

## Oral History

Colleen Mahoney with Harwell Wells

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Skadden, Arps, Slate, Meagher & Flom, Washington, DC

Harwell Wells: Good afternoon, I'm here with Colleen Mahoney, in the Washington, DC offices of Skadden, Arps, Slate, Meagher and Flom, on the afternoon of September 26th, 2019 conducting an interview for the SEC Historical Society about her career at the Securities and Exchange Commission. And I'll start by saying thank you so much for taking the time to speak to us.

Colleen Mahoney: It's an honor to be here; I appreciate it.

Harwell Wells: So, we obviously want to talk about a lot of different things during your career, but we'd like to begin by asking about your background -- where you grew up, where you went to college, and what would've sparked an interest that would've led you to law school.

Colleen Mahoney: So, I grew up in a little town in Ohio, probably about as many people in my town as there were at the SEC's headquarters office in Washington there. Just a couple thousand people. And I came to Washington in 1974 and went to American University for college and law school.

Harwell Wells: What led you? What got you interested in leaving Ohio and coming to Washington?

Colleen Mahoney: Well, my senior year of high school, I was a student in an exchange program, so I was sent ... you couldn't specify where, so they picked. And they sent me down to Chile and I was living at the very tip of the mainland on the straits of Magellan, in a beautiful part of the world. But it also taught me there was like a whole world outside of Ohio, kind of unbeknownst to me. And I was there during a time, 1973, '74, when they were going through a political leadership crisis. When I got there, Allende was the democratically elected socialist president, and during the time that I was there the military took over the government and for four months I was there under the military leadership.

Colleen Mahoney: And what I observed and learned in that process is how different political systems work, how different legal systems work. And not in any level of detail, but it made me interested, it got me interested in government and law, and topics that I thought could best be pursued by getting a law degree. So that's where it started.

Harwell Wells: Okay. So, when you went to law school did you have any interest in securities laws at that point?

Colleen Mahoney: No. And not at all. I thought I was interested in international law, not really knowing what that was. But certainly not securities laws. But I had a wonderful teacher. I had saved corporate law until my very last semester because I dreaded the idea of taking it, but knew that I had to take it because it was covered on the Bar exam. And I took a class with Mary Seagal / Mary Trotter. And she was fantastic, and she made it interesting and she made it come to life. And she had spent time at the SEC and presented the topic in a way that made me think, "This is great. I like this." And that's what sparked my interest.

Harwell Wells: But you never took a specialized securities law class?

Colleen Mahoney: I was done. I saved it until the end, so it was time to graduate, so I had to come up with some other way to learn about SEC work. So, after I spent some time at a law firm, my intention had been to do securities litigation, but I was doing a variety of litigation. I'd decided I'd go to the SEC and specialize.

Harwell Wells: Okay. So, you graduated from law school and spent two years at Steptoe & Johnson and I believe decided to go onto the SEC?

Colleen Mahoney: Correct.

Harwell Wells: It sounds like you walked away from your law school class with a very favorable image of the SEC.

Colleen Mahoney: Very favorable image of the SEC.

Harwell Wells: What was the public image of the SEC at the time? What were you thinking of it before you entered their doors?

Colleen Mahoney: I don't think it had a high profile. I think it has a much higher profile now. And started developing a higher profile when the SEC started to bring the big insider trading cases against Ivan Boesky and the like. So, it didn't have a high profile, but my sense of it was, through this professor, that it was a good group of smart, hard-working people doing interesting things. Among agencies, it felt like a boutique law firm versus a big law firm, compared to government agencies it felt like a boutique agency versus some of the larger more sprawling agencies.

Colleen Mahoney: So, that's what led me there.

Harwell Wells: Can you talk a little about how you were actually hired at the SEC?

Colleen Mahoney: Oh, the hiring process was remarkable. I went in expecting an interview, maybe a couple of interviews, much like the interviews we did at Steptoe where you'd meet a roster of people and then they'd get together and decide whether to

hire you. But when I got there, they put me in a room with a fact pattern and gave me 20 minutes to write a brief on one side of the issues, to spot the issues and a brief advocating one side of the issues, and then after I did that they gave me another block of time to write the brief on the other side.

Colleen Mahoney: And then I had to come in a room and argue whichever side they assigned to me. Which was surprising. And then I had to submit a writing sample and come back, and argue the issues that were addressed in my writing sample, and the people asking the questions, I remember it vividly, had actually read the cases that were cited in the writing sample. So, I thought, "Wow, these people are serious", in a way that made me want to go there even more. I was interested before, but put me through a process like that and I really wanted to go there, I wanted to win. I wanted to get the offer. So, I did.

Harwell Wells: And you joined the general counsel's office.

Colleen Mahoney: I was in the general counsel's office. I started in the litigation side of the office, handling cases where the SEC was a defendant, so it could be challenges to SEC rules, it could be cases under the Freedom of Information Act, it could be sex discrimination cases, it could be challenges to subpoenas that the staff had issued. So, I did that. Some appellate cases as well. And then I switched over to the counseling side of the office.

Harwell Wells: If I can just ask quickly about the litigation side. So, obviously the enforcement division had its own trial unit, had its own attorneys doing investigations. Did that mean you handled the litigation or the defending litigation against other divisions?

Colleen Mahoney: Against other divisions, yes. But the enforcement division played offense. They would bring cases. The general counsel's office would play defense. So, if there was a case brought challenging something the SEC had done, then it'd be handled in the general counsel's office.

Harwell Wells: Okay. So, I'm sorry, you said you started in the litigation side, and then you moved over to-

Colleen Mahoney: I moved the counseling side-

Harwell Wells: ... the counseling side.

Colleen Mahoney: ... of the office, yes.

Harwell Wells: And what did that involve?

Colleen Mahoney: So, the counseling side of the office, was responsible ... it was divided into subject areas, and we were responsible for reviewing the work of the other divisions in order to advise the commission on whether or not there were ...

whether we thought the actions that were being recommended by the other divisions were consistent with commission policy, supported by the evidence, and whether they made sense in the context of the commission's agenda.

Harwell Wells: Sure.

Colleen Mahoney: And the recommendations of the other divisions that we would review might include enforcement cases in the subject areas that we covered, or rule makings in the subject that we covered. And we also helped prepare the Chairman, or any of the commissioners, but during that time it was the Chairman, if they had SEC testimony in a subject area that was within our area of responsibility.

Harwell Wells: It's an interesting role to be almost passing judgment on recommendations other divisions have made. How did you manage to handle that particular task?

Colleen Mahoney: Well, it was purposely set up that way. I think Roberta Karmel is responsible for the idea of it. She was particularly interested that somebody in the general counsel's office play that role with respect to enforcement because there was a little healthy tension between Roberta and the people in the enforcement division. But more broadly, I think the commission and the Chairman felt that it would be good to have a second set of eyes, and for the people in that group to function as their lawyers advising them on the pitfalls and the risks associated with particular recommendations.

Colleen Mahoney: And it was intended as a healthy tension, and what that meant was, if somebody had spent years and years working on a case, and you got the case and you thought, "Gee, huh. I'm not sure I agree with that, or maybe I would shape it a little differently, or maybe I think this is a great case, but the commission ought to be aware that there are litigation risks because of some of the evidence is a little weak, or policy issues, they ought to be apprised of that."

Colleen Mahoney: So, it was a delicate, hopefully constructive conversation with the people who had put in the good hard work putting the case together, "here's how I think we can reframe it," or "here are the issues I think we should focus on," "here are the risks we thought we should focus on." Of course, when I was in the general counsel's office playing that role, I thought I was giving useful, constructive feedback. When I was in the enforcement division getting those comments, I thought, "How come I have to listen to this? Why can't I just do what I want?"

Colleen Mahoney: But, it all worked. We were all working on the same team. We were just playing different roles on the same team.

Harwell Wells: So, it wasn't ... I think you've just answered this, so it wasn't just a matter of giving a thumbs up or thumbs down to the commission, but in fact a dialogue with the people from whatever division you were reviewing the proposals out of?

Colleen Mahoney: Oh, it wasn't at all up or down. It could be, but most of the discussion was not you can't bring this case, or you can bring this case. It was "let's talk about where the risks are in this case and make sure the client -- the commission -- is making an informed decision." Or, "you've got a fraud charge here, but maybe you don't have enough for a fraud charge but you could reposition it that way." Or, "this rule proposal makes sense, but maybe it could be tweaked this way or that way." And sometimes we agreed, sometimes we disagreed. But the point was not to surprise the operating division by going around them and going to the commission and saying, "What these people are telling you, don't believe it. It should be this way."

Colleen Mahoney: But to talk to them in the first instance and see if you can work out a consensus about what the commission needs to know about this before they decide whether they will go up or down on it.

Harwell Wells: I want to come back to this, but how did you actually interact with the particular commissioners, and the commission at this point in your career?

Colleen Mahoney: Not as much at this point because even though I had been promoted to special counsel, I was not the head of the group. So, I would work with the head of the group and then we would go together and have these discussions and usually the head of the group would speak more. As I got more experienced with it, I would go have the discussions myself. And, then you have to choose, usually there's a whole chain of command on either the case in the enforcement division, or the rule making in the operating division. And sometimes, depending on the level of comments you started with the more senior person, sometimes you started with the more junior person.

Colleen Mahoney: But the agency was big, but it wasn't that big. So, you knew who you should talk to and how the conversation could best be structured.

Harwell Wells: Okay. Was it this work that ... because you left in, I'm sorry. You didn't leave, but you moved in 1990 from the general counsel's office to the enforcement division.

Colleen Mahoney: Correct.

Harwell Wells: Was it at the time, the general counsel's office that got you interested in enforcement? Or had you always been interested in enforcement?

Colleen Mahoney: I had always been interested in enforcement. I was happy to have the counseling role because it assured me a steadier diet of securities laws cases, because as I said, the litigation, it could be a challenge to a rule making, but it could also be a FOIA case, a sex discrimination case... it was a very general docket. By going down to the enforcement division, I would be doing securities work by definition, and more litigation type work, which appealed to me.

Harwell Wells: Okay. So, while you're in the general counsel's office, you worked some on what became the Remedies Act.

Colleen Mahoney: Yes, and in the enforcement division.

Harwell Wells: Oh, and while you were in enforcement. I'm sorry.

Colleen Mahoney: Yes, both.

Harwell Wells: I didn't pick up on that. Can you talk about your work on the Remedies Act? What you actually contributed, what you were asked to do?

Colleen Mahoney: So, it was a team effort. And I think what was identified is that congress was willing, and certainly the SEC was interested, in expanding the range of sanctions it could impose to make the enforcement program more effective. In some ways it's quite remarkable that the agency had an effective program, was viewed as having a very effective enforcement program up until that point when frankly all they could do is get an injunction that says, "Don't do it again."

Colleen Mahoney: And penalties in insider trading cases. And that's it. There was the beginning of the thought that they could also get disgorgement, or repayment of ill-gotten gains, even though that wasn't specifically laid out in the statute. It was something that an implied authority, that the agency started arguing for. But aside from that, there weren't a lot of weapons in the arsenal.

Colleen Mahoney: So, we put together, in close collaboration with the impacted divisions, both the general counsel's office, the enforcement group and the like, a package and worked it through congress successfully, and it was interesting. There wasn't as much sausage-making as you might think. The process went pretty smoothly and constructively, and we had a lot of support on the Hill, which of course made a huge difference.

Harwell Wells: And was your work mainly within the commission? Did you actually deal with people on the Hill?

Colleen Mahoney: I was mainly within the commission. Some outward facing work, but it was mainly within the commission. Or I would go ... I was chief counsel then, I was not the head of enforcement.

Harwell Wells: Okay.

Colleen Mahoney: So, to explain to congress why these powers were needed, I would go with the head of enforcement to the Hill and we'd say, "How can we get ... how could we run a program unless you do this for us?" That kind of thing.

Harwell Wells: And what you say has also come up in other interviews about the surprising lack of powers the SEC seemed to have before the Remedies Act.

Colleen Mahoney: Correct.

Harwell Wells: Did you have any thoughts about how the SEC managed to function with such weak tools? Because it really is striking that during a period in which they enjoyed many successes, if one had just looked at the legal tools they had at hand, there really weren't that many.

Colleen Mahoney: I think it's to the enormous credit of Irv Pollack and Stanley Sporkin, and other people, senior people in the enforcement program who made that matter. That impressed upon people that it mattered to be the subject of an enforcement action, even if the consequences weren't enormous. Another thing that they would include in some of these settlements was not just "you have to agree not to do this anymore," but they would also add other kinds of ancillary relief, like "you should have a board, an independent board committee to do compliance," or "you should have this many independent directors."

Colleen Mahoney: So, they would add bells and whistles using their implied powers, and those were important to make the relief effective. And not that many companies -- because the division was small -- were subject to these decrees. So, there was a stigma associated with them that made them effective, even if they didn't require a whole lot. So, I guess that's a long way of saying, you would stand out if you were the subject of a decree, and that made it matter. And they would add on remedies here and there that helped strengthen the underlying injunction.

Colleen Mahoney: But again, I think it's to their credit to impress upon people that this is a big deal, even if looking at it today it seems kind of quaint, you know?

Harwell Wells: And just, one more question about remedies, which is obviously you're at the SEC after the Remedies Act, and then you've been in private practice.

Colleen Mahoney: Right.

Harwell Wells: How did the Remedies Act change either what the SEC did, or an individual's response to SEC actions?

Colleen Mahoney: The fact that the SEC could get more money, the fact that it didn't have ... it wasn't only able to bring cases in federal court against non-registered persons. Just to step back there.

Harwell Wells: Yes.

Colleen Mahoney: So, we could bring a case against anyone in federal court, but only bring a case against a securities firm in an administrative proceeding. So, that meant if you were dealing with a public company, let's say, and the violations were not extreme, you had to make the judgment that even though they were important violations from an SEC perspective, that you could persuade a federal judge that

they were worthy of his or her energy if you were in fact going to have to fight with them before the federal judge.

Colleen Mahoney: The ability to handle them administratively I think meant that you could cast a much wider net, and address more specific types of violations in a different way than with the full power of a federal court. And most of these cases are settling, so you're not really expecting to have a fight. But it's also the case whether you have a fight or not, that certain violations I think are, it's a more proportional response that the defendant be subject to an administrative order rather than a federal court order.

Colleen Mahoney: So, certainly more technical types of violations.

Harwell Wells: Okay. So, in 1990 you moved from the general counsel's office to become chief counsel of the division of enforcement. And I want to talk about your role there in a second, but why make the move?

Colleen Mahoney: Well, it was a promotion. I was also, as I said, interested in being part of the enforcement division, and frankly I was thinking about leaving at that point because I had been there... 1990... so I had been there for seven years and that's kind of an inflection point. But this new challenge, opportunity, came up in a division that I thought I would enjoy working for, and I'm glad I did.

Harwell Wells: What does the chief counsel of the enforcement division do?

Colleen Mahoney: Two things. It functions as kind of a law firm within the division of enforcement, so the chief counsel's group would give advice on legal and policy issues that would come up from time to time, but I think its most important function was to coordinate the regional office program. So, it was a consolidation point, or an intake point for cases that were being investigated by all of the regional offices. And the significance of that role changed during the time that I was chief counsel. Not because of me, but because the head of enforcement and Chairman Breeden decided that it should be less of a light touch, and more of a ...that the regions should be more integrated into the home office enforcement program, in part because of the Remedies Act.

Harwell Wells: Oh.

Colleen Mahoney: Part of the concern that people expressed with all of these new remedies, like "how are you going to make sure that there's some level of consistency here?" It's one thing if you only have three things on the menu, everybody's going to get roughly the same thing. But with these new powers, it was more important to have some sort of a program to make sure that the person that was investigated by the Boston office got treated roughly the same as the person in LA, and the person in DC.



Colleen Mahoney: So, that was a reason to make sure that there was some level, greater level of coordination.

Harwell Wells: So, can you explain to me briefly what the interaction had been with the regional offices before that change? How traditionally had they interacted with the enforcement division, with the commission?

Colleen Mahoney: They had interacted ... it was a light touch. There are cases I think the people in DC were aware of them. If they were of significance there was closer coordination with the head of enforcement to make sure everybody was on the same page. But there were a lot of cases that I think got very little review in Washington. All of them got reviewed through the general counsel's office, but that was also a different role.

Harwell Wells: So, there wasn't a review, at least when you started in the general counsel's office, through the enforcement division?

Colleen Mahoney: I think there was some review.

Harwell Wells: Okay.

Colleen Mahoney: But I think it was ... I don't think it was necessarily required for every single case. I think it was more on an as-needed basis.

Harwell Wells: Okay.

Colleen Mahoney: And as-needed was defined more narrowly. Because again, there weren't that many decisions that were being made about how to charge a case, for example.

Harwell Wells: Okay. And then what changes occurred while you were there? How did the regional offices then have to proceed?

Colleen Mahoney: So, everything had to come into the group and enforcement, and they would write a memo explaining their charging decisions and their rationale, and they would include the submission on behalf of the defendant saying, "They're crazy. There's no case here," or maybe there is a case but it got...

Harwell Wells: The Wells submission?

Colleen Mahoney: The Wells submission, exactly.

Harwell Wells: Okay.

Colleen Mahoney: And again, I think those came in before, but I think they got a much higher level of scrutiny, and there was much more pressure that we come to an agreement about how to proceed. It mattered more whether the folks in my group were in agreement with the case or not for the commission to approve it. And usually

we presented it to the commission together. Sometimes we said, "That's not going to the commission," that was the rare exception.

Harwell Wells: But you had that power?

Colleen Mahoney: Yes, although we exercised it sparingly. If it was a situation where reasonable minds could differ, and we thought that it was a discussion that the commission would benefit from hearing both sides of it, we would air it out at the commission. And sometimes the commissioners were tolerant of that and thought, "This is great. These are two different points of view, we'll pick." And sometimes it's like can you guys just decide and figure this out? But I think it worked.

Harwell Wells: How did the regional offices initially respond to having a new channel for their cases?

Colleen Mahoney: It was difficult at the beginning ... although in some ways, it was not all that different than the role I had in the counseling side, in the general counsel's office. It was a more ... my view was more consequential, I think, in the chief counsel's office. It was more, I'm not saying consequential because it was mine, I think there was more pressure that we come to some common view of how things should be handled. But I was new to the enforcement division. A lot of the people in the regional office had been doing cases for many, many years.

Colleen Mahoney: And they didn't know me, they had been doing cases much longer than I had been doing cases. So, it's like what is this? And we went, Bill and I, went to all the regional offices and spent a lot of time on the phone, and just tried to impress upon them that I recognized ... I had a tremendous amount to learn from them, and was happy to learn it, and I enjoyed the job immensely. And had tremendous respect for the people in the regional offices who were doing the hard work.

Harwell Wells: Okay. And just one broader question - what is the special role of a chief counsel within a division if there's already a general counsel's office? What distinguished the role you played within enforcement from the larger role? I shouldn't say larger, I should say different role than general counsel's office.

Colleen Mahoney: Much better to work out the issues within the division, before it goes to the general counsel's office than to have the general counsel's office work out your issues.

Harwell Wells: Okay.

Colleen Mahoney: And I was, in the chief council's role, I was closer to what was going on in the investigations, including in the regional offices. They'd call and ask questions from time to time, and as I was in the role longer, they would come sooner, and more often because I think they realized that if they came in at ... they wouldn't

wait until they absolutely had to talk to us, I think. I'm hoping they came sooner because it was more efficient to get things worked out earlier, but maybe they thought there was mutual benefit to these discussions before the thing was fully cooked. And that's, again, better ...

Colleen Mahoney: Each of the divisions are like different houses in the same neighborhood, better to sort it out in your own house before you take it over to the next door neighbor and see what they think about it.

Harwell Wells: Okay. While we're still on your earlier years at the commission, I wanted to ask about your perception as a woman joining the commission in the 1980s. Now, I know the SEC, you certainly weren't the first generation. The SEC had a long tradition of women, but it's still a period in which the composition of the workforce is changing, in which the number of women entering the legal profession, entering the government is certainly rising rapidly. And I was curious about your experience there.

Colleen Mahoney: Well, keep in mind my entry point, or my introduction to the SEC was through this woman professor who spoke so highly of it, learned so much from it, and viewed it as a defining experience in her own life. So, I went in the door thinking, "This is a good place for women." And in the general counsel's office, there were quite a few women. Whitney Adams hired me, Linda Feinberg, Elisse Walter, Anne Schaffer, there were many senior women in the general counsel's office in the -- what we call the operating divisions.

Colleen Mahoney: Kathy McCoy was in Corp Fin. Kathy McGrath was in the division of investment management. And at the time, Linda Quinn was the executive assistant or chief of staff for Chairman Shad. He was the Chairman when I arrived there. And she became a wonderful friend and ally, and just a beacon of light to me. As did Elisse, and Linda, and the people that I worked with in the general counsel's office. So, I knew the women in the general counsel's office, and women in other divisions within the SEC pretty quickly.

Colleen Mahoney: And it all seemed pretty normal. It was a pretty hospitable environment.

Harwell Wells: Okay. And I know that, for instance, Joan McKown and Linda Thomsen have both described you as a mentor to them in turn.

Colleen Mahoney: Well, they're very kind. So, they were in enforcement, and when I went to enforcement, there were also quite a few strong enforcement women spread all over the country. So, you had Anne Flannery and Carmen Lawrence in New York, and you had Mary Keith and Anita Negler in Chicago. And you had Merri Jo Gillette in Philadelphia who ended up running Chicago. You had Elaine Cocherus and Lori Richards in LA.

Colleen Mahoney: So, there were women in the enforcement program throughout the agency. In Washington there was Terri Pritchard, and then Linda ... Joan worked with me

from the get-go, and taught me so much. And Linda Thomsen came and joined the staff after I was already in the enforcement division, and told me she came up through the ranks when I was there, and she was still there. It was a great place to work, male, female, all good.

Harwell Wells: Thank you. So, in '93 you stepped away from enforcement, or at least you left the division to become executive assistant.

Colleen Mahoney: Correct.

Harwell Wells: To Chairman Levitt, I believe.

Colleen Mahoney: Right.

Harwell Wells: And as you said, the executive assistant is the chief of staff to the Chair.

Colleen Mahoney: Right.

Harwell Wells: How did you get that position?

Colleen Mahoney: Honestly?

Harwell Wells: Yes.

Colleen Mahoney: Honestly, the-

Harwell Wells: Please.

Colleen Mahoney: So, I was leaving the building to go ... My children were in daycare across the street. This is all relevant. I was leaving to get my kids in daycare across the street. I came back into the lobby, holding my two kids, and Arthur Levitt was in the lobby. And I recognized him as the new Chairman. He had not been confirmed yet, he was still showing up to get ready for his confirmation hearing. And, if you know Arthur you know ... you can picture him doing this. He stopped and he said, "Who are you?" I said, "I'm Colleen Mahoney." And he said, "What do you do?" And I said, "I'm the chief counsel in the enforcement division."

Colleen Mahoney: And he said, "So, what does that mean?" And I boiled it down to two minutes. And two seconds, hoped that my kids would be patient with this. And he said, "Well, we should have lunch tomorrow." So, my goodness. So, we had lunch and we started talking about what I did, and he started talking about his trying to get up to speed on how the agency works. And then he said he spent some time calling people to ask about me, and then he asked me if I'd be his chief of staff. So, that's how it happened.

Harwell Wells: And what does the executive assistant, as you said, what does the chief of staff do?

Colleen Mahoney: It really varies depending on the Chairman. So, I think what Arthur wanted in his early years is somebody who could help him understand how the agency worked. In all respects. And I don't mean to suggest that he didn't know the agency, because he obviously came in with a good perspective on how the agency functions, but to actually run the agency, he wanted somebody who could help him manage that through. And then, as the Chairman gets more grounded in how the agency works and what the issues are, and what the range of choices are in dealing with particular issues, then the role can be more substantive.

Colleen Mahoney: You gather the people together, and you can have this policy discussions, or case discussions, with him, and then help him make those decisions.

Harwell Wells: Okay. That must've given you a very new perspective on the commission as a whole, or a somewhat new perspective?

Colleen Mahoney: Somewhat new. From the general counsel's office, I did have an overall perspective on how the agency worked that was helpful to me in that role. And it was an easier transition than if I had just been in one of the operating divisions. But I thought, what it taught me is Arthur was not a lawyer, he was a business person. And it was an incredibly valuable exercise to learn how to explain ... we hadn't really explained ourselves to a non-lawyer business person in a long time.

Colleen Mahoney: So, I had worked fairly closely with Richard Breeden before that, and Richard was a lawyer, and he loved sitting down and having wide ranging discussions, exploring every nook and cranny of a legal issue. It was fantastic. It was so exhilarating. But he did approach problem solving like a lawyer. Arthur approached problem solving like a business person. And if you say ... he'd say, "Well, what are my choices?" And if you would say, "Well, there are three choices, but really only one choice because we've always done it this way", he wouldn't settle for that answer.

Colleen Mahoney: "Why do you do it that way? What's the history, and do we really have to do it that way? Is it practical to do it that way?" So, you had to boil the issues down, much like you have to do for a client who's a business person, you had to come up with an explanation that was better than we do this force of habit. And he wanted to understand what we were doing from a practical, not just a legal. He wanted to make sure it was legal, but why it was legal, not so important. What can we do, why can we do it, why is that practical? It was an important learning experience for all of us.

Harwell Wells: So, you said you were close with both Chair Breeden and Chair Levitt.

Colleen Mahoney: Yes.

Harwell Wells: And probably a place to ask, how does a Chair influence, for instance, the operations of enforcement, be it setting policies, be it setting larger goals? What are the interactions between that division and the person at the top of the hierarchy?

Colleen Mahoney: There's the big picture and the small picture. The big picture is all of the Chairmen will come into it with a certain philosophy. If you're talking about enforcement, should it be tougher? Should it be tougher? More flexible? Focus on individuals, focus on corporate responsibility. And I'm way oversimplifying it, but big picture themes that way. Or, on the regulatory side, we should be highly regulatory in these areas to address these problems that we're seeing in this area of the market.

Colleen Mahoney: We should be more aggressive coming up with ways to regulate the municipal securities market, or we should be more aggressive in this area. Or we should pull back from this area, so they can set out those big picture concepts. And then there's the smaller picture, how decisions are made, and as I said, Richard would put us all in a room and we'd wrestle it down to the ground and spend hours and hours on it, and Arthur was like, "Okay, what are we going to do?"

Colleen Mahoney: And you spent less time making decisions, and you had a more practical ... I don't want to say Breeden wasn't practical, they just came at it in different ways. It's the difference between a client who is a business person, and a client who is a lawyer.

Harwell Wells: So, in 1994, then you left the executive assistant position, and went and became deputy director.

Colleen Mahoney: Right.

Harwell Wells: Of enforcement. I suppose, why that move?

Colleen Mahoney: Well, I wanted to go ... I loved being in the enforcement division. And, Arthur was all setup, ready to go. And doing, again, much like I liked going to enforcement after the general counsel's office, I was anxious to get back to the enforcement division after spending time being chief of staff. And I wanted to get back to doing cases, and that was how it came to pass.

Harwell Wells: So, you were the first deputy director-

Colleen Mahoney: Not the first.

Harwell Wells: No, the first deputy director in about 12 years.

Colleen Mahoney: Yes.

Harwell Wells: That is, the title hadn't been used since Wallace Timmeny, I think, in the 1970s.

Colleen Mahoney: That's right, Wally Timmeny.

Harwell Wells: So, how did it come about that you resurrected the title, or you were named deputy director?

Colleen Mahoney: I guess there are two things. First of all, the division had gotten much bigger over the years, so it was helpful operationally to have somebody who functioned as a deputy to the director that could help the director oversee the associate directors, the chief counsel, and the like. Somebody who was committed to that versus just getting their cases through and stuff like that. So, that was the role that I hoped that I would be able to play with Bill. And, then there's the practical aspect of it.

Colleen Mahoney: The associate director groups have a big infrastructure underneath them. There's the associate, the assistant, at that time there were branch chiefs, and to fill an associate ... to become an associate director, one of those associate directors had to leave and then you would inherit that structure. Well, all the associates were in place, so I didn't want to be an associate without a portfolio. I wanted to bring cases, I wanted to be involved in cases. So, being deputy director enabled me to be involved in helping run the bringing of cases, and fill a need with the additional management responsibilities given the increased size of the division.

Harwell Wells: But it sounds like you did have to craft or develop the role to some extent.

Colleen Mahoney: Yes. Although, it was pretty easy. Bill and I had a good working relationship and had worked together as chief counsel, and as large as the division was, it wasn't that ... it was structured, but it wasn't ... it didn't require a lot of finding my way. It came pretty easily.

Harwell Wells: Okay. Can you talk a little about working with Bill McLucas?

Colleen Mahoney: Oh, we had so much fun. It was a great adventure, and I say we, Bill, myself, the associate directors, the chief counsel, the group, we called ourselves the front office. Right? And we thought we were fabulous. And, we were all like-minded people who had spent lots of time at that point at the SEC, and Bill is a good inspirational leader, and ... many people in the group with good senses of humor, good work ethic, and it was a great adventure. We were all on a mission together. Every day.

Harwell Wells: What were the priorities of the environment division while you were there?

Colleen Mahoney: Well, priorities, when you're dealing with enforcement it's an interesting concept because in enforcement you're more reactive than proactive, unlike the regulatory divisions, let's write a rule to solve this problem. In the enforcement division, your cases organize themselves around what's going on in the market.

So, the market surveillance people pick up a lot of trading before a significant announcement, so you break that down and do an insider trading case.

Colleen Mahoney: You don't wake up and say, "I'm going to do an insider trading ..." They sort of come to you that way. Or in the financial accounting and reporting area, companies restate or announce that they've got to correct an error, and then you just make a judgment about whether there should be an enforcement action. Or, the people in Corp Fin review a company's filings or get involved in a transaction and see that there's something amiss and they bring it to you, or the exam folks do an exam of a broker dealer and they see that there's a problem, and you help address the problem.

Colleen Mahoney: So, or there's a situation where you learn of customer losses for one reason or another. And you go out and investigate the causes of that. So, some of that's reactive. I think what you also try to layer on top of that are an organized effort to attack specific problems you're seeing in the market. So, there were a lot of bank issues at the time, so we had a financial institutions task force that was focusing on bank filings and bank regulatory disclosures.

Harwell Wells: Was that coming out of the S&L crisis? Or is this something different?

Colleen Mahoney: Yes, yes, that was coming out of the S&L crisis. So, we had that group. I think that has now evolved tremendously to the division organizing itself. They have many more subject areas and specialty groups, which I endorse. At the time, we were not that big that we needed that many groups. So, long answer, you react to what you see. If you want to make sure you send the message that you're particularly on top of a problem area that you're seeing, you organize a group that indicates that they are paying special attention to it.

Harwell Wells: Okay.

Colleen Mahoney: Okay?

Harwell Wells: One of the interesting things about enforcement is that it's always resource constrained.

Colleen Mahoney: Always.

Harwell Wells: That it's always surprising to realize the number of enforcement attorneys, especially given the huge responsibilities of enforcement, numbers in the hundreds or maybe low 1000s. And given that, of course, problems show up and you have to address them, how do you make decisions about directing those resources the way they're ... so that they'll have the best impact?

Colleen Mahoney: There's no art or science to it. You just ... I don't have a smart answer for that question because you see what you've got, and you decide we're going to investigate that, and you're not cost constrained the way you are when you're



putting together a team to represent a client, and their issues about how big the bills are going to be. So, you're not cost constrained in that way. But you just try to make the judgment based on who's available, who's done these kinds of cases before, the geography, is it better handled in DC or in one of the regional offices?

Colleen Mahoney: You do it like that. One other thing I should mention that wasn't something that evolved while Bill and I were there, is that's when the internet started. Which feels very quaint to say we lived before that in a world with no internet. So, we had to figure out well, what does this mean? In two different ways, that we were seeing that people were using the internet as a way of facilitating financial fraud. So much easier to post something on an internet, on the internet and say, "People, give me money", than running around trying to con people out of money.

Colleen Mahoney: So, there were all these investment scams that were being run through the internet, and we were trying to figure out how do we find them, how do we investigate them, how do we deal with that? And then there was the question of how do we allocate access to the internet among the people on the staff, which also sounds so antiquated. But we had to decide who would have a computer with internet access? And who would have a computer, number one, who would have a computer with internet access? Should internet access, should only the senior people have internet access because the junior people would be distracted by it? Or does that make no sense because the senior people ...

Colleen Mahoney: Bill and I couldn't really figure out how to use it for the longest time. Should it go to the younger people? The junior people who actually know what they're doing? And, we had the conversation over the course of months, but it really very quickly was like, everyone's going to have the internet. Everybody gets a computer, everybody has the internet, let's go. And John Stark decided he would organize and try to bring us into the 20 whatever century, he would make us more modern and teach us all how to use the internet, and we finally caught up with the rest of the world.

Harwell Wells: And I also would like to ask you a few questions about the specific matters that you happened to be quoted in the media on as dealing with. And one was the Gibson Greetings Cards case.

Colleen Mahoney: Right.

Harwell Wells: Gibson had gotten involved with a variety of derivative deals, bankers trust, and they blew up, and obviously the enforcement division wound up involved.

Colleen Mahoney: Right. So, the bankers, it starts with Bankers Trust. Which was selling derivatives to a lot of its clients. And had a taping system on its phones that we, the enforcement division, got access to. And was able to listen to them talking

about how they were communicating with their customers about the value of some of the products that they were selling.

Harwell Wells: I'm sorry, talking to the customers? Or actually talking to one another within the bank?

Colleen Mahoney: Well, they would talk to each other ... well, first it would have them on the phone with the customer. But then it would also have them on the phone with each other saying, "Oh, guess what we did?" And, so that led to a case against Bankers Trust. But it also led to a lot of other cases including Gibson, where the issue was whether, notwithstanding the fact that Bankers Trust had perhaps given them information about the value of their positions that wasn't correct. That Gibson Greetings itself didn't have the controls that it should have had to properly value their position.

Colleen Mahoney: So, it was interesting. And derivatives were new and different. Not so new and different anymore. But they were sophisticated products, and Gibson Greetings was an old sophisticated company in its business space, but not so much in its security space.

Harwell Wells: And I believe you also worked on a number of the auditor and independence cases.

Colleen Mahoney: I did. And those cases come up and continue to this day. Again, it wasn't a particular "let's bring independence cases," but information, and I don't even recall how any of those particular cases came to our attention, but it was a topic that when we saw it, we felt we needed to do something about.

Harwell Wells: And in connection with that, I want to ask, I don't know if you had left the commission by the time Chair Levitt gave his ... I'm sorry, the numbers speech.

Colleen Mahoney: That happened right after I left.

Harwell Wells: Okay.

Colleen Mahoney: Right after I left.

Harwell Wells: I didn't know if that had been an issue beforehand, and he only brought it public afterwards, or it was after you departed.

Colleen Mahoney: That's after I departed. And, lucky for me, because it was a speech that announced the fact that the commission was going to be looking at public companies more broadly, with focus on their accounting and disclosure more than we, the commission, had done in the past. And I had arrived at Skadden, and part of the reason I came here is because we had a big public company client base, and thanks to that speech I was introduced to a lot of our corporate

clients. Like what does that mean, they're going to focus more on us? What should we expect?

Colleen Mahoney: So, it helped me become needed early on, for interpreting what it meant when the Chairman gives a speech like that, and you're a public company.

Harwell Wells: And I should ask one more question about when you first came over to enforcement, I should've asked earlier, which is at the time you moved to ... became deputy director, the Washington Post did describe the enforcement division as the most macho division. And I didn't know if you had perceived that, or if that was ...

Colleen Mahoney: No. As I mentioned, there were lots of women in the commission, and there were lots of women in senior positions in enforcement. And that was its reputation. And I think maybe their numbers were different than the numbers in the other division. But if you combine the number of women in the regional offices with the number of women in Washington, like most things, I think this issue was a little bit overstated.

Harwell Wells: Okay. So, we've already discussed Bill McLucas, and Arthur Levitt a bit, and I wonder if there are other, and you've named a number of other people whom you worked with over the years. Are there other individuals who come to mind as very important? Or just very memorable at the commission? Because we talk about the directors, the divisions, we talk about the Chairs...

Colleen Mahoney: Right.

Harwell Wells: But we'd like to understand as well, other people that added a little, or added a great deal to the commission who didn't perhaps reach those positions.

Colleen Mahoney: I go back to Linda Quinn, but I realize that you said I should be answering the question with somebody other than a director.

Harwell Wells: No, whoever ... no, no. Whoever comes to mind or is important to-

Colleen Mahoney: She was ... I think she was important to many of us, men, male, female. Because she set ... she was incredibly smart, very rigorous in her approach to problem solving, and extremely articulate. And just, completely committed to the mission of the agency. And she passed away, and we all miss her tremendously, but she not only played a significant role for many of us in our time at the SEC, but my kids loved her. Linda was just a really important person.

Colleen Mahoney: Another person I will mention who was the head of an office, but I think deserves more of a shout out is Michael Mann. I don't know if you've spoken ...

Harwell Wells: I believe he ... I believe there's an interview with him...

Colleen Mahoney: So, Michael Mann-

Harwell Wells: ...by the Society.

Colleen Mahoney: ... he really changed the game, and what an entrepreneur. It became clear that for the program to be effective, that the division had to be able to get information from overseas, from overseas regulators, and had to persuade them, and create a legal framework for information to be shared, because the markets were globalizing to the point where to do an insider trading investigation, you needed to be able to get bank records from all over the world, or phone records, or other types of documents and information. And he just created this framework out of nothing.

Colleen Mahoney: And it was a combination of very smart legal thinking, but also a lot of entrepreneurial type thinking. Like let's call these regulators and explain to them why it's good for them to have this relationship with us. And, we'll share back, but frankly we needed them more than ... they didn't have big enforcement programs, so whatever we offered to them ... we needed them. And just by force of personality, and he just put this whole structure together that made just a huge difference in the way business is done, and that is still an important part of the framework.

Harwell Wells: So, I know in 1998 you took on one last role at the SEC, acting as an acting general counsel.

Colleen Mahoney: Right.

Harwell Wells: What led you to that position?

Colleen Mahoney: I was only acting general for about 10 minutes, I think. Harvey Goldschmid had been appointed general counsel, but needed to wrap up his responsibility at Columbia. So, there was a gap of several months. Dick Walker had been the general counsel, so he went down to run enforcement and I was the acting general counsel for a couple of months. I had already decided to leave, I was already going to Skadden, all of that was known. So, I did that job for just a couple of months.

Harwell Wells: Okay. Why decide to leave in 1998?

Colleen Mahoney: I had originally come to the SEC thinking I would stay for two or three years, and have the professional experience and have the ... get the learning that the SEC had to offer, and then return to private practice and have a securities practice in Washington. In Washington at the time, there really wasn't much reason why a client would come to DC to consult with a securities' lawyer, other than if they had an SEC problem. There's no real business community that generates clients.

Colleen Mahoney: Like if you're in New York, you're right down the street. But to say, "I'm a securities' lawyer. I'm in Washington," why would they hire me unless they had an SEC issue? So, I thought I needed that credential, to go for two or three years. Obviously I stayed much longer because I was learning so much and having such a good time. But come 1998, my kids are getting older, what if they want to go to college? How's that going to happen? So, it was time, and there were financial ... I just, it was time.

Harwell Wells: Why choose Skadden? Or, as part of a general question which is, what might attract someone to one particular law firm?

Colleen Mahoney: I liked that Skadden had a New York practice with a big Washington office. I was geographically committed to DC, but I thought Skadden would offer the New York corporate client base to somebody who was still committed to DC. That was the first thing. But it was also ... I talked to lots of different firms, and I talked to firms with lots of SEC people, I talked to firms with no SEC people, big, small, medium size, and I thought what Skadden really offered is it didn't have an SEC practice, which made it entrepreneurial, build your own thing. But at the same time, it struck me as a low risk proposition because they did have a big enough corporate client base that I could draw work from the platform in addition to whatever I could bring in on my own.

Colleen Mahoney: And they felt that they were not capturing as much of the SEC enforcement work for their existing corporate clients because they didn't have someone who specialized in that area. So, that was the logic.

Harwell Wells: So, the career path for a lot of securities lawyers is spend ... and I know there are people who obviously spend their entire career at the SEC. But plenty of people spend time at the SEC, then move into private practice, and some people criticize the revolving door. Some people think it's a very productive way to spread knowledge. And I'm curious about your take on it.

Colleen Mahoney: I vote for productive way to spread knowledge. No, I understand the concern that the whole revolving door discussion focuses on. And there are speed bumps built in, or barriers built in. So, after you leave the SEC from a senior level, you have to wait a year or two, depending on your role before you can go back and appear before the SEC on behalf of a client. And that helps remove the appearance that you walk out the door and then you're across the table from your best friend or someone who worked for you, and that somehow leads to a deal that's not on the merits.

Harwell Wells: Yes.

Colleen Mahoney: So, I think that building in time helps remove that perception. And I think that's a good thing. On the flip side, I think the fact that clients want to hire people who have worked at the SEC, and know how it works, is a very normal thing. And what I think is left out of the revolving door discussion is how much clients

want, and I think need, the advice of somebody who knows how the place works from the inside. And there's no substitute, there's no way you can know it without having worked there.

Colleen Mahoney: So, it doesn't surprise me that the door revolves. I think it leads to a better process on both sides. And I think the prophylactics that are built in with the cooling off periods and things like that, address the concern.

Harwell Wells: Okay. So, you join the SEC in the early '80s, you left it 15 or 16 years later in the late '90s. How did it change during your time there?

Colleen Mahoney: During the time, while I was there?

Harwell Wells: Yes. Between the day you walked in the door and the day you left.

Colleen Mahoney: Bigger, and we talked about the Remedies Act, the range of choices was much greater. So, the enforcement division was tougher because there were more people in enforcement, and because what the enforcement division could do was much more impactful. I think the relationship during that period of time with criminal prosecutors, particularly in the southern district, became more effective at dealing with certain kinds of misconduct, and there had always been a good relationship but I think the relationship was really fortified such that for some of the penny stock frauds, and some of the other behavior that really required a criminal effort in addition to a civil effort, I think we were a good ...

Colleen Mahoney: We, the SEC, was a good source of leads and cases for the southern district, and the southern district also, by being with us on things, helped increase the leverage that we had on the SEC side to get people in line. So, I think those are the changes from an enforcement perspective. On the regulatory front, again, one of the reasons I think the SEC remains effective is the swings of the pendulum aren't huge. The enforcement division generally ... it's not like no enforcement, then lots of enforcement. It's not no rules, then lots of rules. The spread between the high and the low is very, very narrow. So, that level of consistency, I think, is very ... helps make it a more effective agency.

Colleen Mahoney: And makes it a good place to work. So, on the regulatory side, there were little swings back and forth, and what areas the agency became more or less regulatory, but see change? No.

Harwell Wells: Did you move to the other side of the table, now doing defense against securities and enforcement, if I understand your practice correctly?

Colleen Mahoney: Yes.

Harwell Wells: Did that change? And now having done it for 20 years, has that changed your view of the SEC?

Colleen Mahoney: Has it changed my view of the SEC? No, not really. I think the cases that they are bringing, and the investigations they're doing, have gotten more complex. And therefore, doing the defense of those cases has become more complex. That also means more interesting, more challenging. The markets are much more complex today than they were before, and the agency works hard with its limited resources to keep up with that. And on the defense side, we got to keep ... they got to keep up with us, and we have to keep up with them.

Harwell Wells: So, thank you so much for taking the time.

Colleen Mahoney: Sure.

Harwell Wells: I want to close by asking, is there something that we haven't discussed, that you think should be recorded, or that we should know about either your time at the SEC? Or about the enforcement division in the SEC in general?

Colleen Mahoney: No. I worry I've forgotten the name of somebody who mattered the world to me, and I'm going to wake up in the middle of the night and say, "Oh my God." But nothing comes to mind.

Harwell Wells: Well, thank you so much for taking the time. We appreciate it.

Colleen Mahoney: Okay, thank you.

Harwell Wells: Thank you.