

**SEC Historical Society**  
**Interview with Roberta Karmel**  
**Conducted by Jack Katz, on July 8, 2005**  
**At the Brooklyn Law School in New York**

**JK:** Good morning; I think we're live now. My name is Jack Katz and I'm currently the Secretary of the SEC. And I am here to do an oral history interview with Roberta Karmel, who is a former Commissioner of the SEC and I'll let Roberta introduce herself.

**RK:** Thanks. I really appreciate your coming to New York to interview me here at Brooklyn Law School where I'm now a Professor of Law. I teach corporations, securities law and various seminars on securities regulation and international securities regulation. My entire career has been involved one way or another with securities regulation and the SEC.

I began my career when I graduated from law school in 1962, going to work as a Staff Enforcement Attorney at what was then called the New York Regional Office and now is called the Northeast Regional Office of the SEC. I stayed there as a Staff Attorney and then became a Branch Chief and then Assistant Regional Administrator. Then I went into private practice as an associate at Willkie, Farr, & Gallagher. After that I was a partner at Rogers & Wells in New York until 1977 when I became a Commissioner of the SEC. I stayed in that job until 1980 and then I went back to Rogers & Wells as a partner. In 1986 I began teaching at Brooklyn Law School as a Professor. At that point I became of counsel at Rogers & Wells.

Then, in 1987, although I kept on teaching full-time at Brooklyn Law School, I also became a part-time partner at Kelly, Drye & Warren where I remained as a partner and then of counsel for many years. In addition to that, I had the honor and pleasure of being on the Board of the New York Stock Exchange in the 1980s. I also was on the board of a public company, which had several names, but eventually became the Mallinckrodt Group.

**JK:** Very good. Commissioner, as you mentioned your entire career has in one way or another been related to securities regulation and the SEC. And since we can't possibly cover all of that in basically a single interview, you have suggested that we focus instead on a few of the really important issues that you had to consider while you were a Commissioner and particular issues that were relevant then and are again pertinent currently.

So you had suggested we start with several of those and I think we were talking about possibly beginning with the whole question of market structure and regulation of securities markets because when you were Commissioner you were responsible for implementing the '75 Amendments to the Securities Act that Congress had passed, significantly giving direction to the SEC to develop or implement or facilitate the development of a national market system. Do you want to start talking about what you had to deal with at that time?

**RK:** History has really repeated itself from the time that I was a Commissioner in the late 1970s during the last five years in a variety of different areas, one of which is market structure. When I was a Commissioner, the 1975 Act Amendments to the Securities Exchange Act of 1934 were only two years old and those Amendments had not been implemented by SEC regulations. There were a number of different important issues that the Commission had to examine and make a determination as to what kinds of rules were appropriate. All of these issues were politically charged and were going to make a big difference in terms of how the trading markets would function going forward.

After I was nominated to be a Commissioner, but before I was confirmed in the summer of 1977, the Commission held hearings on whether or not Rule 390 should be abolished. Rule 390 was a New York Stock Exchange rule, which required all trades in listed companies to be executed on the floor even if they were negotiated upstairs in the block trading rooms.

Harold Williams, who was then Chairman of the SEC, invited me to come to Washington and listen to the testimony at the hearings but I declined to do so. I said, I have been hearing about these issues ad nauseum in New York. It's hot in August in Washington and I have to move my four children and my husband from New York to Washington before school starts, and I don't think I'm going to be able to come to the hearings. I'll try and read what I can of the transcripts. And anyway I haven't been confirmed yet. But a lot of the politics that were involved at the time centered on Rule 390 and whether or

not the Commission should rescind Rule 390. There were some people at the Commission and elsewhere who thought that's what Congress ordered the Commission to do in the 1975 Act Amendments, but Harold Williams did not necessarily share that view and I did not share that view.

**JK:** Do you want to explain what the arguments were against repeal, because the arguments in favor of repeal have been pretty publicly stated over the years?

**RK:** The issue that the Commission was really grappling with was similar to some of the issues that have been debated today in connection with the trade-through rule, and that was whether the government should force all orders into a centralized pricing system of some kind. In those days this central system was often called a CLOB, a Central Limit Order Book, or to the true believers a hard CLOB, which meant there would be automatic order execution of orders in all stocks in a computerized system, eliminating the execution of orders by specialists on the floor of the New York Stock Exchange. Related to this issue was the question of whether the markets could be or might become fragmented by the execution of orders internally at the major brokerage houses which were then crossing orders in-house. Could they do this or did they have to bring those orders down to the floor and expose them to the crowd so the orders sometime could be broken up? One of the discussions between those who thought the Commission should take off Rule 390 and those who weren't so sure was whether or not the rescission of Rule 390 would lead to accelerated internalization of order flow at the major brokerage

houses and fragmentation of the market. So this was a very heated debate; it was very political; it was also very perplexing because no one could see into a crystal ball and figure out what different approaches on the part of the Commission would lead to—in other words, what the result of any Commission rule-making would actually be. Maybe you want to ask me some more questions on this topic; I don't know.

**JK:** Sure, we should talk just for a few minutes. As you mentioned earlier, the Commission within the last month adopted a final roll-call regulation, NMS or National Market System. That is the latest effort to deal with a lot of these same questions.

**RK:** The technology has changed and the markets have changed, primarily because of technology, although also because of changes in the NASDAQ market concerning order handling and changes on the floor of the New York Stock Exchange in terms of greater concentration of specialists and much greater use of automated execution than had previously been the case. There has also been a trend toward globalization of the markets and a trend toward demutualization of the markets themselves. The NASD already has de-mutualized and the Stock Exchange seems to be in the process of doing that. The regulatory questions are the same, but these technological and structural changes really made all of the compromises and resolutions that were struck in the late 1970s outdated. Yet, when the Commission had to reexamine all of these issues, it unleashed all the same legal and political questions that had to be discussed and resolved in the 1970s.

**JK:** In the '70s, when you were dealing with the issue, both the OTC market and the Exchange market were primarily still human markets. There were people either talking on the phone or people standing on the floor of the Exchange. Of course today it's largely an automated market.

**RK:** Yes, that's true.

**JK:** How much do you think the technology has affected the dynamics of the discussion?

**RK:** I think the technology has affected the dynamics of the discussion to a great extent, but I think the basic issues still remain, that is whether the market will be an order driven market, a dealer negotiated market, an automated market, an international or global market, a market that is internalized at the major players or is exposed to the public on exchanges.

**JK:** It's interesting because the issues are so similar. In the context of when you were holding these hearings and the focus was of course on price protection, was there any discussion at that time of what's now referred to as price and time protection?

**RK:** Yes; there was. There definitely were discussions like that. I can remember talking to Andy Klein who was then the Director of the Division of Market Regulation about some of these issues. He was a hard CLOB(ber). He believed in the black box.

Andy also was a very good and conscientious Division Director and ultimately when the Commission came out with ideas that were a little different from those Market Regulation originally formulated, he did a very good job, and a very competent job technically, drafting rules which would implement the decisions that the Commission made.

**JK:** The question people on the outside have about a major rule like this is what is the relationship between the views of the staff and the views of each individual Commissioner and of the Commissioners as a collective body. In this case, I assume there was a fair amount of disagreement as to the appropriate approach. What were the dynamics?

**RK:** Yes, there was; there was disagreement on the staff. There was disagreement between the staff and the Commission and there was disagreement among the Commissioners.

**JK:** What were the different positions? I assume the staff, as you said, were pretty strongly in favor of the hard CLOB. You had your doubts about it.

**RK:** Well some of these issues can be expressed in so many different ways that it's a little hard for me after all these years to categorize what the different positions were. But some of these positions had been formulated at the staff level and to some extent at the

level of some of the Commissioners in political disagreements that had broken out when the Securities Act Amendments of 1975 were being considered in Congress. And I think some of the positions at that time became hardened. Yet, the '75 Act Amendments, like much controversial legislation, were so ambiguous as to the really critical issues that different players in the political arena all thought they had won.

So a lot of the issues that were not resolved by Congress in the 1975 Act Amendments had to be resolved by the Commission and the Commission was not of one mind as to how to resolve those issues. Also, the '75 Act Amendments had been passed in the context of the back-office paperwork crisis and the bankruptcy of many broker/dealers during the late 1960s and early 1970s and the unfixing of Commission rates. And no one in Congress or in the business world or at the SEC really knew how the markets were going to evolve after Commission rates were unfixed.

**JK:** How does that factor into it? You're a regulator essentially trying to develop a blueprint for an entire industry going forward with all of this uncertainty. How do you approach something like that?

**RK:** I think the way Harold Williams wisely approached it at the time was to say: Congress instructed the SEC to facilitate the establishment of a national market system and I'm going to compel the industry to come up with a plan to implement these amendments. We're going to have a bottom-up rule process here that is a process that begins with the



regulated, although within a framework of legislation, rather than a top-down command and control rule-making process where the government dictates to the industry what the industry's market structure has to be. Among other things, the government can do it, but it doesn't mean that anything will happen. The government, being the SEC in this case, had no ability to build a national market system. This really had to come from the securities industry itself.

**JK:** How willing was the industry to come forward with ideas?

**RK:** Not very, because there was tremendous rivalry between the over-the-counter markets and the Exchange markets. There was tremendous rivalry between the specialists and the upstairs firms. A lot of these competitors had been unable to resolve their differences in the legislative process which led to the enactment of the Securities Act Amendments of 1975 and so they were still duking it out at the Commission when the Commission had to come up with rule-making to implement that statute.

**JK:** Yeah.

**RK:** I think you saw these same dynamics again with the trade-through rule.

**JK:** The trade-through rule, as you know, was controversial at the Commission and ultimately there was disagreement among Commissioners as to which approach to take and did you have the same problem when you were dealing with these issues?

**RK:** Yes, and I felt that since I had been selected as a Commissioner in part because the administration believed there was a need for a Commissioner from New York—there had not been a Commissioner from New York for a long time—that I had some obligation to make sure that the views of the New York markets were at least articulated in this debate. At that time of course you had the New York Stock Exchange in New York and the over-the-counter markets or the NASD headquartered in Washington and then you had a number of regional markets across the country.

The Commission, unlike Congress, does not represent geographical areas, and I once worked in an over-the-counter market maker firm in Boston and I originally came from Chicago, so I was not unsympathetic to the views of the over-the-counter and regional markets. Nevertheless, I felt that it was important to have somebody at the Commission who was going to be able to at least articulate what the New York Stock Exchange believed was appropriate.

**JK:** Were the specialists opposed to the idea of a CLOB?

**RK:** Yes.

**JK:** How come, because you know in the current debate, the specialists believe that CLOB in many respects help that?

**RK:** Times change, markets change, and there was not very much automation at the time on the floor of the Exchange and this was really one of the problems in implementing the Securities Act Amendments of 1975. Again, these amendments were passed because the securities industry had failed to deal well with the transformation of the brokerage back-office from a green eye shade, human record keeping regime to a computer regime, and to some extent the 1975 Act Amendments were a direction by Congress to the SEC to compel the securities industry to do a better job of becoming technologically competent.

**JK:** In that respect, do you think it worked? Do you think that was the impetus that moved the Exchange toward automation?

**RK:** I would say it was one of the factors. Yes; I think it was one of the factors, and I should go back to Rule 390 and say in the end there was a compromised decision on Rule 390 between those on the Commission who were not so sure that Rule 390 should be abrogated and those that felt very strongly that Rule 390 should be abrogated and what the Commission did was to abrogate the Rule as to agency orders only.

**JK:** It was almost 20 years before the rule finally went away.

**RK:** Yes, that is true, but one thing I guess I've learned in my many years working for the SEC and observing the SEC and other government financial agencies is that change has to be incremental. It's a mistake for a government regulator to simply order an industry to change. The change has to be incremental and it has to be a partnership at a certain level between a regulator and the industry it regulates or it's just not going to work.

**JK:** And in this case it's interesting because quite often people have this notion that the agency is one side of the seesaw and the industry is all saddled on the other side of the seesaw and in this case, the industry was as fragmented on both sides of all of these issues, weren't they?

**RK:** Yes, and something that I think that the public often doesn't appreciate is that when the securities industry is fragmented it sometimes, in my opinion mistakenly, comes running to Washington to try and get Washington to solve its problems.

**JK:** Well we've got several issues to talk about. Should we talk about some of the other issues and then maybe tie them all back together?

**RK:** I don't think all these issues can be tied together; they're much too complicated.

**JK:** Maybe we should talk a bit about enforcement because probably that was the area you were probably most closely associated with, both as a Commissioner and of course your experience on the staff had been primarily in the enforcement area.

**RK:** Yes, that's true.

**JK:** You became almost immediately well known for being the only Commissioner to dissent occasionally on Commission enforcement actions that had been settled where a deal had already been worked out. Do you want to talk a bit about your views on the enforcement program when you came to Washington in the context of having come out of the enforcement program many years before?

**RK:** The SEC enforcement program has always been a good program, a sound program, run by very competent prosecutors, and it's a part of the Commission that I've always respected. When I became a Commissioner I believed that program in some ways had gone off the rails and was not being sufficiently sensitive to changed politics, not only in the country generally and in Congress, but in the courts, and that there were too many cases that were being brought simply on the basis of bad facts without an adequate appreciation or analysis of exactly what laws had been broken, if any, or whether or not the staff had evidence that made for provable violations in court.

One of the questions that I often used to ask at the Commission table, I'm sure to the annoyance of the staff attorneys who wanted to run to court for an injunction, was— what's your evidence of this violation? How do you plan to prove this when you get to court? I think some of the attorneys thought this was an inappropriate question for a Commissioner to be asking, but I felt the Commission was jeopardizing its high respect in the courts and the public for being a cautious - or maybe cautious is the wrong word— careful prosecutor.

I once read that in the early days of the Commission, the Commission's General Counsel was very strict in terms of never allowing the Commission to go to court on any case that the General Counsel believed the Commission might lose. I thought this probably is one reason why the Commission developed such an outstanding reputation as a prosecutor and I had my doubts when I became a Commissioner as to whether or not this reputation was going to continue. And so because I thought that this was something I really knew about I immediately began challenging and questioning the Enforcement Division when staffers brought their cases to the table.

**JK:** Was this a question of whether the investigation was sufficiently thorough or was this a question of whether you thought the theories that they were advocating were sound and well-grounded?

**RK:** Both; what had happened as I saw it was that during the Watergate period there had been an effort on the part of the White House to fix the Vesco case and the Commission naturally took this overture badly and wanted to prove to the entire world that it was a vigorous untainted prosecutor who could sue anybody for almost anything. This psychology led to the sensitive payments cases, which really arose out of the Watergate scandals because this program started by an investigation of a company which made improper campaign contributions, and then morphed into an investigation of virtually all of corporate America concerning commercial bribery. American companies were trying to obtain business abroad, and they were making what were then customary payments to foreign government officials.

This was the beginning of the globalization of the business world better recognized today. American companies were in competition with companies from other countries that saw no problem in greasing the palms of government agents in order to get business. But the SEC felt there were a lot of problems with this way of doing business. And to make a long story short, because we have limited time, 400 companies came into the Enforcement Division and confessed to making improper payments abroad. This was a very heady environment for the Enforcement people, but actually in a lot of those cases, I think there had not been a real analysis as to whether or not any U.S. laws, and in particular the securities laws, had been violated.

In 1977, Congress passed the Foreign Corrupt Practices Act which did outlaw this behavior, but some of it at least had not really been illegal under U.S. law beforehand. That's not to say that there was no reason for the SEC to be concerned because one of the problems that came to light was that many companies were making payments off the books, or were fudging or cooking their books, in order to hide what was going on and so these accounting problems suggested that perhaps the financial statements of many public companies were not what they should be. And so the sensitive payments program led not only to the provisions of the Foreign Corrupt Practices Act that prohibited the payment of money to foreign government officials in order to get business abroad, but also to the provisions of the securities laws that required companies to have adequate internal controls.

Again, I think you see a repeat of some of the issues involved in the furor that's been going on the last few years about the implementation of the internal control provisions of Sarbanes-Oxley. The Foreign Corrupt Practices Act provisions requiring companies to have adequate internal controls marked the first time that the SEC had been given responsibility or authority over certain kinds of internal affairs at public companies. This had always been a matter of state law before; suddenly there was federal law on what kind of books and records public companies were required to keep.

**JK:** There was no type of disclosure; it was tied to internal operations?



**RK:** The Foreign Corrupt Practices Act went beyond disclosure. It regulated internal operations. It wasn't just that issuers had to have adequate disclosure and correct financial statements, but, in addition, the SEC was administering a standard of internal controls. This was one of the issues in which I did have a disagreement with some of the other Commissioners in terms of the implementation of the Foreign Corrupt Practices Act, because I thought that Commission enforcement actions should be limited to knowing violations and we had a bit of a go-around on that.

**JK:** The question of whether the violations have to have some degree of awareness.

**RK:** Yes.

**JK:** Under the Foreign Corrupt Practices Act, the Commission adopted its Section 13(b)(2) regulation which really was the internal controls rule.

**RK:** Yes.

**JK:** You dissented from the adoption of the rules.

**RK:** Just on that one issue.

**JK:** And was it just on the question of scienter?

**RK:** Yes, it was just on that one issue. I mean I think internal controls are extremely important. When I was a director of a public company, I believed that internal controls were not only important in terms of financial reporting for shareholders, but in terms of running the company. If a company doesn't have good internal controls, the management doesn't know what's going on and can't run the company properly. So I never disagreed with the rest of the Commission in terms of the need for Rule 13(b)(2). Rather, my disagreement was on what kind of state of mind needed to be required in an enforcement proceeding and I felt that something like scienter should be required for enforcement cases.

In those days we didn't have long passionate written dissents the way you've had in the last few years and my dissent in that rule-making proceeding was simply noted in a footnote that I disagreed on that sole issue, the state of mind required for a prosecution.

**JK:** This theme of requiring evidence or proof of some state of awareness wasn't just limited to Foreign Corrupt Practices; that was a theme that came up in other aspects of some of your dissents on reports from cases, too, wasn't it?

**RK:** Yes; I think that government prosecution is a very serious matter and there should be pretty good evidence of clear violations of the securities laws in order for enforcement cases to be brought.

**JK:** What about in cases where the law is pretty well established now that scienter is not required? For example, Section 5 violations or violations of false statements in required reports with a condition? Do you think that scienter or something approaching scienter should permeate any violation, any enforcement action?

**RK:** Well I think it depends on whether the enforcement action is remedial or punitive. Let's take false reporting to the Commission. If the Commission is bringing an action compelling an issuer, for example, to correct a filing, that in the Commission's view is incorrect or false, I don't think you need to have scienter; this is a purely remedial action. But in a criminal prosecution, or an injunctive action, or an action where the Commission is looking for a large fine, because to me a fine is like a criminal penalty, then it seems to me you should have some sort of a wicked state of mind. I won't use the word scienter because that is really a term of art, but there should be some proof that the defendant or respondent meant to do the wrong thing.

**JK:** There are so many permeations as you know—recklessness, gross negligence; do any of those make you comfortable?

**RK:** I think that these often are words that lawyers or judges or Commissioners use to make themselves comfortable with the result of a case or prosecution. This is an area where the facts are very important.

**JK:** Along these same lines, you know you're making your dissent on this in question—in the Foreign Corrupt Practices area. One of the hallmarks for that entire program was it was essentially self-reporting and almost it came to an amnesty program that if you adequately self-reported no sanctions were imposed. What is your view of an enforcement program that is structured along these lines—come forth you know, confess sin, and be absolved?

**RK:** I think there are a lot of things to be said in favor of that kind of a program. Unfortunately, what has happened in the last few years is that this self-policing has been turned on its head and now the government prosecutes you if you don't self-report. I have a problem with that.

**JK:** Where it's used as a basis for punitive action?

**RK:** Right, where a self-reporting program is used as a sword, rather than as a possible shield. I think the right formulation is that if you self-police and self-report, you should get some credit for that in terms of the prosecutorial discretion to go after you or impose a sanction on you. But I am uncomfortable with the idea that if you don't turn yourself into the government the government can get a bigger sanction from you. That makes me uncomfortable. I won't say that it's necessarily a problem under the Fifth Amendment privilege against self-incrimination but that's the reason why it makes me uncomfortable.

I don't think that we should be living in a society where everybody has to turn themselves into the government every time they do something wrong. It just makes me very uncomfortable. To me, that type of rule is not appropriate in a democracy, in a free society.

**JK:** Let me ask you. This notion of self-reporting and voluntary action leads into one of the other dissents that I found very interesting. That was in the Spartek case, which was a settled action against a company in which the Commission also essentially accepted a settlement from an individual where there wasn't a finding of violation per se against the individual. Rather, there was a Commission report of its investigation. Do you want to talk about this case?

**RK:** This case involved, among other things, a Section 21(a) Report and yes, I dissented on a number of Section 21(a) Report cases where the Commission resolved or terminated an enforcement investigation by accepting a factual statement from the person under investigation. It seemed to me that the publicity of this kind of a report was a sanction and I objected to that. In addition, the Spartek case and some of the other cases in which I dissented were cases where it wasn't very clear what sections of the securities laws had been violated. It seemed to me that these were cases where the Commission was going out on a limb in terms of saying that certain conduct that had not previously been categorized as a violation of any provisions of the securities law was now illegal.

And as a Commissioner I didn't think it was appropriate for the staff to simply negotiate a settlement in a case like this, bring it to the Commission and have the Commission rubber stamp it when the settlement was changing the law. And there was a lot of controversy at the Commission about my objection to these Section 21(a) settlements. It started with the Spartek case. There was a lot of pressure put on me not to dissent in that case because I was calling into question the Commission's authority to bring the case. But that's what I was intending to do and that's why I did it. I wasn't persuaded that there were violations of the law in that case or that we could bring cases based simply on bad facts where it would have been a good idea if those facts were a violation of the law.

So my objections in the Spartek case were two-fold. One, I questioned whether the facts were a violation of any part of the securities law and the Section 21(a) Report didn't spell out exactly what part of the securities laws were violated. The second is, I felt as a Commissioner that if I didn't feel the Commission could bring this case either administratively or injunctively because either we didn't have sufficient evidence or we didn't have a sufficient legal theory that we shouldn't accept a settlement.

**JK:** In this case, you really had questions as to whether the facts as stated broke the law?

**RK:** Yes.

**JK:** If you didn't have those concerns would you have been comfortable issuing a 21(a) Report?

**RK:** It's hard to go back and change the context of one's views. I don't know. I have long felt that adverse government publicity about something that is articulated in a formal way is a sanction.

**JK:** In that case it was highly unusual for a Commissioner to dissent on a case and at the time on the Commission with you was—Irv Pollock was the first Director of Enforcement and before that the Director of Trading Markets, and Phil Loomis was the past General Counsel of the Commission and I assume both of them must have had fairly strong views on the issue of whether a dissent was appropriate in the context of this settlement. Was this a controversial issue for them and for you?

**RK:** Yes.

**JK:** Was there a lot of pressure applied to you?

**RK:** Yes, but not directly by the other Commissioners. Even though there were many disagreements at the Commission level when I was a Commissioner, I think we were always very collegial and respectful of one another. The pressure on me came much more from the staff.

**JK:** Who? And what were the arguments they were making on why you shouldn't do it?

**RK:** I can't really remember the arguments so much as the enormous amount of pressure that I felt not to do this. I was made to feel that I was a traitor to the cause. Maybe that's an exaggeration, but that's how I was made to feel. I mean nobody ever used those words, but I was made to feel that issuing a dissent was not an appropriate way for a Commissioner to behave.

**JK:** That case was brought into what was then Provision 15(c)(4), which essentially no longer exists. It was superseded...

**RK:** Yes.

**JK:** ... when the Commission received cease and desist authority.

**RK:** Yes; when the Commission obtained cease and desist authority, it stopped issuing 21(a) Reports and I always felt there was a causal connection there.

**JK:** Well we've done a couple, but just a few; we have completely eliminated 15(c)(4). But for example, almost immediately after we got cease and desist authority, I think before



we actually used it of course, it was one of the really significant 21(a) Reports against Donald Feuerstein.

**RK:** Yes, I was not at the Commission then.

**JK:** Yes, but I don't know if you thought about that at all because you—by then you were teaching and it was quite a controversial report. Feuerstein was a General Counsel at Salomon who had learned of the attempt to rig the Treasury market by subordinates at Salomon—became aware that no corrective action was being taken...

**RK:** Do you have a question there?

**JK:** Oh yes, I'm sorry; I thought you were about to say something and I guess my question was in that case the Commission issued a 21(a) Report because it felt that the law was not crystal clear on what a General Counsel's responsibilities were at that time to affirmatively take corrective action when he knew of a violation and knew that no corrective action was being taken. And so they negotiated a 21(a) Report. And I was just curious if you had thought about that in the context of the 21(a) Reports that you had problems with.

**RK:** I don't know that I have any comment on that. I mean it was a unique fact pattern. Feuerstein not only was the General Counsel, but he was a partner of the firm. I don't

think it would be appropriate for me to comment on it really. I know I have opinions on almost everything, but...

**JK:** I found one that you don't.

**RK:** You found one on which I at least prefer not to articulate.

**JK:** That's right. The other area in Enforcement that I think you had really strong feelings of course was the whole issue of what was then 2(e) proceedings is now 102(e) proceedings against lawyers and accountants, and I think you were comfortable with the notion of proceedings against accountants under the right circumstances and strongly questioned the appropriateness of such proceedings against attorneys.

**RK:** That's correct.

**JK:** Do you want to talk a bit about sort of how you got to that point?

**RK:** I felt then and I still feel that it is inappropriate public policy for a prosecutor to compel attorneys for entities or persons that are under investigation to give evidence against their clients. I think that if Assistant US Attorneys did this everybody would understand the problem. The SEC, it is true, is a more complicated kind of government agency than a US Attorney's Office because the SEC in addition to prosecuting people for violations of

the securities laws engages in rulemaking and also processes disclosure documents from regulated entities.

This is where some of the problems really come in. Should the SEC have the power or authority or is it a good policy to compel counsel for entities that are involved in drafting disclosure documents to give evidence against their clients when there is some kind of a problem with those disclosure documents? If the SEC did not have the power to prosecute entities for violations of the securities laws, I think my policy objections to compelling counsel to give evidence against their clients would not be as strong as it is.

**JK:** How would you feel about actions against attorneys as aiders and abettors or causes of a violation as opposed to a proceeding that's premised on the professional status?

**RK:** Well it depends if the attorney is aiding or abetting or causing a client's violation as a business man or woman or is doing that in the attorney's functions as a lawyer. Just as the SEC has different roles, one of the problems in this area is that many lawyers go beyond the traditional work of a lawyer in counseling clients or representing clients who are under government investigations and start giving clients business direction. Well, when the lawyer becomes a business principal, then that lawyer should not have some kind of immunity from being held responsible either as a principal or as an aider or abettor or a cause of a regulated entity's violation of the law.

Over time, lawyers have become less professional, in the sense of being learned professionals, and acted more as business principals. And so this entire area has become a very difficult one to analyze and there frequently is there more heat than light thrown on the subject.

**JK:** You distinguish between attorneys and accountants. How would you describe why you have a higher degree of comfort in circumstances where the professional is an accountant as opposed to an attorney?

**RK:** Because an accountant has no privilege and an accountant does not have the job of zealously representing a client and acting as agent for the client. An accountant who acts as an auditor is supposed to act as an independent professional for the benefit of shareholders and certifies the financial statements of an issuer to the SEC. One of the problems I had as a Commissioner in the Rule 2(e) area was the Commission's authority. I felt that the Commission had more statutory authority with respect to the regulation of the accounting profession than we had with respect to regulation of the legal profession. This authority issue is a little changed because of the Sarbanes-Oxley Act of 2002, so some of my dissents have been made obsolete and have been superseded by changes in the law. But I think my policy objections are still the same.

**JK:** One of the issues that came up about 10 years ago in the area of 102(e) was the question you just alluded to a little while ago about the Chekovsky decision where the question

came up—could we bring a 102(e) proceeding based upon negligence or did it have to be some higher standard.

**RK:** I think negligence is too low a standard. Gross negligence or recklessness may be a sufficient standard. Admittedly, some of these distinctions come down to semantics.

**JK:** Given that you came out of the enforcement program and then your Regional Office, and that when you came to the Commission, a great deal of your time on a weekly basis was the enforcement calendar. Do you want to talk a bit about sort of what the role of a Commissioner was at that time in terms of influence or shaping the enforcement program and how much of it was just essentially a quasi-judicial reactive role?

**RK:** The way matters turned out my role ended up being more reactive than proactive if what you're referring to is giving direction to prosecute particular kinds of cases. Yet I did have views on that subject. I felt that the SEC should spend more of its resources holding the securities industry to the law than trying to expand its jurisdiction over public companies.

**JK:** When you came in as a Commissioner what were your expectations in terms of what you thought you would be doing versus what you actually did?

**RK:** Probably my expectations were not so different than what turned out to be the reality except that I thought it would be much easier than it turned out to be to affect Commission policy. I thought I would be trying to change the Commission's priorities in the enforcement area. I thought I would be dealing with market structure issues and - something we haven't yet talked about - I thought I would be having some impact on or giving input to the Division of Corporation Finance on disclosure matters.

The job did turn out to be much more complicated than I anticipated. I was very young—only 40 years old when I took this job - a little naïve and not too well versed in the ways of Washington. I did not understand a lot of the politics of the agency, and in particular the relationship between the SEC and Congress, and between SEC staffers and Congressional staffers. I thought the agency was not only independent of the Executive Branch but independent of Congress, too. I found out that in many ways the SEC is simply an instrument of Congress.

**JK:** What do you mean? What happened?

**RK:** What do you mean—what happened? I became more knowledgeable.

**JK:** Were there specific episodes or incidents that you can recall?

**RK:** There was a particular case and somehow the name of it escapes me at the moment and it involved a steel company.

**JK:** Was this Wheeling Pittsburgh?

**RK:** Yes, Wheeling Pittsburgh where the SEC staff was egged on by some people in Congress to investigate and prosecute a particular company due to some issues in that Congressman's district. This turned out very badly for everyone because the Commission lost one of its few cases on the issue of when an SEC investigation was appropriate. So I think this is the most visible example that's a matter of public record.

**JK:** How about in the vis-à-vis you had mentioned that how the agency had sort of been damaged by Watergate—in certain periods from pressure from the White House? I assume by that time this was not an issue.

**RK:** No, and as a matter of fact, the Commission and the Comptroller of the Currency jointly brought an injunctive action against Bert Lance, who was in the Executive Branch. I'm trying to remember exactly what his job was.

**JK:** He was head of OMB.

**RK:** Yes, head of OMB—and we were all kind of nervous about this case, but to my knowledge there was absolutely no effort by the Carter Administration to pressure us with regard to that matter.

**JK:** So to the extent that their agency still maintained most of its independence...?

**RK:** Yes, I think it's lost some of its independence since then in terms of its rule-making functions. My understanding is rules now have to pass through OMB, which was not the case when I was a Commissioner.

**JK:** It's a process thing?

**RK:** Well I'm not at the Commission, so I don't know how much input OMB has into these rules, but process and substance cannot always be neatly separated.

**JK:** In the area of enforcement, just to wrap it up—we were talking about this earlier, a lot has changed in the enforcement program since you were a Commissioner.

**RK:** Yes.

**JK:** The passage of Insider Trader Sanctions Act was the first statute that gave the Commission to seek money penalties and the Remedies Act of 1990 gave the



Commission the power for penalties across the board in injunctive proceedings and in certain types of administrative proceedings as well, and also created cease and desist authority and explicit Director Bar authority which has since been expanded in Sarbanes-Oxley. Looking at all of this in the context of your background in enforcement, how do you feel about this?

**RK:** Well I think it has made the SEC a more aggressive prosecutor and has brought the SEC closer to the status of being a criminal prosecutor. There have been many court cases over the years where the SEC has been able to persuade a court, in an area where the Commission was trying to push the envelope in terms of an interpretation of the law, that it was entitled to do so because it was a remedial agency. It seems to me that once the Commission is perceived as not very different from a criminal prosecutor, working hand in glove with the Department of Justice that the courts are going to give the SEC a lot less leeway in terms of expansive interpretations of the securities laws. In fact, some of the cases that the Commission has lost over the years are cases where a criminal prosecution was involved, rather than a civil prosecution. I'm thinking of a case like the Chiarella case.

**JK:** There was Scrushy.

**RK:** Yes, Scrushy also; I'm not so sure in Chiarella the result would have been the same if this had been prosecuted civilly as an injunctive action instead of criminally.

**JK:** Because of the difference in standard of proof or because of the difference in result—in sanction?

**RK:** All of these factors - standard of proof, sanction, state of mind. A principle nobody pays a whole lot of attention to is lenity. A prosecutor is not supposed to expand the law in criminal prosecutions. Criminal prosecutions are supposed to be for clear violations of the law. This principle seems to be much honored in the breach in recent years.

**JK:** Is that what the principal of lenity is? I wasn't even familiar with it.

**RK:** Yes. In the O'Hagan case Justice Scalia dissented on this ground. In other cases, I believe the judges were influenced in their decisions by this concept.

**JK:** On this subject, after you left the Commission, you wrote a book called *Regulation by Enforcement*.

**RK:** *Regulation by Prosecution – The Securities and Exchange Commission versus Corporate America*.

**JK:** *Prosecution*, yes, and part of the theme there was, I guess your belief that the Commission relied too heavily on enforcement actions to establish policy?

**RK:** Yes, to summarize it very succinctly. I think that this is something that some people are saying is happening again today. The government, and this is not just the SEC, but the Department of Justice as well, is trying to expand the law through prosecutions and making conduct that was not previously thought to be illegal against the law.

**JK:** That was your view 20 years ago. Do you think anything has changed since then?

**RK:** I think that we've seen a resurgence of this kind of activity. It really started with Eliot Spitzer's prosecution of investment banking houses with regard to the relationships between research analysts and investment bankers, in which investment banking firms were prosecuted for conduct that perhaps was questionable but probably was not illegal, and was then made illegal, at least going forward. I think this is a dynamic that's been at work at the SEC the last few years. The SEC is somehow trying to play catch-up; the agency was embarrassed.

Although the Commission had some rule-making programs concerning analysts ongoing and the SROs had some rule-making initiatives concerning conflicts of interest in the works; this rule-making was superseded by prosecutions by the New York State Attorney General. And I think the publicity generated by Spitzer gave rise to and gave a new impetus to this kind of regulation by prosecution everywhere by attorney generals, by state prosecutors, federal prosecutors, the SEC, etcetera.

**JK:** Do you think the pendulum swung so far that it's too late for it to come back?

**RK:** I really don't know. When I was an enforcement attorney, we were taught if you get a telephone call from the press, the only thing you say is "no comment" and hang up. This is certainly not the way prosecutors behave today and I think that is what is behind a lot of problematic prosecutions.

**JK:** When you were a Commissioner do you think that the practice was still the same?

**RK:** No, I think there were a lot of conversations between enforcement attorneys and the press then.

**JK:** Before the fact or after the fact or both?

**RK:** Both.

**JK:** The argument against, to play devil's advocate, that people will make is that you have to hold the hand of the press to walk them through things or else they don't get it right.

**RK:** Well, perhaps you have to educate the press, but I think prosecutors should not be bringing cases with an eye to getting onto the six o'clock news.

**JK:** As a regulatory agency, remembering that enforcement is first and foremost is supposed to be an arm of regulation...

**RK:** I should say the SEC does much less of this than other prosecutors. We've gotten a little off the track here, although the prosecutors who frequently have used publicity in questionable ways have done so with regard to prosecutions in the securities law area. I think the SEC has been better behaved than other prosecutors in dealing with the press.

**JK:** If the SEC is going to try and be more disciplined in sort of pushing the limits, articulating the law to enforcement proceedings, would you then rely exclusively on regulation or is there some other approach that you think would be effective?

**RK:** No, I think enforcement is a necessary part of the Commission's work.

**JK:** But in terms of pushing the law or pushing the boundaries of the law, is there an alternative?

**RK:** Why does everything have to be regulated? There seems to be a philosophy today in terms of securities regulation that everything has to be regulated. I think there are areas of behavior in the business world that should not be regulated—where standards of

conduct should be left to the private sector to determine. Let me give an example that takes us a bit away from some of the matters we've been discussing.

After the Enron/World Com scandals some people said these problems occurred because Congress repealed the Glass Steagall Act and allowed investment banks and commercial banks to consolidate and allowed for the growth of financial supermarkets. I don't think the Gramm-Leach-Bliley Law had anything to do with the Enron/World Com scandals, but there were people who wanted to set back the clock and put the Glass Steagall wall between commercial and investment banking back into place. But actually what has been happening the last few years is that the private sector has decided that some of the conglomeration of financial supermarkets has not worked out so well and there's now some disaggregation going on.

In my opinion that's a better way to deal with some of these problems than to have a government agency or several government agencies telling business what to do. Sooner or later some of the problems in the business world are self correcting, if they turn out to be the outgrowth of misguided policies. Now that doesn't mean that where you have a company that is coming out with clearly false financial statements, you should say, oh well, sooner or later that company will do the right thing and come out with better financial statements. I mean you have to have some enforcement of the laws that exist.

But I think that the government just seems to regulate more and more and more every year and one thing that happens is that innovative new businesses tend to form outside of areas of government regulation. You have tremendous amount of regulation in the mutual fund area; that has not prevented some of the abuses that popped up in recent years. But where have you had the most innovation and where do you have an awful lot of money now going? The answer is into unregulated hedge funds. The attitude of the government then becomes, well, we better regulate these hedge funds. I should say here, I think hedge funds should register with the SEC and should be subject to some regulation, but maybe one of the reactions to this phenomenon of hedge fund growth also should be that investment companies should be deregulated in certain ways.

Someone should ask, how come all the bright, young entrepreneurs have decided to manage hedge funds instead of investment companies? Maybe it's because of this regulatory disparity. You see the same dynamic with the Internet. Would the Internet be the powerful force it was today if it had been regulated from the outset by the Federal Communications Commission? Frankly, I doubt it.

**JK:** In terms of guidance for the SEC then, do you think there are areas of the SEC right now that should take a step back?

**RK:** Yes; but this is an interview about my life as a Commissioner. We're getting kind of far afield and I don't want to be giving advice to a Commission that hasn't even been formed

yet, because we're going to have a new Commission, in terms of a new Chairman and at least one new Commissioner, so if they want my advice they can come and ask me and I'd be happy to provide it.

**JK:** Well then let's get back to the interview and talk about an area where you did get active in seeing the Commission sort of rethink what it's been doing—that's integrated disclosure.

**RK:** This was an area that was very important to me and while I was a Commissioner the first rule-making for the whole integrated disclosure system that we have today got underway. This was a product of Ed Greene, when he was the Director of the Division of Corporation Finance. I worked to some extent with Ed on that project and with Harold Williams. This was a project that was very important to Chairman Harold Williams and I was extremely enthusiastic about this regulatory initiative. It was based to some extent on the efficient market theory, in the sense that if a company was already making public disclosures because it was a registered and reporting company under the Securities Exchange Act of 1934, it should not have to repeat all of these disclosures in a filing under the Securities Act of 1933.

This was an effort to streamline the offering process and it did considerably streamline the offering process. I think many securities lawyers feel that if they were to have designed a good disclosure system, they would not have started with the '33 Act; they



would have started with the '34 Act. At the same time, I really see this same dynamic going on in the European Union and in some countries that have not had as sophisticated a disclosure system as we had, so maybe there is something rather basic about starting with mandating disclosures when a company is going public for the first time and then bringing in a regime for annual and periodic reporting. But maybe other countries are just copying our mistakes—I'm not too sure.

I think it's interesting that this question of what rules should govern the offering process have been reviewed and revisited, and on the last day of Chairman Donaldson's chairmanship, the Commission unanimously approved a series of very important new rules for the offering process and the disclosure system. So it seems that in this area also some of the issues that were important issues in the 1970s have resurfaced today as important issues. Technology and changes in the markets have forced the Commission to take a look at the rules it passed thirty years ago and rearticulate the same policies and principles in new rules.

**JK:** You mentioned Ed Greene's name.

**RK:** Yes.

**JK:** He was of course the Director of Corporation Finance.

**RK:** He also became General Counsel.

**JK:** And became General Counsel; what was your relationship with Ed? Had you known him before you came to the Commission?

**RK:** Well Ed had been a partner with the firm Willkie Farr & Gallagher and at one time I was an associate at that firm, before Ed became a partner there. I helped to recruit Ed to the Commission through mutual friends at Willkie when Harold Williams was looking for a new person to head up Corporation Finance. I'm very glad that I did so, as I think it was wonderful for the Commission that it was able to attract someone as talented as Ed turned out to be.

**JK:** In the context of integrated disclosure, it probably has been one of the great success stories for the Commission over the last twenty-five years.

**RK:** Yes.

**JK:** At the time, did everybody support it? Was there a disagreement over it?

**RK:** I wouldn't say everybody supported it—no; it was a bit of a struggle to get everyone onboard. Actually I delayed my departure from the Commission in order to be there for the vote on the first round of putting this new idea forward as a rule-making proposal.

At that time my husband and children had moved back to New York and I was commuting. I had four young children and this was very difficult from a personal point of view.

**JK:** At the time, this was one of those issues that had been talked about a great deal, when Milton Cohen had first proposed it.

**RK:** Yes, it started with Milton Cohen.

**JK:** In the '60s?

**RK:** Yes.

**JK:** And Louis Loss had tried to pick it up as part of the ALI Federal Securities Code project.

**RK:** Yes, a project which the Commission I was on studied at great length—thousands of hours were spent on that, although in the end the Federal Securities Code did not become law. I think that one of the results of that exercise was the integrated disclosure system. But the Commission simply decided to do this by rule-making, rather than to go to Congress and back a whole new law, which would have required the Commission to

consider and once again pass virtually all of its rules and regulations. Maybe that would have been a good idea, but the Commission opted not to do that.

**JK:** In focusing on integrated disclosure, of course one of the biggest problems was the different liability standards in the '33 and '34 Acts.

**RK:** Yes, this is one reason why there was resistance to the integrated disclosure system, but it's also why it became very popular. I should say that it is also because of these different liability standards between public offerings and private placements, that the private placement market has become so huge. I have often felt that it would have been much better policy for the SEC to go to '34 Act liability provisions for all offerings, and then obtain greater authority over all offerings, rather than allowing the private placement market to become an alternative market to regulated markets.

This is another example of what I was talking about before where over-regulation leads to the development of an alternative unregulated market. In my opinion, a regulatory agency should consider some deregulation so that it can obtain regulatory authority over the total market instead of allowing a huge part of that market to become unregulated.

**JK:** In that context of course that would require Congressional action to really fundamentally change the offering process.

**RK:** Yes.

**JK:** Did the Commission consider doing that at any time?

**RK:** No.

**JK:** Just because it was politically too difficult?

**RK:** The Commission is rarely enthusiastic about going to Congress for new legislation unless it is pretty sure that legislation is going to come out the way the SEC wants.

**JK:** In hindsight do you think it would have been a good idea or not?

**RK:** I'm not sure of your question; I guess you're asking whether with hindsight, it would have been a good idea for the SEC to have had a legislative program for the integration of the '33 and '34 Acts instead of trying to do this by rule-making? I don't know; I think you would have ended up with much simpler regulations. Instead, there is a complex, convoluted, prolix regulation in this area; it's probably good for the legal profession but I don't know if it's really that good for the capital markets.

**JK:** Correct me if I'm wrong, but at that time were there also public hearings focused on governance and proxy questions?

**RK:** The public hearings were on corporate governance and that's another area that has resurfaced that was very controversial when I was a Commissioner. In the last few years, the Sarbanes-Oxley Act gave the Commission some of the authority it had wanted back in the 1970s to structure boards of public corporations and to compel public corporations to have independent directors. This is another area where I think it's better to leave the development of new forms of conduct to the private sector rather than to have the government mandate what kind of corporate governance structure corporations ought to have.

This is how corporate governance has developed under state law, particularly in Delaware, with judge-made law tailored to the facts of particular situations and with reliance on the fiduciary duty of directors. It seems to me that it is the existence and development of the law of fiduciary duty of directors that is really much more important than specific corporate governance forms. Back in the 1970s, when the Commission had its corporate governance hearings, there was an effort to mandate that boards of directors have a majority of independent directors.

This actually was one of the differences I had with Harold Williams when he was Chairman. He thought this was how corporations should be structured. I did not necessarily disagree with him as a matter of what's good corporate practice, but I didn't see where the SEC had any authority whatsoever to mandate the corporate governance

structure of public companies. Eventually the Commission abandoned this effort, but then when it had the opportunity to get provisions along these lines put into the Sarbanes-Oxley Act, it enthusiastically did so.

I am very skeptical as to where all this is going to lead, and although the Commission has always taken the view that independent directors are better than non-independent directors for public corporations, I don't think it's ever had anything other than political faith in that proposition. Although it's had plenty of opportunity to do so, the SEC hasn't developed empirical evidence in this area, which I think would be very useful. Of course, that's the issue in the Chamber of Commerce case involving mutual funds that's now become so controversial.

**JK:** At the time when you were having these hearings how useful was the hearing process to getting these issues clarified?

**RK:** I don't know; a lot of energy and time was spent on the hearings, but corporate governance is an area where people have very strong political views that are not necessarily backed up by empirical data or legal analysis. So people came in and gave predictable presentations. The hearings were very controversial and they allowed a lot of people to let off a lot of steam. The extent to which they formed a basis for Commission rule-making is not so clear in my mind, although the extent of the opposition to some of

the ideas that the Commission was flirting with probably made the Commission a lot more hesitant in passing some of rules that the SEC might have otherwise have passed.

**JK:** Do you think it gave the Commission sort of undiluted sort of access to the industry that wasn't being sort of filtered through the excerpts of the staff or do you think that overstates it?

**RK:** I think that overstates the case. Maybe I have to correct an impression you have. I think your impression is that the Commission sat there while all of these witnesses gave their testimony. That's not the way it worked. First, these hearings were all around the country and my recollection is that either the Chairman or one Commissioner went to preside over the hearings in the different cities in which the hearings were held. So the Commission still had to rely on the staff summaries of all this testimony.

I remember we had a hearing in Washington on some other issue that was controversial. It had to do with possible rate making in the options area. This is hazy in my mind, but what I remember is I was the only Commissioner who went to the hearings.

**JK:** Really?

**RK:** Yes.



**JK:** Was this during the period when they were doing the standardized option study?

**RK:** It was in that period; the options study was conducted while I was a Commissioner but it was a different issue. It was a market structure issue.

**JK:** Okay.

**RK:** It was a market structure issue and it was more like some of the issues that have surfaced in recent years about stock exchange data and related matters, and whether the Commission had to decide whether rates that were being charged were reasonable or not. I saw this as a potential rate-making job for the Commission, which concerned me, because we had just gotten rid of fixed commissions and I didn't think the Commission did such a good job in overseeing fixed commission rates.

**JK:** Was this the fees charged for the last trade or trade reporting data because you know in the Reg NMS Rule, which was adopted—that was a portion of it, too.

**RK:** It was an issue like that but it involved the options world.

**JK:** Okay.

**RK:** I can't remember the precise issue; I just remember that I saw this as a possible or potential rate-making task and I thought that was something that should be watched, and I went to the hearings and I was surprised that no other Commissioner was there. So just because there's hearings doesn't mean that those hearings are attended by the full Commission. Maybe today they are; I don't know. Maybe the practice has changed. Being a Commissioner is a very difficult, time-consuming job, and it's very hard to do everything that you should do as a Commissioner and do it well and conscientiously. I don't think that I have ever worked so hard in my life as I did when I was an SEC Commissioner even though I've always been a pretty hard worker.

In fact, I remember when I was a Commissioner, one my children drew a picture of me, I think for school, showing a little lady with a briefcase as big as she was and the side of the briefcase said "SEC Homework."

**JK:** Well, we've been talking for a very long time. Are there any other recollections, any other things that come to mind? We've been talking about everything under the sun here.

**RK:** We've been talking about the securities laws and policy and that's fine with me, because that's what has always interested me. But I should also say that one of the aspects of the job of being a Commissioner and in fact being a securities lawyer, that I have always valued is making many friends and knowing colleagues that are bright and interesting. The friends I made in the days when I was on the New York office staff and in the days

when I was an SEC Commissioner and from all the time I spent as a member of the securities bar, in bar association and in other professional activities, are of great importance to me. Some of these friends have been some of my closest and the most important people in my life.

A short time ago, John Ketels, who was my counsel or legal assistant the entire time I was Commissioner - although I had other staff members who rotated in from the various divisions and worked for me for a period of time as a second legal assistant—gave a party for me and all of the attorneys who had worked in my office and it was great fun and we really had a good time. Not everybody could come but at least we tracked everybody down.

**JK:** Are there any other people that you remember from your time at the Commission that just really made an impression worthy of remembering or noting?

**RK:** Oh yes; I mean there were a lot of staff members who I remember and who I've had a lot of contact with afterwards. Ralph Ferrara was General Counsel for a part of the time that I was a Commissioner; Andy Klein, who I mentioned before; also Rick Ketchum, who I believe was on the staff when I was a Commissioner, but later became Director of the Division of Market Regulation, who I have enormous respect for and have kept in contact with over the years; Ed Greene, of course, who I've already mentioned... I'm sure I'm leaving out a lot of very important people.

Someone that I remember clearly as a lawyer who was very important to the Commission was Paul Gonson, who became Solicitor in the General Counsel's Office. I remember one snowy day at the Commission when I came to work and Paul came to work and there was hardly anybody else in the building. My office was right down the hall from the General Counsel's Office, so I kind of knew who was there, and I said to Paul, "What are you doing here on such a horrible day? There's a blizzard going on outside." And he said, "Oh well I'm from Buffalo." And I said, "Well I'm from Chicago; I guess that's why the two of us are here and at work."

And then I said, "You know I've never worked in a place like the SEC where people are so dedicated and work so hard; it's like some sort of a medieval monastery, except it's co-ed." And I always respected the dedication and intelligence of so many of the staff members who have been in and out of the Commission over the years and who I consider good friends. And maybe that's a good place to end the interview.

**JK:** Yes; the only other thing that can't go unmentioned of course is you were of course the first woman on the Commission and you were probably one of the first women as an enforcement attorney before you were on the Commission.

**RK:** Well when I went to work in the New York Office there were a couple of other females who were there, and in fact my first boss was Irene Duffy, who was my Branch Chief,

who later became a judge and is the wife of Kevin Duffy, who later became Regional Administrator for the New York Regional Office.

**JK:** And also became a District Court judge.

**RK:** And also became a District Court judge, yes; and also taught at Brooklyn Law School at some point. Washington was another story; they were really very, very few women in Washington. I mean not that there were a lot in New York, but there were more in New York than there were in Washington.

**JK:** Really?

**RK:** Yes.

**JK:** Oh that's interesting.

**RK:** In the 1960s, I can't remember any women in Enforcement, although maybe there were some. There definitely were no women in the General Counsel's Office. I think there were one or two women in Corporation Finance. It was very unusual for a woman to be a lawyer and the SEC has always been an agency dominated by lawyers. It made for a great opportunity for me actually; I went to work for the SEC because I could not get a

job at a Wall Street law firm when I graduated from law school even though I did very well in law school.

I was a little disappointed that I was going to a government agency instead of a law firm, and in fact, my first choice had been to go work for the NLRB where I had a job offer from the General Counsel's Office but that was in Washington and my late husband was still working on his doctorate degree in New York, so we couldn't move to Washington. When I spoke to the man who headed up the NLRB in New York, he said, "I'm not hiring a woman. You might have to go out and interview Teamsters." So I went to work for the SEC as a kind of third choice and it turned out to be the best decision I ever could have made in terms of my career as a lawyer. So I always tell that to young lawyers and students—you never know quite how life is going to turn out. The important thing is to do your best in whatever job that you get.

**JK:** By the time you came back in the Commission that had changed a bit?

**RK:** A bit but not very much.

**JK:** Really—still not very much?

**RK:** I know that Debbie Hechinger became a Branch Chief in Enforcement while I was a Commissioner and she came to me and said, "Roberta, you probably won't believe this,

but I'm the first woman to become a Branch Chief in the Enforcement Division since you were on the staff."

**JK:** Wow.

**RK:** So it was just beginning to change but it had not changed very much at that time. Today it's a different story, but I've had a very interesting career as a woman in a man's world. Things have changed now but not as much as they could; I think there's still room for more change. But I never felt when I was an SEC Commissioner that it was in the best interest of women in the financial world or in the law firms to make too much of that. Rather, I believed that if I did a good job and was respected for the job that I did, I would do more to pave the way for more women than making a big fuss about my status.

But I think that it did mean a lot to the women who were on the staff at the SEC when I was a Commissioner to have a woman Commissioner. Many of them told me that when I was on the Commission.

**JK:** You certainly established something that as you point out today—don't know what the figures are, but the percentage of women on the staff is enormous.

**RK:** Well it is enormous and yes, if you're talking about Enforcement, you know Linda Thomsen is the first female Division Director.

**JK:** Director of Enforcement, yes; that's right.

**RK:** Director of Enforcement, yes; so you know that was one barrier that had not previously been broken and I wish her every success in this job.

**JK:** Okay; and on that note maybe I should thank you so much for taking the time.

**RK:** Well thank you for taking the time to come to New York. I really appreciate it.

**JK:** I've really enjoyed this and I've learned a lot.