to keep things interesting.

That strikes me as almost a no-brainer, but it was very different with selective review. I was not at a policymaking level at the time. This would have been the late '70s, possibly

early '80s, but I'm not sure. Obviously, there were lots of high-level discussions on selective review, because every single piece of paper that came in the door had been reviewed. Even a plain election of directors proxy that didn't involve a contest or big legal issues, the employee benefit plans on Form S-8, very routine post-effective amendments, they were all reviewed. We didn't really have the staff for it, so they decided to go to a selective review system where only the higher priority things would be reviewed. Now, it certainly makes a lot of sense, not to mention that Corp Fin, instead of having about 400 people, which I think is what they have now, would probably have to have 4,000.

But at the time I was appalled. They called us into a big division meeting and told us about selective review, and I was appalled. I remember talking to one of my other coworkers, and I said, "I guess it's not the end of the world." He said, "Well, it's the end of Corp Fin." So, it's very funny how we took the news. When I was in operations, at a certain point, I became an assistant director, special counsel.

**WT:** Can I ask you, before we proceed: so the function of operations, in general, is just to determine how things like reviews are done, or how they are conducted in the rest of the division? Maybe I should just let you explain.

**MO:** Okay, operations, it's really in the core of the division, and I say that as someone who spent most of my time in support. You have operations, and then you have support and the support offices. Operations performs what is the core mission of the division, which

is to review the filings that come in. Obviously they get into the policies of what the disclosure should be, but disclosure is really what it's all about.

I guess I should say this for people listening to this who are not otherwise as familiar with Corp Fin: the whole premise of the disclosure system is that it is disclosure. It's sunshine. It's not a merit regulation system. We don't tell investors, "You cannot invest in this because you're not sophisticated enough, or because this is not a good deal for you." We tell investors, "Here are all the facts about the company, and if you want to invest, go ahead. It may be a terrible deal, and you'll see risk factors, and you'll see other disclosures saying it's a terrible deal."

Now, I'm aware this doesn't always work because sometimes brokers will tell their clients, "Oh, ignore that. All that stuff, the SEC makes them say that. It's really a wonderful deal." Some people don't bother to read it, so it's not the ultimate protection, but the intent is not to be overly paternalistic. This is especially so for registered offerings. There are certain exceptions in a rule permitting offerings of securities to investors that are not on a registered basis, and that gets a little more complicated because it's not merit regulation, exactly. Some of the states have that. We don't, but there is a more highly regulated system of who is allowed to buy those offerings.

With respect to registered offerings, disclosure is the key, and, therefore, the staff reviewing the disclosure, commenting on it, and having companies respond to those comments is very important. We always thought of ourselves, too, as being very

accessible. It wasn't just like a faceless bureaucracy, and it still isn't. Letters of comment have the names of contact people. People are encouraged to call them. And when someone, usually a lawyer in my case—now, of course the accountants would talk to accountants, but lawyers on the outside would be talking to lawyers, or sometimes financial analysts on the staff about the response to comments. We encourage people to call with questions and not just send an answer without knowing what we were getting at, if the letter of comment didn't make it clear.

So, we had a lot of interaction by phone, and the staff still does, even in these e-mail days. It was a long time before comment letters could go out by e-mail, but the staff is not necessarily encouraged to communicate a lot with the outside by e-mail, because you don't want something in writing that says, "This is an explanation of our comment," unless it's really been vetted by the right people. So it's actually better to have informal conversations, and we did that.

**WT:** We're a little bit ahead of ourselves, maybe, but that's an interesting point. Was there encouragement to continue using telephone conversations?

**MO:** Yes, it's definitely not an all-e-mail kind of thing. If someone wants to know, "What did you mean by the comment asking for more disclosure about such-and-such? We think we've done an adequate job," the easiest way is to have a conversation. People are encouraged to go up through the chain if they want to appeal something. It's not a my-way-or-the-highway kind of thing. Having said that, it's not a good idea if people want

to start out by calling the division director because he was their buddy in private practice; it is better to go through the chain, but I think we always prided ourselves on being very accessible, and I believe that's still true of the staff today.

**WT:** Could I ask you also, in clarification—so, back to the point about the function of operations, does that, then, encompass the branches, or does it stand separate?

**MO:** It encompasses the branches. And now, we generally call them the AD group, the assistant director group. Each assistant director has branches under him or her, and now they are divided into legal branches and accounting branches. That wasn't the case when I was there. Each assistant director would have maybe three branches—the numbers varied—headed up by a branch chief who was usually a lawyer or a financial analyst, although sometimes it could be an accountant. And then there would be attorneys, and accountants, and financial analysts in the branches to work on filings, and every filing that contained financial statements would be assigned to an accountant, as well as to an attorney or a financial analyst. There's a lot less hiring of financial analysts these days. In fact, I don't know if they've done it for a long time. The professionals are generally attorneys or accountants, with some exceptions for very specialized things. For example, a mining or oil and gas company might also have an engineer assigned.

**WT:** And so your initial title was attorney adviser. Is that standard?

**MO:** Yes, that's the standard title.

**WT:** Okay, as far as with people who review the forms that come in and that sort of thing?

**MO:** Yes. I think now they allow some people to be called senior counsel who have been there for a while but have not gotten a more formal title, but that was not the case when I was in operations.

One thing I should mention, when we sent out letters of comment, the secretary did the typing. There were no computers. The professionals didn't do the typing, and of course that meant that there would be a backlog, and the poor secretaries had to use carbon paper and make a number of copies. I think the blue was for the mailroom, and the yellow was for the branch files, so when the secretary typed it, the professional would proofread it, and the secretary would get highly annoyed if there were mistakes to be corrected, because with all those carbon papers it would not be an easy thing. Over time, the transition was made to computers and professionals doing their own typing, which is something we may come back to. But at the time it was a very labor-intensive process.

In the case of proxy contests, we would read the comments over the phone, because they were very time sensitive and we wanted to get the comments out as fast as possible, and then we would follow them up in a letter. It was very annoying reading the comments over the phone if you were reading them to a lawyer who would stop and interrupt and say, "What do you mean by this? What do you mean by that?" So I would always

encourage them to have a secretary on the other end take dictation, or else do a tape recording to avoid that, although it wasn't always possible to avoid that.

**WT:** Okay, to loop back around, you then moved on to a different position that you were about to talk about?

**MO:** Yes, it was still in operations. Each assistant director had a special counsel who got to be a Grade 14. Now, the career ladder for attorneys goes up to Grade 14, but back then the career ladder only went up to 13. So, if you wanted to get a 14, you had to get a promotion, which usually meant you had to be competing with people, and I applied for my share of jobs that I didn't get at the Grade 14 level.

Back in those days, the way they told you if you didn't get a job, they would give you a blue special attention envelope which said, "Thank you for applying for such-and-such job, but we decided to select such-and-such other person." So if you saw one of the administrative people in the division coming toward you with a blue envelope, you knew you were in trouble. Now they do it in a more civilized way, which is they have a face-to-face conversation.

In any event, this was a job that I got. I should say, however, one of the jobs I didn't get was an assistant director special counsel job, which I really wanted. It was on my 30<sup>th</sup> birthday that I found out I didn't get the job, so at the time that seemed like a terrible day. Not only did I not get the job, but I was thirty, and that thought of thirty being so awful is

pretty amusing now. However, the next special counsel job that came along, I did get. I was special counsel to Irving Borochoff, and I may have been the first woman to actually be an assistant director's special counsel.

I didn't know Irv that well. He was a branch chief that I knew before he got promoted to being an assistant director. I found out he was very smart, and I feel like I got my start at learning how to think like a manager, because he would bounce ideas off me, not only substantive ideas, but also ideas about people, and his concerns about people, that there was somebody who was very good in his group but he felt that person wasn't necessarily recognized as being that good by other people and what could we do about it, and things like that. So I was not formally a supervisor, but in a certain sense I was, because part of my job was to supervise proxy contests in the division, in that group, and part of the job was to help train other people in the group. So, I was maybe a de facto supervisor in some of my responsibilities, and that was a lot of fun. I enjoyed that very much.

**WT:** Were there kind of informal mentorship roles going on at that time? Did you experience them, or did you mentor anyone later on?

**MO:** I don't think I experienced them. The word mentor wasn't really in vogue, I don't think. I felt like there were senior people I got to know who were always very good at answering questions. There were a couple of people in the chief counsel's office in the division—I should say the chief counsel's office is not to be confused with the general counsel's office, which is a separate office unto itself; the chief counsel's office was an

office within Corp Fin. There were people there that were very good at answering questions, so that's how I learned. In addition to my direct supervisors on a matter, I always tried to be available and accessible.

When I got my next position, which was deputy chief counsel, I really particularly enjoyed training people. I became deputy chief counsel in 1985. This was a very exciting promotion, not only to a Grade 15, which was really rare in the division, but more important, it was really my first division-wide position, and it was unusual that I had not been in the chief counsel's office first. I got promoted to that job directly from being an assistant director's special counsel. Although there were certainly some good people in the chief counsel's office at the time, none of them were viewed as having the right amount of seniority and seasoning for that position.

Bill Morley was the chief counsel, and Bill was just a wonderful and delightful person, very smart, very down to earth, very interested in sports. I joked with him that at least they couldn't say his selection of me was the old boy's network, because I had a complete lack of interest in sports and cars. Bill thought it worked out well, because that way, if he wanted to take off time to go watch a University of Maryland game, he didn't have to worry about my wanting the same thing.

One reason I got the job, I believe, is David Martin, who subsequently became the director of the Division of Corp Fin, at the time he had been in the chief counsel's office, but he had very recently gone up to the Chairman's office to work with Linda Quinn,

who was the executive assistant. She brought a couple of attorneys from Corp Fin with her to work for the Chairman, and David Martin was one of them, so he was no longer in the chief counsel's office. I said to Bill Morley at one point—this was after I worked for him a couple of years—I said, “I bet if David had still been in the chief counsel's office, he would have got the deputy chief counsel job.” Bill laughed and said, “You're right.” So I was very—especially when many years later David became my division director, I expressed to him my great appreciation of the fact that he went up to the Chairman's office when he did and cleared the way for me.

That job was actually the best job I ever had, and I enjoyed it so much. It was very intellectually challenging, because we did interpretive work, we answered questions about the rules and the forms. There was a lot of telephone duty. Some of us got a little tired of that because we could answer dozens of phone calls a day, and the calls could vary from someone who was planning a very sophisticated new securities product and wanted to know some of the ramifications for how to comply with the rule, to someone who didn't bother to look up the rule himself and just wanted to be spoon fed. There were times when I would say, “You need to look at release number such-and-such, and after you've read the release, please call me if you have more questions.”

We would sometimes get associates who were afraid to consult with other people in their law firm, so they would call the SEC to ask a question, which is a practice that would probably not have been encouraged by the law firm. So we got all kinds of questions. It drove the secretaries crazy. This is before they had an answering machine, when the

phone was constantly ringing, and we all took turns, including Bill Morley, who was the chief counsel.

**WT:** In those days, before everything was available via the Internet, would companies generally have files of not only the rules, but all the releases, and that sort of thing that the SEC would put out?

**MO:** Well, we would put out releases from time to time. We had a couple of releases on the process of filing a request for a no-action or interpretive letter. And of course, when rules were proposed and then adopted, there would be public releases. The releases weren't as long as the ones today, but they would still have some helpful guidance—not like back in the '30s and '40s, when the SEC would issue a release saying, "We have decided to adopt the following rule," and then there would be the text of the rule. But over the decades the releases got longer and there was more explanatory material, and those were very helpful to the public.

**WT:** And those would just go out to a subscriber list or something like that? I'm just curious how the physical documents at that time—

**MO:** They would be in law libraries, as well as the SEC library. And they would be available in a more general way; financial printers would issue compilations of them and send them to their clients. In fact, this may be a good time to just talk about the evolution of technology in that regard.

**WT:** That would be terrific.

**MO:** When I came, I told you the SEC didn't have its own sets of rules for its own employees, but it was hard to do research if someone presented you with a question on the staff. And of course, on the outside, you would also have difficulty, but on the staff you would have index files. Some people would maintain card files. They were very informal. The chief counsel's office had card files, but sometimes they were better maintained than others, and you could find them. Then they had microfiche, and the microfiche was a real pain to use. It was not well indexed, and you would have to get a microfiche for a particular month, and it was pretty dreadful.

Then they started with Lexis, and that was very exciting. When I was in law school, I remember grumbling about the fact that they told us how to Shepardize cases, and saying, "This all ought to be on a computer." Unbeknownst to me, people were developing computerized systems of legal research, and Lexis and Westlaw were being developed. And so at a certain point—it wasn't available right after I came to the SEC, but within a few years—Lexis was available, and I think subsequently Westlaw, and the SEC releases, as well as the interpretive and no-action letters were available. But at first we were not encouraged to spend a lot of time on Lexis, because the division had a budget.

I remember one of the best attorneys in Corp Fin got into a little trouble with the division director, Linda Quinn, who sent her a note saying, "You've used Lexis too much. You're

using too much of our budget.” The attorney was not very happy, because she had been putting in all kinds of extra hours, and she was not using the system frivolously. Of course, now the SEC pays for subscriptions, and I don’t know how it works, but it’s certainly not on an hourly basis. But at the time Lexis was a precious, rare commodity.

When I first joined the chief counsel’s office, I think we still had some of those index cards and microfiche, and maybe Lexis was just starting to be used. As a side note, Post-Its were also just starting to be used, so that may not really come under the heading of “technology,” but it seemed like a significant change. I’ll come back, I think, to EDGAR and electronic filing.

But just talking about my time as deputy chief counsel, it was a lot of fun because I got to write memos to the division attorneys addressing different disclosure issues. Form S-4, which was a registration form for mergers and acquisitions, was brand new. I had not been involved in the rule making, but I was involved in the interpretation, and I put together a long memo that listed all of the interpretations. I just enjoyed telling people things, I guess.

At the time I was promoted, the division director was John Huber, and the associate director-legal was Cathy McCoy, so I worked for John and Cathy, and then Bill Morley, that was my chain of command. Cathy was lovely and very nice to work for. John was very smart, and I was a little intimidated by him, although I subsequently learned he had

a sense of humor, and I respected him very highly. I was a little nervous when he first became division director because, at the time, the going private rules were new.

Rule 13e-3, the going private rule, was a very new, exciting development, and John had worked on the rulemaking, and I was answering some Chairman's correspondence. This is when I was a branch attorney. It involved going private rules, and so I was asked to consult with John, who was then involved with the rulemaking, on how to answer it, and he suggested I say something and I argued with him a bit. I said, "Well, if I say this, shouldn't I say this instead?" He said, "Well, why did you consult me, then?" I said, "Well, I was asked to consult with you to see what you said. I didn't think I had to take your words as a fiat from the Pope." It's actually very funny: a) I'm not Catholic, b) he then became my division director. I told my mother, "Well, the guy that I told I didn't regard his words as fiats from the Pope has just become the head of the division." She said, "What are you going to do?" I said, "I'll kiss his ring."

Rule 13e-3 was something significant for us all to deal with. And similarly, there were new tender offer rules. Now, I want to back up a little bit and say when I was an AD special counsel, the division decided that one of the jobs of the AD's special counsels would be to review tender offers.

**WT:** The issues that you were dealing with, did different ADs have different jurisdictions?

**MO:** No, because these tender offers were assigned by whether the target company was in your branch or not. There were I don't know how many assistant directors at the time, say eight, and so maybe there were eight special counsels. The Office of Tender Offers, at that point, which subsequently was renamed the Office of Mergers and Acquisitions, at the time it was the Office of Tender Offers. It was very small. It was headed by a woman named Ruth Appleton, who was one of the few women in high positions at that time, and she had a couple of attorneys working for her, but it was a small office.

The division made the decision that the assistant directors' special counsels would have, as one of their duties, reviewing the tender offers and giving the comments. Ruth trained the special counsels, and I missed out on that training because I was not yet a special counsel. She retired just around the time I became a special counsel, so I got my training in other ways. But I really loved the tender offers, along with proxy contests. They were some of the most interesting filings. Especially some tender offers were hostile takeovers, not all of them, but a lot of them were.

**WT:** Sorry, and we're circa 1980 right now.

**MO:** Yes, right, we're in the early '80s.

**WT:** So it was really becoming a prominent issue, even in the press.

**MO:** Yes, right. When I became deputy chief counsel, I did miss the proxy contests and tender offers, although they came back to me, as you will see. But at the time it seemed too bad having to give up that responsibility. But aside from that, as I said, it was really the best job I ever had. A bunch of us would stand around late, talking, not because we were under a severe deadline necessarily, but just because issues were so exciting and challenging.

Well, that era came to an end when I moved on, although I should say my rulemaking career really began while I was deputy chief counsel. Rulemaking was generally the province of an office, which at that time was called the Office of Disclosure Policy. Now it's called the Office of Rulemaking, but the Disclosure Policy Office handled the rulemaking. At one point, they didn't have the staff to handle a project. It involved changing the rule related to filing fees, and it had been proposed, but there was a push to get the rule adopted, and there was a staff shortage in that office. So the associate director, Cathy McCoy, came to the chief counsel, Bill Morley, and said, "Could you lend me one of your attorneys to help out with the rulemaking?"

Well, around that time, I had a cold, and every time I had a cold it changed to laryngitis because of all the telephone calls in that office. So as I reconstructed it later, Bill probably thought to himself, "Who is the most useless person in my office that I can offer up to Cathy for this rulemaking project?" He offered me up, since I couldn't talk on the phone for a few days, so I got involved in the rulemaking project. Evidently, I did a good job on that, because I was spotted by Cathy as someone who could do that.

In the meantime, Linda Quinn became division director. I had known her when she first joined Corp Fin as an attorney fellow. Then she went up to the Chair's office to be the Chair's executive assistant, which is a position that is now called chief of staff. Then she came down to Corp Fin when John Huber left to be the division director, and shortly after she became division director, she said, "I want to take you out to lunch," and I was a little bit alarmed. She said, "It's nothing bad." I had worked with Linda when she was up in the Chairman's office. I had done a report on tender offer regulation in different countries for the advisory committee on tender offers that was ongoing at that time. That was when I was still an AD's special counsel, and she had complimented my work on that report, but I hadn't really worked that much with her after that, when I was deputy chief counsel.

When she took me out to lunch, she said, "I would like you to head up an EDGAR rulemaking taskforce." EDGAR was just getting started. There was a pilot program to accept filings electronically at the SEC, and there was a decision to make it mandatory for companies to file electronically with the SEC, which was at that time a very forward-looking and controversial decision. Linda felt that the rules would have to be very significantly changed to take into account electronic filing, and she said to me, "You'll still keep your title as deputy chief counsel, but in reality the work you do will be for this rulemaking taskforce. I'd like to have three or four very good attorneys working with you on this rulemaking, and you'll be in charge." I was in a way somewhat hesitant,

because I really liked my position, which is why Linda made a point of saying, “You will keep your title,” and so I agreed to do it.

We had a taskforce, which had many meetings. We put together a report that analyzed the different rules and the changes that would need to be made. That ended up being a very significant strand of my career, because I was involved in EDGAR rulemaking and policy issues, in one way or another, for my whole career, even when it didn’t necessarily make sense according to the organization chart. In the early ‘90s we did a concept release, but we actually then did rulemaking to phase in public companies to make their filings electronically starting in 1993, and that applied only to domestic companies. Foreign private issuers didn’t have to do that until 2002.

So this was ongoing all through the ‘90s, EDGAR rulemaking. It was very, as I said, controversial. We were the first country, so far as I know, to have an electronic system for securities filing. This was before the Internet, so people who wanted the public filings could subscribe to them. They weren’t disseminated as broadly and as easily as they are today, but it was still a huge improvement.

**WT:** How would they be submitted to EDGAR?

**MO:** Well, they were submitted on EDGAR. There was a computer system; there still is. It’s not just you send it over the Internet – there was no Internet then. There is a system in place where you would get your security codes and log on and submit it. Originally, the

filings had to be in ASCII. Ultimately, we allowed HTML. At first you couldn't have any pictures, and this got you in some interesting interpretive questions. If you wanted to have a graph in your filing, you would have to give the data points in the electronic one, because you couldn't present it in electronic format. Now you can do that, but back then you couldn't. If it was a proxy statement and you wanted pictures of the board of directors, you would just say, "Pictures of board of directors omitted." I would joke when I was on the public speaking circuit about how you don't have to describe what they look like, and if I really had a comfortable audience, I would say, "You don't have to say pictures of twelve middle-age white males omitted."

That's getting ahead of myself a little bit, but I started my EDGAR career with being the head of an EDGAR rulemaking taskforce. In the meantime, Cathy McCoy left, which meant there was a vacancy for the associate director-legal job, and at that time the rulemaking office and the chief counsel's office both reported to that position. It was a very attractive position to me, and I wanted it. Linda Quinn wanted an outsider. She went around giving speeches, telling people she wanted an outsider for that position. Bill Morley said he was not going to apply for it because he did not like rulemaking, and he did not want rulemaking as one of his principal responsibilities.

Elisse Walter was the deputy director at the time, and she was, by the way, one of the best people I ever worked for and worked with. She was one of the smartest people, as well as a very warm person, very easy to get along with, and I did a lot of work with her on the EDGAR rulemaking and otherwise, and I did make it clear I was interested in the

position. Well, apparently the outsiders who applied for the position weren't satisfactory, and I guess Linda had second thoughts. The next thing I knew, they decided to post a different position; it was called the associate director of regulatory policy. The chief counsel's office was not going to report to it, but the rulemaking office, the Office of Disclosure Policy was. I did apply for that, and I got it. I was sorry to be leaving the chief counsel's office and not have that under my wing, because I loved the chief counsel's office. To this day, I would say one of my career regrets is I never got to be chief counsel. In a sense, I was promoted from deputy chief counsel to associate director.

But subsequently they posted another job, they called it associate director-legal, and this had the chief counsel's office, but it did not have the rulemaking, because I already had rulemaking. Bill Morley applied for that job, because it didn't include rulemaking and he was chief counsel anyhow. So, he became the associate director-legal, which was combined with the chief counsel position. So he got a promotion, too, which is good, because I have to admit, if we had been competing, most likely he would have got the job. If it didn't involve rulemaking, I'm sure he would have got the job. It worked out well that we both had promotions. I still felt a little bit of regret that my career path took me away from the chief counsel's office, but certainly I could not complain that rulemaking wasn't interesting.

For the first time I was actually a supervisor of record. When I was deputy chief counsel, I got the supervisory excellence award, which I was very proud of, but I wasn't a formal supervisor. I was more of an informal supervisor, and tried to be a teacher and a helper to

people. When I became associate director, I enjoyed supervising not only the office chief, but I was a second line supervisor to the attorneys in the office, some of whom were very talented. Of course, as a supervisor, there are bad aspects as well as good aspects. You're not necessarily happy if you have to give someone negative feedback, or to try to get someone to improve in a way that may not always be well taken. On the other hand, you're dealing with good people, you're fostering their careers. So in general I would say I really enjoyed being a supervisor throughout my career, although I have to say it was not always an easy task.

**WT:** Going back to an earlier point, was this the first time that the associate directors were becoming more specialized in this way?

**MO:** I guess so. The division is very different right now. There are lots of associate directors for operations, and there are fewer associate directors for the support office. But they did perform different functions. There used to, I think, be maybe one associate director of operations, one associate director legal, and so I think they did become more and more specialized at that point.

**WT:** As more of an evolutionary process, though, than anything else.

**MO:** Yes.

**WT:** So prior to your very direct involvement with rulemaking, how prominent, or how big of an effect would things like the tender offer rules or shelf disclosure or something like that, that is very important from a rulemaking perspective, how would that impinge on your work before you had arrived in that position? Was it an adjustment, or was it more radical than that?

**MO:** Well, are you saying the rules that were passed before I got involved with them?

**WT:** Yes, exactly. I mean, you'd be involved in applying the rules, so I'm wondering how much of an effect changes in the rules would have on how you went about your work.

**MO:** Well they certainly did have an effect, because when there were new rules, there was always training. I think the division was—way back, and it still is—very good at training its staff. So, if there are new rules put into effect, there might be division-wide meetings, there might be memos, depending of course on the significance of the rule. When new tender offer rules were put into effect, the Office of Tender Offers did training for that.

It is interesting, though, when you're interpreting the rule, you say to yourself, "Why didn't the rule makers think of this?" When you do rulemaking, you realize why the rule maker didn't think of this. In the first place, maybe they did think of it, but it would have made the rule too long or complex. And in the second place, it is also true that there's nothing like practice to show you how a rule is working. Theoretically, if you had a

perfect rule there would be no need for interpretation, but I'm not sure that such a rule exists at any point.

**WT:** Okay, so why don't we talk a little bit about some of the key rules that you were dealing with, once you took up this position. We've talked a little bit about EDGAR, but now of course your remit is much more expansive.

**MO:** Yes, and over time, there were many. We worked on changes to the beneficial ownership reporting system—Regulation 13D we worked on. And actually, this may be my first highly significant rulemaking project, Section 16, which are rules requiring officers, directors, and 10-percent shareholders of companies to report their purchases and sales of the company's securities. And also, these rules provide for recovery of short-swing profit from officers and directors and large shareholders who have sales and purchases within a six-month period. We engaged in some very controversial rulemaking to modernize that system. We had rulemaking at several proposals, culminating in an adoption in 1991, and a further round of rulemaking in 1996, as well as miscellaneous rulemaking here and there on the Section 16 system.

At the time we got started with this project, not only were some of the rules very difficult to understand and requiring a lot of interpretive work, but also, the reporting rules were not well followed. Companies were—or insiders I should say, because it's the responsibility of the individual, not of the company—these insiders were not filing their required filings, and there was a large delinquency rate, which was embarrassing. We

worked with the Division of Enforcement on a coordinated approach, where Enforcement would bring more cases when they found violations of the reporting requirements. But we also worked on our rule in a manner to try to encourage companies to get more involved with the rule, because the officers and directors, after all, were with the company. The 10-percent holders may or may not have been friendly to the company, but we felt that companies should at least report delinquencies on behalf of their officers and directors. In various other ways, we got the rule modernized, and we encouraged reporting to take place on a more timely basis.

We also provided a treatment of derivative securities that worked with the rules. I have to give credit to Brian Lane, who subsequently became a division director. At the time he was an attorney in the rulemaking office, and he came up with a suggestion for a scheme for treating securities and their derivatives as being the same, for purposes of analyzing whether purchases and sales had taken place. In other words, if you purchase an option for securities, that should be treated the same as purchasing securities directly. It's of course more complicated than that, but it was a scheme that required a lot of thought and analysis, and a lot of persuasive work.

I have to say, Brian had to persuade his office chief, then he had to persuade me, then we had to persuade the deputy director and the division director. It worked out very well, I was very proud of the regulatory scheme we came up with. So I actually want to say that was my first very highly significant project. Then I mentioned the beneficial ownership reporting system, calling for reports on Schedule 13D and 13G.

**WT:** In that case, beneficial ownership, is that like where they have different classes of stock? Is that related to those discussions?

**MO:** Well, beneficial ownership, it's not necessarily record ownership. You might own a security as a matter of record, but not have voting power or investment power. And we do have rules providing, for purposes of the 13(d) regulatory scheme, that voting and investment power are the most important. So if I hold securities, but I have signed an irrevocable power of attorney giving voting power to someone else, I no longer have it. If I don't have the power to sell those securities, maybe I don't have beneficial ownership at all. It's a complex concept, and beneficial ownership is defined differently for different purposes.

For purposes of the Section 16 reporting rules and short-swing profit rule, beneficial ownership is defined in terms of pecuniary interest. So there are many different ways of going, when you figure out who is the ultimate owner of securities for a purpose of determining who is subject to the regulations. In the case of the 13D reporting scheme, it's different from Section 16. You have 5-percent holders, not 10-percent holders of securities, who have to file certain reports with the SEC listing their holdings, and, in certain cases, the purposes of their holding, and changes in their holdings. I worked a lot with that regulatory scheme.

Then we had the regulatory scheme for takeovers and security holder communications, which is fondly known as Regulation M-A, even though that's only really one part of the rules. This was maybe the single project I'm most proud of in terms of my role in it and the results. This really modernized the whole tender offer reporting scheme, that not updated only the disclosure, but actually the circumstances under which a company could make communications to the public when they were engaged in takeovers.

The rules were ultimately adopted in 1999; they were proposed the previous year. This was proposed at the same time as the Aircraft Carrier, which I think had become pretty famous, even though those rules were never adopted. I was not on the Aircraft Carrier team, I was on the Regulation M-A team, because at that point—there were some changes we haven't really discussed yet—but the Office of Mergers and Acquisitions reported to me. So I worked with very fine people on that project. Dennis Garris was the chief of the office, and Jim Moloney and P. J. Himelfarb were on the proposing release, Jim Moloney was on the adopting release, and they were a great team to work with.

The funny thing is—I'll tell you a little bit of an internal story about Regulation M-A—one of the centerpieces in the free communication scheme; at that time it was very radical, because under the Securities Act generally, if you're going to have any kind of a registered offering, there would be strict rules in place prohibiting the company from conditioning the market by talking about the company or its securities, except under highly regulated circumstances. That has been very much liberalized today, but the first liberalization started, really, with Regulation M-A.

The Aircraft Carrier was also going to regulate the communications scheme in a more restrictive way. Well, we had the two rulemaking teams, and there was a lot of rivalry. I won't get into the details, but there was a little bit of acrimoniousness going. The Aircraft Carrier team felt that they were in charge and they could tell the Reg M-A team what to do. We felt that our project was just as important, and there was no reason for them to tell us what to do. The division director, who at that point was Brian Lane, actually fostered the rivalry a little bit, which generally I would think is not a good idea. But in this case it worked out well, and I have to compliment the result, because at one point, Dennis got angry—Dennis Garris, the chief of the Offices of Mergers and Acquisitions. He had been fairly conservative and regulatory on whether we should liberalize communications, and I tried to encourage him to think more broadly. Then Brian Lane said, "Well, the Aircraft Carrier team has their system for liberalizing communication, so you, the Reg M-A team, have to do the same thing, unless you can convince me that there is a different approach that is warranted." Dennis got mad, so he sat and thought, and then he came up with the idea that there should be totally free communications, maybe filing them, but there should be no restriction, which was much more expansive than what the Aircraft Carrier proposed. He had a good reason for it. He had a very good idea for why mergers and acquisitions were different in a number of ways, and he sold me on it, and he sold Brian Lane on it, and we went out with that proposal and it was ultimately adopted. The Aircraft Carrier was never adopted.

**WT:** Can I ask, was Reg FD being talked about at this point, or was that still a little bit in the future, on the subject of communications?

**MO:** Well, that is a different kind of communication, because I'm talking about the kind of communications companies make in connection with their filing. Reg FD is a little bit more like communications companies make generally to analysts and to the trading public. There are certain interactions, but it's not quite the same. But I think that Reg M-A, we were very proud of getting it adopted, especially when the Aircraft Carrier wasn't. We felt that at least we had a really significant project that the division could show for its efforts, and its substantial rulemaking.

A few years later, when Alan Beller got involved with liberalizing the '33 Act, it was kind of a successor to the Aircraft Carrier, done a different way. I think they made use of some of the Reg M-A concept and some of the liberalization. So we felt that our project had far-reaching implications. It was a very exciting time, and we really enjoyed it. Later on, there was other tender offer rule making, including the Cross-Border Rules, rules for companies in different countries making tender offers that included U.S. shareholders, and vice-versa. That was a very interesting and substantive project, too, but I would say of all my projects, and especially in the area of tender offers, my heart would be given to Regulation M-A.

**WT:** Can I ask, in general, would the tenor of rulemaking be different if a rule is made just to modernize the system, to provide more effective or efficient disclosure, versus ones that

are driven by external events? Of course, mergers and acquisitions was a very hot topic in the 1980s. Maybe it's calmed down a little bit in the 1990s. Does that give you more space in the rulemaking process?

**MO:** Well, it's hard to say, because there are definitely hot topics, and when there are hot topics then there are different sides to it. I think you're correct that at the time we adopted Reg M-A, we got a lot of comment, pro and con, and one thing I have to say about the rulemaking process is that we take public comment very seriously. But generally, there was good acceptance of what we were trying to accomplish, while at other times, if there were external events driving it, you hear from all sources. There are many very inconsistent comments, and you really have to sort out which ones are well taken.

**WT:** That's very interesting. I think when we were talking about beneficial ownership reporting, for example, my knowledge of this topic is kind of from the macro level, where it's often associated with things like defense against takeovers and that sort of thing. So I'm wondering how much that context would be on your mind when you're actually in the depths of the process of formulating the rules.

**MO:** You definitely have to take all points of view into account, and that is not easy. One project that was ongoing, or at least being thought about when I was on the staff, which I have not seen emerge in the light of day, is to shorten the reporting period for Schedule 13D, the beneficial ownership reporting rule, which the statute had said ten days. The

Dodd-Frank rulemaking gave the staff the authority to shorten the time period by rulemaking.

Well, at a certain point, I really wished that the statute had just shortened the period instead of giving the staff the authority to shorten the time period, because that meant we had to go through rulemaking. It sounded initially like an easy thing. These days, communications move at great speed. Why should a company have ten days after it crosses a 5-percent threshold to file a report? Surely, wouldn't shareholders on the trading market benefit from hearing a lot sooner?

In fact, it turned out to be a more complex decision than the staff had envisioned. We began hearing from shareholder activists arguing very strenuously that, in fact, it would hamper their business, and it would hamper takeovers, and takeovers were a good thing for shareholders, so it could reduce shareholder value. Now, some of this is a little overblown, I think, but it became clear that there were two very sharply-opposed camps as to whether to shorten the time period or not. It shows, actually, as part of the rulemaking process, that there is a good reason for getting public comment because the staff, in its great wisdom, doesn't know everything, we really need comment from the outside. But it also shows that if a topic becomes too controversial, maybe it won't be dealt with.

And quite frankly, I don't know. Now, I could be wrong. I haven't been on the staff for over a year. Maybe, for all I know, tomorrow they're going to issue a Sunshine Act

notice saying they're going to be voting on whether to propose rules shortening that ten-day reporting period. But my own thought—and I'm not saying anything that isn't public, because people were filing rulemaking petitions and filing comments on the SEC website and talking about it at conferences, so the controversial nature of that potential change is very well known—so whether in fact that controversy will mean no change is made in the time period or not, I don't know.

I just wanted to quickly touch on a couple of other topics that have been significant in terms of my career, certainly. One of them is the international area. We might actually take a step back. When we last saw where my career was, I had the office of disclosure policy, which was a rulemaking office, reporting to me. Subsequently, Brian Lane became division director. I actually had two people named Brian who used to work for me, and then ended up being division director, so they ended up being my boss, Brian Lane and Brian Breheny. It didn't bother me, since I did not have any ambition to be division director myself, which has got to be one of the most difficult jobs around. But Brian Lane, who had been in the rulemaking office, was now division director, so he abolished the rulemaking office. He decided that rules should be done in different offices around the division. I disagreed with him, and I didn't think it was the right decision. But he was the division director. He got to do what he wanted.

Of course, he didn't put me out of a job. He still put me in charge of a lot of different rulemaking, and he also put the Office of Tender Offers under me as part of my portfolio. That was very interesting, very exciting, because I got back to the tender offers area,

which you heard me say I enjoyed so much when I was an AD's special counsel and I worked on tender offers. And then you heard me say I worked on the Reg M-A rulemaking, but that was after I got the Office of Tender Offers as part of my portfolio.

We subsequently renamed it the Office of Mergers and Acquisitions. I didn't like the fact that Brian had abolished the rulemaking office, but I appreciated the fact that he gave me this very interesting area back. I had a lot of fun with that office, not only dealing with the office on the filings, the reviews of tender offers, and they also reviewed proxy contests. I got involved in very interesting issues from a practical point of view, but then I also got involved in the rulemaking for those areas.

Then, when David Martin became division director, he decided to reinstate this rulemaking office, and he asked me if I was interested in having it back. I said, "Well, I might be a little burned out with rulemaking, and I really like having the Office of Mergers and Acquisitions." So, he didn't put that back onto my portfolio, but instead, he gave me two other offices, the Office of Small Business Policy and the Office of International Corporate Finance. So I then had the three offices, so I was very grateful to David and very appreciative of the fact that he trusted me enough to have these three very significant areas under my ambit.

The two other areas I wanted to then touch on in terms of significant projects were the international area and the small business area. The Office of International Corp Fin, like the Office of Mergers and Acquisitions, reviewed filings. In that case, it reviewed filings

made by foreign governments, as well as foreign private issuers, by which we mean not private companies, because they'd be public companies, but foreign companies that are not governments. So that office reviewed filings by those entities, and also handled rulemaking for issues regarding foreign companies.

**WT:** So like debt issuance, you mean? You said not public filings, filings from public companies, which would be equities, so I assume you're talking about debt.

**MO:** Well, no, foreign governments may be debt, but foreign public companies that were not government, they could be issuing debt or equity, just like US companies can issue debt or equity. These would be foreign companies that would be offering securities in the US, as well as perhaps other places, so they would have to comply with our rules.

**WT:** But they might be traded on foreign exchanges?

**MO:** Exactly. Sometimes they would be traded on US exchanges, sometimes foreign exchanges, sometimes both. There were a number of rulemaking projects, some of them were very highly technical, but for example, there were issues on foreign issuer deregistration. At what point would a foreign issuer that was required to make filing with the SEC be permitted to cease filing? I don't think I'll go into that here because it's highly technical, but it was something that involved a lot of staff time and effort. The chief of the office, Paul Dudek, was and is a real expert in those areas.

There's an exemption from US registration for foreign private issuers called Rule 12g3-2(b), which is perhaps not exactly catchy. But one previous associate director, Mickey Beach, who had the Office of International Corporate Finance under her portfolio, actually had a license plate that said 12G3-2B, so I suppose I could have considered that at one point, but I never did. At any rate, there was a very substantial rulemaking project to revise and modernize that exemption.

Basically, with foreign issuers, there were also projects involving disclosure, foreign private issuers file registration statements and annual reports, just like domestic companies do. Domestic companies have to file quarterly reports, as well as current reports on Form 8-K. Foreign companies don't have to do that, but they do have to file form 6-K, which is basically a report, anything that is already public or that the company is required to file in its home jurisdiction. So there are issues about how that scheme works, and in particular what the disclosure is like for foreign companies, who have their own regulators after all.

The challenge there is to create a balance. On the one hand, they have their own regulators and they don't necessarily work exactly the same as U.S. companies, so they shouldn't be charged with regulation that either is too costly or is not pertinent. On the other hand, if they don't have good, solid disclosure, we're not doing the investors of the United States a service when they buy those securities, and we want investors to be able to rely on their filings. So, when we have disclosure rules, or when we change the disclosure scheme, we always want to keep that in mind. There's a little bit of a tension

between having specialized disclosure and giving accommodations, versus not giving them a break over and above what US companies might be expected to do, not giving them an unwarranted break.

It's interesting. The same kind of thing comes up in the small business area, which is the other one of my three main areas during most of my career. In the small business area, you also have a question of on the one hand making accommodations for small businesses and not putting them into a regulatory straitjacket, where it costs them so much to comply with our regulations that it's going to stifle capital formation. On the other hand, if their disclosure is not good, this is going to be a problem for the investing public. Either they're going to buy based on disclosure that is not as full as it should be, or they may in fact feel that they can't rely on small businesses, and that therefore is a disincentive to investors buying those securities. So that's another area where the rules have to create a balance.

Now that office, which I supervised, unlike my two other offices, did not review its own filings. The filings, registrations statements filed by small businesses, were reviewed by operations, and not reviewed or co-reviewed by that office. But that office dealt with and does deal with all of the policy issues relating to small business, as well as the rulemaking relating to small business, and I got involved in a number of those.

That office kind of went through a little bit of an evolution. When I first had the office report to me, I think it was seen as a little bit of a backwater. Things were quiet. It was a

small office, which actually—it still is a small office, but small business was not necessarily looming large on anybody’s horizon. That changed very much over the years. Alan Beller put together an advisory committee on small businesses, which that office got very heavily involved in, and that raised the profile of the office.

Subsequently, over time, especially with the JOBS Act, the profile of the office really boomed.

There was another advisory committee, on small and emerging companies, which is still ongoing. Both of these advisory committees included people who were members of the public, not the staff, although there was a lot of staff support. But the idea was to get ideas from people who worked for companies, or in some cases law firms or other organizations, about steps that should be taken in the regulatory area to improve, to modernize regulation, in the case of small businesses to improve this balance, to do as much as we could for capital formation, while not impairing investor protection.

**WT:** That seems to be particularly a sensitive thing in this area straight through. In the early 1990s, you had the intense concern with penny stock fraud and that sort of thing, and even right up now to crowd funding, and the availability of that tool to potential investors.

**MO:** I’ve seen the regulatory pendulum swing back and forth many times during my career, and I was less aware of it before I became an associate director. But once I became an associate director and I was involved in rulemaking and other policy issues, it’s very

apparent. Some of this would depend on who the Chairman was, and it's not strictly a matter of party politics. It wasn't strictly a matter of all the Democrats are liberal and they care about protecting investors, and the Republicans are conservative and they don't want there to be a big regulatory burden, and they want to encourage capital formation. Some of that is true, but I think it's also fair to say that all of the Chairmen and Commissioners do care about investor protection. Nobody wants to throw it out the window.

People had ideas which did not always go according to party politics beliefs, although sometimes it did, about what the best approach was. I have seen sometimes where we were charged with the responsibility to increase our regulation and told there are these potential loopholes, they need to be stopped. Then there were other times when the focus was more on why should we have these regulations that prevent companies from taking their securities to market because the costs are so great. So it's a very interesting dynamic.

Right now, I would say it's hard to know which way the dynamic is, because you have certain forces in Congress saying we overregulate, we should roll back the Dodd-Frank Act. Then you have other forces in Congress saying, "Why haven't you done all of your mandated Dodd-Frank and JOBS Act rulemaking, and why don't you do other things that will protect investors?" I feel that it's a very difficult dynamic.

I admire Mary Jo White, the current Chairman, tremendously, and I don't know how she could navigate these shoals any better. It tends to slow down rulemaking when you sometimes have hostile voices on both sides in Congress, but she, like everybody else, is very much aware of this need for a balance, even if different people would balance their regulation and deregulation in different ways.

**WT:** Generally, we view the Commission, especially the Chairman level, as the intersection point between the political ends of the process, particularly on the Hill, maybe to a certain extent to the Executive Branch, and the staff. To what extent are priorities communicated through the Commission level to the rulemaking process?

**MO:** Well, they are. The division directors, of course, talk to the Chair and other Commissioners, and they are definitely communicated. The origin of a rulemaking project can come from many sources. It could be mandated rulemaking. It could be not exactly mandated, but something where we get letters from Congress about it. It could be the chairman has an idea. It could be the division director has an idea, although if the division director had an idea, obviously, he or she would have to sell at least the chairman on it, because rulemaking takes a lot of time and effort. It really sucks up resources, so you shouldn't just be going off on a project because you think it's a neat idea without having some kind of a commitment that the resources are worthwhile.

With small business, I did want to mention a couple of the small business projects. There have been many through the years, but the Dodd-Frank Act called on us to impose bad

actor requirements on various rules, Regulation D and other rules. We have certain rules that permit the offering of securities without registration, and there are certain requirements, including accredited investor definitions. Not everybody can buy these securities. Regulation D has been by far the most prominent of these rules. There's actually a series of rules under Regulation D, and people who purchase—I'm oversimplifying, but there are certain entities that are allowed, and then there are certain other individuals, if they have income or net worth of certain amounts. So these people who are permitted to buy unregistered securities under these rules are called accredited investors, and there are issues concerning who should be an accredited investor which are extremely controversial and are ongoing today.

The Dodd-Frank Act included some references to the bad actor rule. Right before the rules were proposed and adopted, there were certain rules calling for sales of unregistered securities where "bad actors" were being not permitted to offer securities under these rules. These would be not only felons, but companies that had engaged in certain rulemaking violations. By rulemaking, we extended the bad actor requirements throughout Regulation D. We made them uniform and consistent with Regulation A, which I'll come to, and we really rationalized the whole scheme. That was actually fairly difficult regulation, even though it was part of a statute. It got more complex than we would have thought, and we were very proud of ourselves for getting it not only proposed but actually adopted.

The other thing, actually—this was my last rulemaking project—Regulation A is one of the rules permitting unregistered sales of securities. It's sometimes called a mini registration, because there is an offering document that has to be filed with the SEC, and the SEC staff does review it. So it's a little bit different from Regulation D, which does not call for that kind of a disclosure document being filed with the SEC and being reviewed. Regulation A has not been used much in recent years because the dollar amounts for the offering permitted are very small, and the numbers of the Regulation A offerings in the past few years have been in the double, or even single digits.

Well, I'm not quite sure how this happened. Well, I think I know. Basically, Congress ended up taking an interest in Regulation A, and they put it in the JOBS Act, requiring us to revamp and improve Regulation A. And so, the challenge to get it to be a rule that will be useful for companies, because if we do all this wonderful work and then nobody uses it, that would be pretty sad, and Congress required us to go up from 5 million to 50 million in the maximum offering size, so that would, of course, be more of an incentive for companies to use it. But it did mean coming up with a whole new disclosure scheme. The staff called it Regulation A+.

The last project I worked on was actually the proposing release for Regulation A+. Initially, we were going to keep that as an internal name. Some people thought it sounded too cute, but we ended up, I think, being proud of it and just calling it Regulation A+. Since I left, and it took about a year, the rule was adopted. I was not, of course, involved in the adopting release, although I knew a lot of the controversial areas and I

knew how hard it would be, and I was very proud of the staff remaining to work on it when I saw that it had been adopted.

One of the most significant issues—which again I can tell you because it’s certainly public—is the question of preemption, because this is an intersection. Regulation A was in an intersection between state and federal securities law. It was very clear that this was not be likely to be useful in companies if they continued to have to comply with state requirements as well as federal requirements. And the states wrote letters of comment vociferously objecting to any kind of preemption, but also saying they were going to have a more streamlined system for reviewing filings because people complained about having to comply with the state requirements because it wasn’t just one state; it would be every state that they wanted to sell in, and those requirements could be inconsistent or time consuming. So the states didn’t just say, “Don’t preempt us because we are your regulatory partners. We’re valuable. We help find fraud.” They also said, “And we’re also going to improve our own system and come up with an easier system of regulations so companies will not find it as difficult to comply with our rule.”

**WT:** Had this been an ongoing conversation? I know that they had NSMIA back in the mid-’90s, and I’m told that that was not entirely successful. So, I’m wondering about your perspective on it.

**MO:** Well, it is very interesting. I was not closely involved with NSMIA, but definitely, it was very difficult because the states could not have been happy about that either. And

NSMIA improved things a lot from the corporate point of view, but there were still areas where there was duplicative regulation, Regulation A being one of them. During the time period that the staff worked on the proposal, the states submitted comment letters, and, after the proposals were issued, the proposals called for a preemption of certain offerings, not all of them. The states submitted many additional comment letters, some of which—and you can read them on our website—some of which took a very unpleasant and acrimonious tone.

The rules as adopted did call for preemption, and of course now I know, since I retired, it was public, but two states, Massachusetts and Montana, have sued the SEC, and it will be interesting to see how that goes. I hope that the new regulatory scheme works and is effective and that it proves to be a very useful means for small companies to raise capital.

**WT:** I think we skipped a bit quickly over the Sarbanes-Oxley period. I'm wondering if you can expand on, from your perspective and what you were doing, what the key impacts there were from, for example, the small business perspective or the international perspective. I know it's in the aftermath of Sarbanes-Oxley that people start to worry perhaps more deeply than they had been in the earlier period about reconciling, for example, accounting standards.

**MO:** Yes. I was not involved with the accounting standards, per se. I was involved with some of the rules involving certifications under Sarbanes-Oxley, and the first small business advisory committee I mentioned was very largely devoted to Sarbanes-Oxley issues. The

rulemaking itself, or, as I said, a lot of it was accounting, and that was something that was, I would say, very significant overall, but I wouldn't say that my own particular highlights in terms of the big rulemaking projects involved those.

**WT:** It wasn't really within your sphere so much?

**MO:** Right.

**WT:** I see. Another thing that I wanted to ask about the international area is to what degree agreements hammered out, say through IOSCO, or something like that, how much did that set what exactly the tasks were within the SEC?

**MO:** I'm glad you asked that, because the issue of international regulators and their role is quite significant. One of the jobs of the Office of International Corporate Finance, which reported to me, is to be the Corp Fin liaison with IOSCO. There were also IOSCO liaisons in the Commission chief accountant's office, and the Commission has a separate Office of International Affairs, but Corp Fin was the primary interface with IOSCO for disclosure-related issues. There is also another international organization called OECD that deals with corporate governance matters, so both of those organizations have played significant roles, but especially IOSCO, because at one point there was an agreement hammered out for disclosure.

In general, there's a certain tension because the SEC is very proud of our disclosure scheme. We want to be a model for others to follow. We're not necessarily signing on to harmonize our regulation with those of other countries. However, we do realize that there is a time where there are certain kinds of filings, perhaps, where it makes sense to allow other countries' regulation to control. There is actually a multijurisdictional disclosure system, called the MJDS, with Canada, where the U.S. and Canada worked out schemes so that each country can make filings in the other country by complying with its own home country regulation. Now, the U.S. and Canada are very close in regulation, so that makes more sense. With many countries, it wouldn't make much sense or it would be very difficult to get that kind of result.

Even many countries that have very highly developed securities regulations have important differences from the U.S., so it would be much harder to harmonize. So there's been this ongoing thread of how much do we harmonize our regulation with theirs, how much can they harmonize with us, and at one point, some disclosure standards were worked out with IOSCO, which the SEC then implemented into its rule for foreign private issuers. But most of the time, it's not as direct as that. Most of the time, it's more on the level of task forces and best practices.

**WT:** You mentioned one of the themes that we wanted to return to is technology. Did you remain involved with EDGAR through its evolution? I think we left it in the early '90s with the requirements.

**MO:** Yes, I'd like to talk about that. EDGAR had been a theme in my career, not only during the initial rulemaking for phasing in companies—domestic companies first and foreign companies later—but whenever technological developments came along or when the system was modernized, there were likely to be rule changes. I was actually on the group that helped evaluate requests for proposals at one point when EDGAR was modernized. That was kind of a fascinating experience, me with a bunch of techies. I don't know if I'd want to do it again, but it was quite interesting.

There were a number of issues that had to be dealt with. For example, once the system could accept HTML, we had to change our rules and we had to provide for pictures and graphs being permitted. There were a lot of policy issues that came up with EDGAR. I wanted to talk about, actually, the Internet and dissemination, and then XBRL, because those are all aspects of the technology aspect of my career. As I mentioned, when EDGAR started it was before the Internet, and people or entities could subscribe to the dissemination stream and they could get the filing that way, so people had to pay for them.

At a certain point, the Internet came into being and New York University purchased a subscription to the dissemination stream, which they then made available to the public so everybody could see it. They did this, I think for a year, as an experiment, and disclosure is what the SEC is all about. From our point of view, the more people who see things the better, so this certainly appeared to be a very favorable development from the point of view of the investors and the analysts. However, at the end of the year or so, NYU said,

“Well, we’re not going to fund it anymore. It’s not our job to do it indefinitely. This was a trial.” So then the SEC had to figure out, okay, well, what do we do?

Now this is amusing. This was 1995, and the SEC did not have a website. But this is just when websites were getting started, really, and my own knowledge of the Internet actually really dates from 1995 for this reason. We got together a task force. I was the Corp Fin representative of the task force, but there were people all over the Commission to decide whether the SEC should have a website (which is very funny now), and also whether we should put the EDGAR filings on it. Both of these seem like absolute no-brainers, but at the time there were many complications. One of the complications was that we had a contract with a company to do the dissemination. There was money changing hands. We couldn’t just say, “Oh, by the way, you’re paying us for the privilege of disseminating these filings and then reselling them, but we’re also going to give them away free.” So that had to be worked out as a contractual matter.

What we came up with is, yes, we would have a website, and yes, we would put the EDGAR filings on it, but there would be a twenty-four-hour delay, so people who wanted to look at filings for free could find them on our website with a twenty-four-hour delay, but people for whom it was important to get them in real time would still be paying for dissemination. I guess that was worked out. I was not involved with the actual negotiations with the dissemination company, but presumably that was worked out as a contractual matter. However, I don’t know how long it took, maybe a couple years, maybe longer.

At a certain point, it began to look really bad that we had a twenty-four hour delay, even if there were good legal reasons for it, and at a certain point the contractual matters were resolved and the twenty-four-hour delay was eliminated. And so EDGAR filings are available on our website, and of course the website is extremely useful in many other ways. It has information about all the SEC divisions, there's information about all the rulemaking projects, including public comments, that are much easier to find. People don't have to go to the public reference room and dig them up. So, it's kind of hard to even imagine EDGAR without the Internet. It just looks like they were made for each other, but that wasn't true.

EDGAR, I should tell you, stands for Electronic Data Gathering Analysis and Retrieval. One of my former coworkers, Herbert Scholl, won a prize, I think it was a \$100 savings bond, for suggesting the name, and the data gathering and the retrieval are there. How about the analysis? That was always a little bit of a weak point. Back at one point, after we phased in companies to EDGAR, we engaged in some rulemaking, which I was involved in, on what we would call financial data schedules. The idea was that every company making a filing containing financial statements would submit a separate form in a structured, tagged format that would give some key data elements, and that would be useful for investors, analysts, et cetera, to use in computing ratios, because the data would be tagged instead of something that you would have to actually go inside a filing to find.

Well, that was not a success. I think we may have had too few data elements, maybe not the right ones, and companies didn't really respect the rules. I don't think they really took great care to do it properly, so that ended up being very little used by investors. But years later, the idea of a more robust system for tagging data that could be used for analysis came back in the form of XBRL.

**WT:** This is eXtensible Business Reporting Language?

**MO:** Oh, very good. I was just thinking maybe we should tell people what it is. That was actually in a way probably my most annoying rulemaking project ever. Chairman Cox was very big on technology—and here's an example of a Republican who was not completely deregulatory, as I was saying earlier—because he believed very strongly in technology and he wanted to improve technology, and so he was the one who really made the push for having an XBRL system and having it be mandatory.

We did have a pilot system at first, but ultimately rules were proposed and adopted requiring companies to submit in electronic format, in addition to their basic filings, a 10-K or whatever, also an electronic document, if that's a word, that would tag all of the data in that document, including the financial statement footnotes. It applied just to financial statements and the footnotes, not to other areas, which, however, have been thought about from time to time. People have suggested that maybe it should be expanded to management discussion and analysis, or to executive compensation information or other

information in the proxy statement, and those have not yet been done, although it's possible that one day they would be.

First there was a phase-in period for XBRL, and it still does not apply to foreign private issuers because a different system is needed for them because their financial statements are filed not according to GAAP but according to IFRS, so you need a different system, and that has been discussed and worked on but hasn't yet been implemented. So you could say that XBRL, it's right now a somewhat controversial area because some people say it's expensive for companies to put together, and are investors really using it, and some people are saying, yeah, the more you have it and the more it's spread to all companies, the more it will be used as a useful analytical tool.

This gets into a policy area, you could say, involving the government versus the role of the private sector, because you could have said, "Look, why do we need this kind of analysis mandated by the government to have companies do? Why not let the private sector do it, because there are, in fact, many companies that will extract data from filings and they have their own systems for doing that, and why not just let them do it? One answer may be they don't necessarily do it to all companies; they do it for the ones where they can make money, the larger ones, and maybe smaller companies would benefit, the trading markets would benefit if the database were pretty much universal in terms of public companies. Certainly, the decision the Commission made was to not rely on the private sector for that, but to, as I put it, put the "analysis" in EDGAR and make companies do it.

It was interesting to me because first I worked on financial data schedules, then I worked on getting that requirement rescinded, and already you begin to feel like you've been hanging around too long when you work on a rule and then you work on getting the rule rescinded. Then I worked on the next step, which is financial data schedule, which is a more sophisticated and complex version of that rule, but one that has aspects that should make it more successful. So, I will be very interested in following how that continues to work.

**WT:** Are there any detail-oriented matters that we want to go into, because I thought we might start to kind of pull back and look at some of the broad picture from your time there. But if you want to address anything else, this would be a good point.

**MO:** I think probably it's time for the big picture.

**WT:** Okay. First, I think you mentioned earlier that we might look at just the general changes in the process of rulemaking. So, since we've been talking about the individual rules, let's start with that. What have been the big shifts?

**MO:** One of the big shifts has been that there is much more emphasis on economics. Although we always, since I was involved with rulemaking, had a division or an office, they've been through various names—not in Corp Fin, but the Commission had always had an office devoted to economics that had gotten larger and more important, and the amount of

economic analysis in every rulemaking project had become more important, partly because of litigation, which the SEC had tended to lose in many cases.

**WT:** These are the cost-benefit analysis challenges?

**MO:** Right, exactly, and so that is a big difference. Another big difference, I see rulemaking as being more political. Now, I'm not a hundred percent sure that's right, because I think even at the beginning of my rulemaking career, when I was maybe less attuned to things or less likely to be involved, there were probably political aspects that I was less aware of, but I feel like Congress really gets into the act. And there is between the Commissioners—what I said earlier about how you can't just say it's a Democratic-Republican thing is true, but having said that, it is partly a Democratic-Republican thing and partly... it's most likely, when a vote on a rule is not unanimous, it is very likely that the Democrats and the Republicans will be lined up differently. There are certainly many more dissents or Commissioner statements on various rules.

Back when I first got involved with rulemaking, the Commission was a little bit less involved in the projects. I don't even know how far in advance they knew about the projects. There was an open Commission meeting about every couple of weeks, so about ten days before a meeting, we would calendar a release and send it up to the Commission. It seems unbelievable that the Commission might not have known that was coming, but that, in fact, may be the case. Now they know about it. Certainly, the Chairman had to

sign on, but other Commissioners as well know about projects far in advance, and they demand to see drafts far in advance.

Many years ago, Commissioner Fleischman demanded to see a draft before the calendar draft, and we were all aghast, we thought it was so nervy. That seems pretty funny now, because the Commissioners like to see drafts at early stages. They have their own counsel or legal assistants that spend time looking at it. The legal assistants give comments to the staff. The staff have to decide how to handle the comments, which the staff may or may not agree are well taken, and sometimes, we're perfectly willing to implement one Commissioner's comments but then another Commissioner won't like that. So that has gotten much more difficult.

**WT:** Could you just say a few words about that, and of course when something passes the Commission, it's by a vote which would be 5-0, 3-2, but before that, to what extent is there an expectation that you're going to be developing rules around consensus versus rules that can win a vote?

**MO:** Well, people always want a consensus; it's very nice to get 5-0. I was really astonished and pleased that the adopted release for Regulation A+ was 5-0, again, because I had not been involved in the adopting phase of that project, so I can imagine it took some doing and some negotiation and some getting to. But there are times when something has to be done, either because of mandated rulemaking or just because it's viewed as very significant. You don't want to be paralyzed by saying, "Okay, if we can't get

Commissioner X to sign on we won't do anything in this area," so I think that's primarily a Chairman's call as to whether to go ahead or not.

I have to say I have a long-term perspective on this. I saw recently an article that was criticizing Mary Jo White as Chairman for not getting consensus enough of the time, and saying the Commission is too fragmented. I personally think she's done a marvelous job on getting consensus on at least some things like Regulation A+, but it's not like there was a golden age where there was always consensus.

I certainly remember some Commission meetings, back much earlier in the lawmaking phase of my career, that were acrimonious, where they actually displayed a lot of acrimony toward the staff, and that's much less likely to happen now. Now, I think the Commissioners are very nice and very appreciative to the staff, of their hard work, even if they end up saying they have to vote against something. But I can think of some times where there was some unpleasantness directed at the staff, and I can think of a couple of cases where things were actually changed at the meeting.

I can think of one project that we brought up to a public meeting, and one of the Commissioners didn't like it and it was shot down in flames in public. That would not happen now. I can think of another project where two alternatives were proposed. The staff selected an alternative that was more regulatory. One of the Commissioners preferred an alternative that was more deregulatory, and at the open meeting he convinced the others, or at least a majority of the others, to vote his way. So at the

meeting the staff was directed to go back and take that release and rewrite it, to adopt the more deregulatory alternative.

So, I don't think that would be likely to happen in public now. Things are too scripted. There are less likely to be questions asked at public meetings by Commissioners. It's more likely that the Commissioners will each make their own statements, because they will have resolved questions in advance. Or at a public meeting, a Commissioner may say to the director of Corp Fin, "And we discussed this with you. Can you tell the others how you answered this?" So it's a little bit more scripted in that sense.

Commission meetings used to be very nerve wracking, because you never knew which question would be asked. It's still is a little nerve-wracking, because you never know how things will go, and if you've worked for months on a project, it's very nice to know that it's going to be voted on, but you don't quite know. So, I won't say that the staff isn't nervous, but I think there are less likely to be unknown outcomes. If, in fact, there were going to be a question as to whether something was passed at all, I think they would not hold the open meeting. I think it's very unlikely they would have a meeting and then the project would be voted down.

**WT:** There are some people that have said that the Commission has become a bit more political, or at least philosophically strident in terms of regulatory versus deregulatory views. Is that something that's come and gone in waves, or is that more of a linear change, or do you even agree that that's been the case?

**MO:** Yeah, I see it as a linear change. I don't know if I'm right, because maybe the more recent period assumes greater importance in one's memories, and it may be that I also know more of the politics that's going on than I did at an earlier point in my career, but I think that may be right.

**WT:** We started out talking about how you were one of just a few women in your division, and we haven't returned to that subject since then. Of course, there's been great change in that time. I'm wondering if you can discuss your perception of some of those changes. Did it start more at the higher up levels? There were always, from the 1970s, one woman Commissioner, and then of course Mary Schapiro became the first non-acting Chairwoman. But then there were also division directors. Or did it start more at the staff level?

**MO:** Well, it's both. At the staff level, there always seemed to be, since I was on the staff in 1974, at least some women in higher places. We had Ernestine Zipoy, and I can't remember, but she might have been a branch chief when I came but then quickly became an assistant director, and ultimately an associate director. And although an accountant, she was one of the smartest lawyers around. She was, in fact, one of the smartest people I ever met. We also had Mickey Beach, Mickey a nickname for Mary, Beach, who when I came may have been the head of the rulemaking office but then was promoted to being associate director. And Ruth Appleton was the chief of the Office of Tender Offers.

With Mickey, I remember the first time I interacted with her. In the branch, I was in operations, but I was working on a special rulemaking project and we had a meeting in her office, so she was an associate director. As we're talking about Form 10-K disclosure, which is what the rulemaking project was about, her phone rang and it was one of her kids, who was in grade school. I hear her saying, "What? What? Oh, that's terrible. Well, try to calm down. Don't cry. Oh, he's at the bottom of his cage? Well, why don't you go see so-and-so next door." So she was being a working mother there. It turned out, she hung up, she explained one of the guinea pigs was evidently sick and subsequently died. But then the conversation veered off a little bit because several people in the room were parents and had kids with guinea pigs, and there was a conversation about the colors of guinea pigs and so forth before it returned to business.

At first I was a little put off, like, gee, should we be discussing this? I was young and I didn't have kids, which I still don't, but I do understand. I look back on it and I say, well, this was kind of neat. She was a good example of someone who was very highly respected, and she may have been the highest level woman in Corp Fin at the time and had recently been promoted, but at the same time she had her children, who she gave very high priority to when she would answer a phone call.

So, as time went on, there were more and more women. There were more women attorneys before there were women accountants. I think I may have mentioned that there was one woman accountant in Corp Fin at a certain point, not counting Ernestine, who was in a higher-level position and no longer working just as an accountant. At one time

in the rulemaking office, there were three married women, all of whom became pregnant at the same time, one of whom was the office chief, and I was the associate director over that office, so I thought it was very funny. There were some people who were quite annoyed, and of course it's a challenge for a supervisor to deal with when you have three out on maternity leave at once.

But, as I pointed out, there wasn't anything I could do about it, and I guess that was really attributed to the fact that we had these very great and very professional women. In fact, at one point in the chain of command, we had not only the women in the office, the chief of the office was a woman, then there was me, then there was Elisse Walter, who was the deputy director, then there was Linda Quinn, who was a director. So it was quite an evolution.

I think one of the things that I am proudest of in my career is that I helped make it easier for women in the division to work part time. This is someone whose name I don't want to give because of her privacy, but one of the people in my chain of command who was on maternity leave came to my office to tell me she was resigning, and the reason she was resigning is that she thought that she needed to work part time, and she knew that there was an absolute policy in Corp Fin of not allowing people to work part time. I knew that was true, because actually, in the chief counsel's office there was an attorney I knew who was a very good attorney, who at one point wanted to work part time after she adopted her second child, and she was told she could not do it. They found her another job in the

Division of Investment Management, which is interesting. Investment Management would allow women to work part time and Corp Fin wouldn't.

**WT:** Yeah, it's interesting that there wasn't an overarching policy for the Commission as a whole.

**MO:** Right, right. It was division by division, and it was really what the division director wanted. So when this woman came to tell me she was resigning, I said, "Well, do you have another job?" She said no. She said, "I realize part-time work would be hard to get, but I feel like I have to do this." I said, "Well, don't resign yet. Maybe they can find you a job in another division. Do you want me to explore that?" She said, "Oh, yes, I'd really like that." I'm so happy I did not accept her resignation, because I feel like I worked behind the scenes. I let higher-level people know that she was going to resign and she was very valuable, and it was an office where we didn't necessarily get an abundance of applicants, and it would be really nice if she could stay. And somehow they worked it out.

Initially, they said it was going to be a pilot project for Corp Fin to see if part-time work could work out, and it was going to be a six-month pilot. But she stayed, and of course then it became division policy, not the pilot. And this particular attorney, who eventually returned to full-time work, had a great career at the Commission. So, I feel very good about that. I'm sure the policy would have been changed sooner or later anyway, because now, you would not be able to have a situation where it was division by division— this

division director is okay with it and this division director isn't. But I was glad that it was changed when it was.

**WT:** Did the increasing equality of women within the Commission map onto an increase in diversity, or did one lag the other, in your observation?

**MO:** Well, that is certainly another way in which the Commission has changed. I would say women came before other kinds of diversity, in terms of you could look around the division and there would be a lot of women, but they would be mostly white people. So people of color came later to the process, and still, I think maybe in the securities industry as a whole or maybe just at the Commission, I don't think you would feel that there has been no change. But now you look around, unlike my first SEC Speaks, but you would look around either at SEC Speaks or at some staff meeting or gathering, you would see Asian-Americans, you would see African-Americans, you would see people from different countries, and people whose native languages were different languages.

I went to a meeting with the Small Business Office one time. Actually, it was a lunch with my office, and I said, "Gee, you should be the international office," because everybody in that office either was bilingual or were raising bilingual children. I remember there were people from different countries married to each other who were raising children using English and German or English and Spanish, or whatever the language was. It was fun. It was very different. I think that the Commission as a whole has tried to take steps to increase diversity, not just in terms of race, national origin, or

color, but also different outlooks on life, different disciplines. It's a very different place, and the change is certainly for the better.

**WT:** We've had the opportunity to talk with a lot of the division directors of Corporation Finance, but of course, sadly, Linda Quinn died some years ago. I'm wondering if you can talk a little bit about her in particular.

**MO:** She was a very extremely bright person. She was not that easy to get along with. I felt like on the one hand, she promoted me, and I owe the fact that I'm an associate director to her. I think I owed it to Elisse because Elisse may have been the one who encouraged her to pick me, but nevertheless, she did pick me and she had that much confidence in me. I think I told you that she wanted an outsider for the job, but then when she picked me, she said, "I know I said I wanted an outsider, but I really wanted you, and I have confidence in you," so that was very nice. We did not always get along.

**WT:** Elisse said that she liked to really get involved in the process of rulemaking and that sort of thing.

**MO:** She had very brilliant ideas, and she got very involved. She was very imaginative. I was trying to think of who were the most brilliant people I ever worked with; she would be one of them. There were, I guess I would say, Ernestine Zipoy, whom I've also mentioned. Elisse Walter, Alan Beller, and Meredith Cross are names that spring to mind.

I remember once working with Linda on a rulemaking project that I was in charge of, and she was giving me comments on the release. Once she saw it in writing, she had a vision for how it would work differently. I mean, she was not dissatisfied with the release. She was complimentary, but nevertheless, she wanted it changed to reflect a lot of different ideas. I went into the office the next day to work on them and it took me nine hours, and I always tried to remember that later when I was supervising people who were implementing things themselves, and I would wonder why did it take you so long? Because even though it was not a question of saying the release had to be rewritten from scratch, there were so many ideas that had to be implemented in a consistent way throughout the release that it took a long time, but the release was undoubtedly better for it. So it was a challenging but very interesting experience.

**WT:** That brings us up to just the Commission in general. You spent an extraordinary forty years there, so there are few people who can give us that broad of a perspective on how it's changed just in general in that time period. One of the questions that we're always interested in is the resources that are available and the ability of the staff to cope with the tremendous amount of work that's put on them, and so that's one issue that I'd like you to address, but I'd also like you to address anything you wish.

**MO:** Well, in terms of how it has changed, we mentioned the role of women, we mentioned diversity, and we mentioned technology, which actually feeds into the resources issue, but I'd like to expand on that. Although there are better resources to help us do our

jobs—I still say “us,” you notice, even though I’ve been retired for more than a year—there are computerized resources, there are databases, there’s computerized legal research, the attorneys have computers. We generally do the typing ourselves because it’s easier.

The first rulemaking project I worked on where that happened was back in the early ‘90s, I think. We called it the gang of eight because there were eight projects we were doing at once, although they were not all major projects. There were not enough secretaries to go around, and I saw Elisse was actually typing. I was kind of afraid. I was afraid the disk would explode or something. We had disks in those days, which were always getting corrupted. But I thought, well, if Elisse can type I can too, and I did that. Before computers, we had Lexitrons, and that was challenging to deal with those. We let the secretaries deal with those, at least I did.

**WT:** Are those word processors?

**MO:** Yeah, they were word processors, and they were not easy because you had to go page by page. You had to put in footnote numbers manually, do an underline then a slash and backspace, and put in the number. And so we would do releases, which had a lot of footnotes, and not fill in the footnote numbers until the end, until we were ready to send it to the Commission. One time I sent an action memo to the Commission without footnote numbers, and I was very upset. I was afraid somebody would know, but it was an accident. But if, in fact, once you got the footnote numbers in, you sent it to the

Commission, then, if the Commissioners wanted to change it, maybe they wanted to eliminate a footnote or to add a footnote, you'd try to combine other footnotes or remove other footnotes later so you didn't have to renumber everything. So the technology has certainly changed and improved.

Unfortunately, that may also mean our releases are longer and longer because we have not only the economic analysis but all of these other regulatorily-mandated parts, so I don't know if that's a change for the better. But I think when you were asking about resources, you may have also meant the staff. The size of the staff has certainly increased, but a lot of that increase in Corp Fin has been in operations. The division was certainly fewer than a hundred people when I arrived. The SEC was 2,000 nationwide, including all the regional offices, and now Corp Fin is at least 400 or 500 people and everything is much bigger. But I have to say, from my perspective, the part of the division that I was most familiar with, the support offices, the rulemaking and other policy things that those offices do, there has not been a great increase in size; somewhat, but not in proportion, so maybe we really are doing more with less.

**WT:** I guess it's kind of in the operations area that you have—based on other oral histories that we've done, people have often pointed to things like safe harbor rules, and just in general, modernization of the rulemaking that makes the burden on the staff somewhat less. Because you had a very cumbersome system in the 1970s originally, and as these things came in, it did become a bit easier to review disclosures.

**MO:** I don't know if the rules really make it easier to review disclosures, to tell you the truth. Again, the rulemaking process has gotten so difficult that the staff tend to try to find other ways to deal with things. We tend to try to find telephone interpretations to publish, which we called CDIs, Compliance and Disclosure Interpretations, or staff legal bulletins, or do no action or interpretive letters, including maybe global letters that will apply to all companies. So we try to find other ways to do it rather than do rulemaking, if we can legally do that. Of course, you can't really get around the rulemaking process when it is an appropriate topic for rulemaking, but we try. I don't know if that makes it any easier to review filings. I am not sure how they do it, quite frankly. Of course, with selective review, you can refine the criteria.

**WT:** Another area, one of the things that prompts the question, I gather wasn't quite what you worked on, but the move all the way from shelf disclosure all the way to the well-known seasoned issuers, has that created a lot more efficiency?

**MO:** Yes, that's made it a lot more, definitely, and I worked on certain aspects of that, although that wasn't my major impact. In that sense, the rules have helped, the changes have helped. Similarly, there were rule changes along the way that made certain kinds of filings automatic, and so the focus really is on freeing up the staff to review the filings that need to be reviewed.

**WT:** Any last comments for the record, or shall we wrap it up?

**MO:** I think we've pretty much covered it in a not too short period of time. My work has always been interesting, and I feel like anybody who works for the SEC, whether it's a long or a short time, is really privileged to have that as all or part of their careers.

**WT:** All right. Well, thank you very much. I appreciate the time that you've taken today, and I think this is a very good long-term perspective on the Commission, and I'm pleased that we have it.

**MO:** Thank you.

[End of Interview]