

SEC Historical Society
Interview with Barbara Black
Conducted on June 7, 2022, by Kenneth Durr

Ken Durr:

This is an interview with Barbara Black for the SEC Historical Society's Virtual Museum and Archive of the History of Financial Regulation. Today is June 7th, 2022, and I'm Kenneth Durr. Professor Black, so good to talk to you today.

Barbara Black:

It's great to be here, Ken. Thank you.

Ken Durr:

I really appreciate the opportunity. This is a little out of the ordinary for the kinds of discussions we have. So, I'm really looking forward to talking about the arbitration clinic. But framing it in some other parts of your career.

Barbara Black:

Sure.

Ken Durr:

By way of doing that, let's go back to the beginning and talk about your undergraduate education and when you started to think about law.

Barbara Black:

All right. I went to undergraduate school at Barnard College in New York City in the 1960s, so that was a tumultuous time to say the least. The Vietnam war protests and campus disruptions. I was a liberal arts major. And like many liberal arts majors--and I actually do not recommend this, but I did it--I graduated and I didn't know what to do with my life. So I thought, why not go to law school? And so I did. I entered law school in 1970. I had very little knowledge of law. Again, I'm not recommending this to people today. But I had very little knowledge of the law and frankly, even less knowledge about business law. But there I was at Columbia Law School in 1970. And I loved law school. I loved many of my professors. I enjoyed the Socratic teaching method. And my interest in business law, corporate, and securities, really stems from my experience at Columbia. I had some very fine teachers, William Cary, who had previously been SEC Commissioner. Harvey Goldschmidt, who later became an SEC commissioner. And so that was my introduction to corporate and securities law.

Ken Durr:

So people like William Cary, Bill Cary, made a difference, I guess.

Barbara Black:

Yes absolutely. Absolutely. He's one of the really great figures in corporate law and a real public servant, what he did as chair of the SEC.

Ken Durr:

So did you decide to get into securities law at that point?

Barbara Black:

Yes, I did. I enjoyed it. I liked the technical aspects of the law, the reading of the statutes, the reading of the rules. There are also obviously very many significant policy issues, but I think I got into it initially because I did like trying to figure out what the statutes meant and what is a security anyhow? I found that very intriguing.

Ken Durr:

Yes. So it sounds like this fed into some of the things you did as an academic later on, which we'll get to. But you went into practice.

Barbara Black:

I did. I went into practice and I had what I think in the 1970s was a very typical junior associate experience at two law firms, one in New York City, one in Washington, DC. Some of the work was interesting. A lot of the work was not interesting. But I was fortunate, I got to work with some really fine lawyers. I worked with Barbara Thomas-Judge, who later became an SEC Commissioner, and I know you've interviewed her. She recently died, but I know you interviewed her for this project. I worked with her at Kaye Scholer in New York. In Washington, DC, I was at Rogers and Wells and I worked with John Liftin, who had previously been Director of Market Regulation at the SEC, and I know you've also interviewed them. So I think it was a good learning experience.

Ken Durr:

And there should be a comma at the end of that or something. A good learning experience, but. What turns somebody in the direction of moving toward academia in your experience?

Barbara Black:

I think, Ken, if you talked to almost everybody who made the move from practice to law teaching, a common theme would be, we loved law school. We really loved learning in law school. And we loved the way we were taught in law school. Many practitioners, many very fine practitioners do not have those same feelings about law school. But I found it so intellectually stimulating. And I think another probably key theme is you go into academia because you want to think deeply, you want to dive deeply into areas of law that interest you in a way that you simply can't do if you're in practice. You're on a clock, right? You're going to bill a client for your time and you can't go down the rabbit hole and look at things that strike you as interesting or unusual. So I think that's it. I enjoyed the experience I had at law school. And I wanted to think more deeply about areas I was interested in.

Ken Durr:

I'm also looking for influential experiences. And you had a little interlude where you were with the Association of American Law Schools? Is that right?

Barbara Black:

Yes.

Ken Durr:

What did you get out of that brief experience?

Barbara Black:

I learned a lot about different kinds of law schools. I went to one law school, obviously I went to Columbia as a student. And then at that time I had taught at one law school, Pace Law School, for a number of years before I went to the Association. So it was a way of seeing how other law schools operated. I met a lot of academics. You learn more about the operational issues that face law schools; financing, outreach to students. So it was a good rounding experience of thinking about something else rather than simply thinking about the law.

Ken Durr:

Okay. And you'd gotten a grounding in academia already by being at Pace. Let's talk a little bit about those first few years. The program was fairly new when you came in, is that right?

Barbara Black:

Yes. Yes. I joined the faculty at Pace Law School in its third year of operation. I was part of a rather large cohort of new faculty members, most of whom, like me, were new to academia. So as you can probably imagine, it was somewhat of a chaotic experience. We were all trying to figure out what we were supposed to be doing. We all came to Pace with our own idea of what law school should be like, based on our experience with the only one we knew. The university had an excellent business school, but having a law school was new to it. And there are differences between a law school and a business school. So as a new faculty member at a new law school, you spend a lot of time on administrative issues, which nobody, frankly... well, I guess some people enjoy it, but most people don't go into academia because they think "I want to do administrative work." Some people probably do, but certainly not me. And so that was challenging.

Ken Durr:

So you're talking about how to structure the program, things like that.

Barbara Black:

Yes. How to structure a program, you set up committees that sort of thing. Law schools, the theory is that the faculty run the law school, people think that it's the Dean, the Dean is like a CEO. But actually, it's supposed to be a faculty-led institution. And so you have to have committees to recruit faculty members, to recruit students, for all kinds of things like that.

Ken Durr:

And in the meantime, you're starting to do some publication. I think you'd probably been doing some already.

Barbara Black:

Yes.

Ken Durr:

And it looks like you were really just picking up really interesting pieces of securities law and writing about them. Can you generalize about some of that early work, early academic work, that you did?

Barbara Black:

Yes. I was in academia then and I was writing for academic journals, but I was coming to it very much influenced by my experience in private practice. And I focused on real world issues, the issues that were really current and important in the securities law field. I like to think that I write in a very clear and concise style and I owe that again to my experience in private practice. That is one of the things at a good law firm you learn. You learn how to write clearly and concisely. So yes, I think that was... And I tried to look for answers. I tried to find solutions. I recall some of my colleagues criticized some of my writings because they said they weren't theoretical enough. And that's probably true in some instances, but what I was interested in, again, real life problems, and trying to find some solution. I think at my heart, I'm a very practical person.

Ken Durr:

Yes. Having read a lot of legal journal articles, yours stood out, I think. Certainly the early ones, because you were making recommendations. This is the way the Commission should look at this.

Barbara Black:

Exactly. Yes.

Ken Durr:

Well, let's get to one of the most important ones. In the early eighties, you did something on fraud on the market.

Barbara Black:

Yes.

Ken Durr:

And let's talk about that concept. Let's talk about how you handled it, what your point was, and where that article went.

Barbara Black:

Okay. So under the common law of tort--which is actually the underlying foundation of federal securities law, it's essentially a tort action of fraud or deceit. And under the common law principles, a purchaser of securities had to prove three elements. One, that the purchaser relied on a misstatement about the security. Two, that the misstatement was materially false or misleading. And third that the misstatement caused his injuries. Now by 1984, federal securities class actions were coming into their own. They were a way where you could have a class of small purchasers who had purchased stock in a corporation. And their individual damages claims would not be large enough to make it financially worthwhile for them to bring an individual action. So the notion was to combine them in a class action. Now, the problem with that was, again, this notion of reliance, did those purchasers have to individually prove that they relied on a corporate misstatement? And in most of these cases, they were purchasers.

You can have class actions with sellers of stock. But the typical case is someone who purchased the stock at a time when the corporation had allegedly made misleading statements that inflated the price of the stock. So they were saying, essentially, "I paid too much for stock. It wasn't worth what I paid for."

If these purchasers had to prove individually that they read that statement and then relied on it, well, we wouldn't have a class action. And let's face it, most purchasers of stock don't read those corporate filings. Why should they? That's why you have brokers or investment advisors. They're supposed to be advising you about what stocks to purchase. So in my view, purchasers shouldn't be... I mean, if they want to read them, fine, but I don't think it's a prerequisite to bringing a claim and establishing that you've been damaged by it.

That was the situation in the early 1980s. Can you have federal securities class actions? Which again, if we don't have those, these small investors are not going to be able to recoup their damages. And how are we going to then deal with this question of reliance? So it's a pretty intriguing issue. And that's where the fraud on the market notion came up. That false information—fraud on the market—can be expressed in a lot of different ways. You can make a fair argument. Maybe it's not a theory at all, because it can get pretty diffuse. But the conventional thought, I think, on this is that allegedly false information made by the corporation is embedded in the price of the stock.

And so every purchaser who purchased that stock at that inflated price could be said to have relied on it. So that's the fraud on the market theory. And then the question was, what does the Supreme Court, which is the final arbiter on federal securities law issues, think about this?

And so, in 1988, the Supreme Court in a case called *Basic Inc. against Levinson* adopted a version of the fraud on the market theory and said that purchasers could take advantage of a rebuttable presumption of reliance. And that would allow the federal securities class actions to go forward. And what was great for me as a young academic at that point is that both the majority and the dissenting opinions cited my article, which was pretty cool.

Ken Durr:

And what was the article's contribution? Was it a descriptive work on, this is what fraud on the market is? Or were you laying out that it was a bit of a grab bag?

Barbara Black:

Yes. So it really was a deep dive into what the theories out there on fraud on the market were, the various approaches. For example, the approach that the Supreme Court took was this rebuttable presumption of reliance. You can also argue fraud on the market to a stronger position, which is you don't have to show reliance at all, all you need to show is essentially causation. That the information was in the stock, in the price of the stock, and so you were damaged by it. And just throw out reliance. I think there's a good argument logically, that makes sense. And that's what my paper played around with. I didn't actually go to that extreme, the strong version... Let me say strong and not extreme. I didn't go to that strong version. But I said it was out there and it's a possibility. Instead, I really ended up where the Supreme Court did, saying, you know what makes sense is a rebuttable presumption of reliance. Although again, there are all kinds of issues about how do you rebut that presumption, which is an issue which I think still hangs out there.

Ken Durr:

And you went back and revisited that subject after the Supreme Court case, right?

Barbara Black:

Yes. I couldn't let it go. I wrote another article to see what courts had done after the *Basic* case. What I really came up with was they were doing all kinds of things. And again, it was a good theory. It was more a label. It was more a label that could be applied to various situations, and courts were becoming more comfortable with what kinds of situations those were. But is it a really coherent theory? Probably not. It was fun. And my timing was really great because when I wrote that article in 1984, not much had been written about fraud on the market. And so when the Supreme Court got the case, they were looking around at the literature, who's written about this, what is there out there? And so they found my piece and as I said, it was quoted by both the majority and dissenting. So that was cool.

Ken Durr:

Yes. So at the same time you're teaching. Talk a bit about the challenges and some of the gratifications of teaching. I guess you taught corporations and some other the basic courses.

Barbara Black:

Yes. I taught the basic contracts course, I taught corporations, and I taught securities regulation. Again, going back to somebody who really found law school interesting. I think one of the things that was hard for me to get used to was that a lot of students don't find corporate law all that interesting. That was like, really? But it was true. And so I found--and I do think I got better at this over the years--ways to make it more interesting and more accessible to students. Tie it in to things that were going on, newspaper headlines. Certainly in with the tech crash in 2000, 2001, there was a lot to talk about. And also, I always thought that even if students didn't share my fascination with the subject matter, they should have a firm grounding in the principles of the law.

And in corporate law and securities law, that's usually statutes. You start with statute. You've got case law too, obviously. But you've got to start with statutes. You've got to start with reading statutes and what do they mean? And particularly corporations. Almost every student will take corporations because they know it's on the bar. They know they have to know some corporate law for the bar.

And so I wanted to honor that expectation of theirs by really drilling down deep into the corporate statute, which, when I taught at Pace, was the New York statute. When I taught at Cincinnati, that was the Ohio statute.

Now I have to say, a lot of my colleagues have the notion that you shouldn't dumb down the material. You should make the students work hard to understand the material. That was tough love, I guess, that's good for them. I tried to do a balancing act. I didn't want to make it simplistic, but I did want to make certain, as much as I could, that they could read the statute and understand what it meant. So that's a balancing act.

Ken Durr:

At the same time, you are in a fairly pioneering group of women who are teaching corporate law.

Barbara Black:

Yes.

Ken Durr:

There weren't a lot of you out there at that point. Who were some of your contemporaries? Did you talk? Did you meet at conferences? That sort of thing?

Barbara Black:

Yes. There was Roberta Karmel, also an SEC Commissioner. Margaret Sachs, who was teaching at the University of Georgia. She came in a few years after me. As you say, there were not a lot of us, but we did run into each other at conferences. And that was helpful.

Ken Durr:

In what way?

Barbara Black:

Just to know there were other women who were going into the corporate and securities area. I know when I was at Kaye Scholer as the junior associate in their corporate law department, there were only three women in that department. Curiously, all of us were named Barbara.

Not surprisingly I guess, as you had practitioners moving from practice to academia, there weren't so many women in the corporate securities area. And I think we all, to some degree—me not as much as others, but to some degree, we encountered some resistance that these weren't the kinds of courses that women were competent to teach. Oh, as we were talking, I remembered: Cynthia Lichtenstein, who taught at Boston College law school, was another early pioneer. And I remember we had discussions about this topic as well. So I think just reinforcing that, yes, there is a place for us here. We know what we're doing. We know what we're talking about. We shared drafts of articles. I should say also, I had many colleagues who were men, who were also very generous with their time and would read drafts of articles.

I don't want to suggest that wasn't the case, but it provided some comfort to know that there were other... I remember, actually, this wasn't a corporate law issue, but very early in my time at Pace, there was a conference at Cincinnati, as I recall, which was for women teaching in law schools. Not just corporate women, but all women who are teaching in law schools. And there are other programs like that. That's the one that comes to my mind immediately. But, just being able to talk about what it was like to be teaching at a law school, which traditionally is a very male-dominated field, although it was becoming otherwise.

Ken Durr:

Right. Well, let's do some of what you like to do, which is talk about the ideas and the concepts.

Barbara Black:

Okay.

Ken Durr:

And we get into arbitration here.

Barbara Black:

Yes.

Ken Durr:

But before we start talking about your experiences and what you did at Pace, I want to get the context so that we have a sense of what's at stake. So these are predispute arbitration agreements that we're looking at. Let's talk a little bit about the back history there.

Barbara Black:

Okay. So you're a customer, or let's say you're an investor. You want to buy securities, so you're going to go to a broker-dealer and open up an account. And in opening up that account, you'll sign a customer's agreement. It's a standard form contract obviously. It's got a lot of boiler plate language in it. You're probably not going to read it. And it's going to have a clause in it, the pre-dispute arbitration agreement, which is going to require you--if you have any dispute with your broker it's going to require you to go to arbitrate that dispute in an industry-sponsored forum, which essentially is what was for a long time called NASD, and is now FINRA, and that's the self-regulatory organization for broker-dealers.

Ken Durr:

Right.

Barbara Black:

So you've entered into this contract with them in advance of any dispute arising saying that you will arbitrate this in FINRA. Now in 1987, the Supreme Court, in a case called *Shearson American Express versus McMahon* held that these pre-dispute arbitration clauses were legally enforceable. This was a big deal because the Supreme Court had earlier ruled that they were not enforceable as to federal securities claims. So, they reversed themselves. They overruled their prior precedent. So after *McMahon*, broker dealers know these clauses are enforceable. And so essentially, FINRA became, de facto, the exclusive forum for deciding these cases whenever customers of a broker-dealer had any dispute with that broker-dealer about their account.

Now, at the time that *McMahon* was decided in 1987, many academics, including me, as well as investor advocates, thought *McMahon* was wrongly decided. It was really seen at that time as an anti-investor decision. Investors had deep suspicions about industry bias. Remember, this is a forum that's sponsored by the regulator of broker-dealers.

Ken Durr:

Right.

Barbara Black:

So they had deep suspicions about industry bias, and also lack of transparency. They're confidential proceedings. You get an award that is public, but it has just bare bones information. It's not an opinion. It's not going to give you the reasons for the decision in most cases. So that was the lay of the land in 1987.

Ken Durr:

The commission did an amicus. It came in as an amicus on this decision though, right?

Barbara Black:

Yes, that was quite controversial because they came out in support of mandatory arbitration.

Ken Durr:

Right.

Barbara Black:

Contrary to their previous position, they had been persuaded that it was a fair forum and it could—I mean, that was the issue. Is it a forum that can handle these disputes and decide them in a fair way? And this Supreme Court said, “Yes, it’s essentially an alternative forum. And so it’s not taking away any rights.” That had been the argument, that arbitration took rights away from investors. It took away the right to have their dispute decided fairly. And the Supreme Court said, “No, really all they’re doing is just, they’re moving it from the court to arbitration.” And this was part of a trend we saw in the Supreme Court, a very pro arbitration, not only in the securities area, but in other areas. Get these cases out of the courts. We’ve got too many cases in the courts anyhow. Let’s get rid of those cases. They can go to arbitration. They can be handled there fairly. That was fine. But you’re right, the SEC reversed itself there.

So now, after *McMahon*, to its credit, NASD, later FINRA, made many changes. They continued to make many changes to the arbitration rules and frequently amended their rules, both to improve their procedures, make them more regular, make them more predictable, establish code, essentially, a procedural code, improve the procedures, and also to reduce the influence of the securities industry. So I have written many articles in which I argue that investors, in fact, have a better chance in securities arbitration than they do in the courts. Many investor advocates disagree with me on that. So, that’s just where it is.

Ken Durr:

So about ten years down the road, you’re contacted by the Commission about this idea for securities clinic. Tell me about the phone call, the approach, what your thoughts were.

Barbara Black:

Yes, this was in March 1997. So you’re right, it’s about ten years after *McMahon*. And the person who called me was Ron Long. At that time, he was an attorney in the office of the SEC chair, Arthur Levitt. And he called me up. I’d never met him before, never talked to him, but he said that Chairman Levitt was very interested in law schools setting up securities arbitration clinics. And as he explained it to me, he said the Chair Levitt had done a number of town halls throughout the country, talking to investors about what their issues were. And what he heard from them was that they had difficulty arbitrating their disputes because they were having difficulty in getting legal representation, particularly small investors. And therefore, that obviously influenced their view of securities arbitration, and their view of the fairness of it. So Chair Levitt thought, “All right, we got law schools there. This would be a good situation, a good opportunity for law schools to get involved,” and establish clinics.

So as I talked to Ron Long about this, I thought, this really appealed to me. It sounded like a really good idea. And first of all, I think, it tied in with my own interest in advocating for investors. And also, it could fill a need at law schools. At that time—and this continues to this day, I think—law schools are looking to provide their students with more clinical opportunities, in other words, skills training opportunities, not just learning the law, as I did. I taught corporations obviously, and I wanted them to learn the statutes, as we were talking about before. So they they're sitting in a classroom, they're learning the law, but really there are important lawyering skills, and law schools should play a part in teaching their students those skills. They shouldn't just assume that once they get out there and join a law firm or go to the DA's office, whatever, they're going to know how to negotiate, they're going to know how to do these things.

Pace was looking around for other kinds of clinical opportunities. We had a number of very fine clinics. We had a criminal defense clinic, we had an environmental law clinic, but as this was described to me by Mr. Long, I thought, wow, this would be an opportunity for students who perhaps aren't interested in going into litigation, but would like to have negotiating skills, they would like to have drafting skills, they'd like to learn a little bit more about securities law, and they could do it in a clinical setting. And so I thought, yes, and I signed up for it. I thought this is a good idea. And I have to say, I got tremendous support from everybody that I talked to about this. I got tremendous support from my law school. I have to give a shout out here. Vanessa Merton was, at that time, the director of the clinical program at Pace Law School, and she provided enormous assistance to me in establishing the clinic, was terribly patient.

I was not a clinician. I was not a skills teacher. And she was tremendously supportive of the clinic. The Dean of the law school at the time, Richard Ottinger, was very supportive of the clinic. New York City—I have to say I was fortunate in where the law school was located, because New York City has a community of experienced, highly qualified attorneys who specialize in securities arbitration. And many of them were generous with their time and sort of bringing me up to speed on what's securities arbitration and how it played out in the real world. And I had colleagues who were NASD arbitrators, and they were generous with their time as well.

Ken Durr:

These are a lot of pieces that you're describing. And I'm sure that you don't just bring them all together at once, but there's got to be a way that you're shaping this. Where did you begin? Is it simply trying to figure out what a clinical program looks like?

Barbara Black:

Yes. I knew I wanted to have the skills component. We wanted students to have an opportunity to meet investors and interview them. So, we also wanted to have a seminar component where they could learn. They did have to learn some law, obviously *McMahon* and some of the concepts we've been talking about, FINRA rules. So, it starts out with those. And also, I wanted to have—many of the clinics had a lot of credits. And how many credits you have determines how many hours it meets and gives a rough sense of how much work you're supposed to put into it. I wanted to have a clinic that was not so intense so that students who might not otherwise think they're interested in a clinical experience to get involved in one. Also, at that time, Pace Law School had an evening program, and I wanted to design a clinic that part-time evening students could participate in that wouldn't have the daytime time component that other clinics had.

Perhaps there'd be a hearing, and they'd have to do that during the day. But most people, if they're given enough notice, could arrange to take a day or two off from work to participate in a hearing. The rest of the work, interviewing clients, for example, could be done in the evenings or weekends. So first, it was sort of the structure of the clinic and how many credits, just sort of mundane things that academics worry about, how many credits, how many are going to be in the classroom, how many are going to be in skills training. And then I worked through that, again with Dean Merton. As I was saying before, she helped me a lot working through that.

I remember meeting with some SEC lawyers, and they had good ideas, about what we should cover in the classroom component, what should take place in the seminar. I did meet people from FINRA at this time. I met some people from FINRA. Actually, I went down, and I sat in on a few arbitration hearings. First of all, I wanted to get a sense, do I think students—again, students acting under attorney's supervision—would students be able to do this, or would it be too complex, too difficult for them? And I got a sense that with proper supervision and assistance, students would be able to handle the work. So, yes, I went down. I mentioned I met with some practitioners. They were very generous in letting me look at some of their materials and discussed some of their arbitrations with me. I would not have done it if I felt I didn't think it had a reasonable shot of pulling it off.

Ken Durr:

Right. The NASD would've had a program of some sort to train its arbitration people, I would think. Was that the case?

Barbara Black:

They do. Certainly, our students did not participate in that. We must have made some judgment that was not the best way of doing... Yes, actually, it's coming back me. Now that's done online. And if I was starting the clinic all over again, I might have the students just do that arbitrator training program online. At that time, it was in person. You went down to the NASD, you sat in a room and learned it that way. And my judgment was that we could do that. We could do that at Pace in the seminar. And as I said, I think we had some people from FINRA who came up and talked to our students about that.

Ken Durr:

So, I assume you got to be an expert on arbitration pretty quickly.

Barbara Black:

Yes, I did. I did. I got pretty familiar with it.

Ken Durr:

How did you like the experience? Was there ever a time when you said, "Oh geez, what did I get into this for?"

Barbara Black:

Oh, I said that many times. I said that many times, but I think it was a great experience for me. Selfishly, it accomplished what I wanted to accomplish, which it gave my scholarship a boost, gave me a focus, it gave me something I could really hone in on. After that, almost everything I wrote for a number of years involved small investors and protecting small investors. And so that was a great experience. I enjoyed

the skills training. I mean, it was nice to know. I felt I could still do it. I thought I could do a good job helping the students with that, again, with a lot of assistance from my clinical colleagues, but it was challenging. And the thing about running a clinic, I learned, is that many of the things can be unpredictable. In a classroom, you stand up there. You know what you're going to cover. These are the points you want to get across in this lecture.

In the clinical work, you don't know when that... The students have interviewed somebody on the phone, perhaps. It sounds like they might have a claim. You bring them in for an interview, but you don't know what you're going to learn. And then, let's say you interview that client, and you review—the students do a deep factual investigation. They do several interviews with the client make certain they understand, from the client's point of view, what happened. They'll do a deep dive into the account statements, confirmations, whatever other documentation the clients have, or I should say the investors, because they're not clients yet. They're prospective clients. But you never know, right? You never know what they're going to say.

You think that they've got a claim here, you take them on as a client. You have the students write and file a statement of claim, which is the arbitration equivalent of a complaint. And then you have to wait and see what story the broker-dealer is going to come back with? You may learn a whole new perspective from the broker-dealer. So yes, there are always a lot of things going on, and a lot of understandable anxiety among the students. For many of them, this is their first experience acting as a lawyer, and they'll need a lot of handholding, perhaps. So, yes, it was fun.

Ken Durr:

What kinds of students signed up for the clinic?

Barbara Black:

A whole variety of students, but I think in the main, the kind of students were what I had expected. We got students who were interested in business law. I remember we had some accountants. We had some people who had worked in the industry. And then we had other people. Other people just thought it sounded like an interesting area, or they wanted the clinical experience. As I said, we got part-time evening students who usually came with a different perspective. Most of them had a full-time job outside of law school in a whole variety of fields, and they were coming to the clinic with that experience. Many of them had high-level positions in other areas, so they came perhaps with negotiating skills, because they might have been in a situation where they had previously done negotiations, for example. So, yes, we'd try to get a good mix of students.

Ken Durr:

Did you find that you got a lot of folks who were really interested in investor protection, people who wanted to be advocates?

Barbara Black:

It's interesting. I don't think most students came in with that thought. They might not have an opportunity or thought about investors at all, but I think certainly many students were dismayed when they saw the conduct of some broker dealers in the industry.

And I mean, obviously there are good and bad apples in every profession. But in our work, we saw some broker-dealers who were not acting professionally, let's say. And that bothered the students. They said, "My gosh, I didn't realize there was so much fraud out there." Because when you're focusing, you're focusing on this area and you're getting letters from investors. One-sided presentations obviously. You're getting letters from investors saying, "My broker defrauded me." You are reading these; you're talking to these investors. Yes. A lot of them became very, very disturbed by what they were reading.

And we also had students, and I think this is what makes teaching so much fun. We also had students who looked at the investors and said, "Well, they were really stupid. Why did they do that? Why did they believe that broker? Nobody would believe that, that doesn't make sense." And so, you also have to spend a lot of time talking about empathy, put yourself in that investor's shoes. What do they know? Why are they relying on this broker? And so it would lead to good discussions.

Ken Durr:

How about those lawyering skills you talked about? What kinds of skills did this clinical experience bring forward?

Barbara Black:

Okay. We'd spent a lot of time, when setting up the clinic, thinking about what kind of experience they would get in this clinic. It's arbitration after all, it's not litigation. And so the rules of procedure, particularly when we first started in the clinic, were more informal. There's less reliance on judicial precedent. Arbitrators are free to apply equity, as long as they don't disregard the law, whatever that means.

And so, it's sort of like, well, is there enough substance here to make it a valuable experience for the students? And also, many of these cases settle. So student can be working on a case and it won't go to a hearing. We'll tell students up front, "We can't guarantee that your case will go to a hearing. You may graduate from the clinic without having a hearing. That's just the way it works out."

But we did think that there were plenty of skills students could work on. One, interviewing. Again, figuring out from the client what happened here. This can be difficult because the clients may come in and all they know, frankly, is that they lost money. They had money in an account and now it's gone. Well, did the broker defraud them or was this market risk? You win some, you lose some in the stock market. And so, this could have been market risk. The broker had to have done something wrong, that's what we tried to impress upon our potential clients. They had to either break the law or do something that was unprofessional, violated a duty that they owed to them.

And so, you could spend a lot of time, you do spend a lot of time, even with relatively simple cases, talking to potential clients about what had happened. That was an opportunity to really work on interviewing skills. How do you get the information from the client? How do you test their understanding without turning them against you? You don't want to nod your head, "Oh yeah, yeah, yeah. No, I understand. Absolutely. That's terrible what he did to you." But on the other hand, you don't want on the first interview start cross examining them. "What do you mean he said this? Did he really say that?" Maybe that's for the second or third interview.

Then there would be papers to go through. I mentioned before, account statements, confirmation statements, laying out the trail of what had happened. So interviewing, fact investigation. We did promise the students you always do at least one client interview, and many students did more than one. And you'll always have a significant research and writing assignment. It will either be you're drafting the statement of claim, in which you'll set out the facts, you'll set out why this particular client, in your view, is entitled to recovery and you'll set out a formulation of damages. So you draft a complaint.

Or if you don't do that, perhaps you'll do a memo or a letter. Perhaps a letter to the client explaining why you're not taking the case. "We've looked at this, we've looked at this. We understand your position is this. Unfortunately, we've concluded not to go forward with it." Those are things we could promise. We also spent a lot of time, because it was a clinic, talking about issues like time management and professional responsibility. Issues that come up all the time in practice, any kind of practice.

Ken Durr:

Okay. So when this clinic started up, you got a good bit of press.

Barbara Black:

Yes, we did. We did.

Ken Durr:

Yes. What was the result of that?

Barbara Black:

I remember I did an interview with CNN. We had a couple of articles in the *New York Times*. There was a lovely article in the chain of local newspapers in Westchester County, which is where Pace Law School is located, about the clinic. And when we were starting out, one of the things we worried about was where were you going to be able to get clients.

Ken Durr:

Right.

Barbara Black:

We're throwing a party, will anyone come? Because of that press, we got a lot of inquiries. In our first two years, we got 120 inquiries. I think that was higher than it became in subsequent years, because there's kind of a backlog there and we did get all that publicity. And we were getting letters from all over the country about people who wanted our services. And obviously we're in New York, we had to limit ourselves to cases in New York.

But we got a lot of press, a lot of potential clients. And it was also I think very good for the law school. For the students who were in the first few years of the clinics, the publicity validated their sense that this was a good opportunity. They made a good choice in signing up for the clinic.

Ken Durr:

You talked about getting support from people in NASD, the SEC perhaps, in teaching, in some of the classroom work. How did you get those people to come in? Was there an overwhelming sort of sense of duty? Could you provide them with some kind of experience or continuous education, or how did that work?

Barbara Black:

We provided them with nothing. I would call up people and ask them if they would come and speak at my seminar. And people said yes. The attorneys in private practice representing investors, the attorneys representing broker-dealers, they all recognized that the clinic was a good idea. They had all been in situations where they were on the other side of a case. Well, if you're a broker-dealer, for instance, you're on the other side of a case, where you have an investor who's representing themselves pro se, and that's a wild card. You don't know what they're going to say, what they're going to do. You don't know how the arbitrator is going to react to that person. It's somebody who's in an arena where they don't know the rules, the protocol.

So industry people thought, "Yes, this is a great idea. These people need help." And again, the private attorneys representing investors—one thing. We can talk about this if you like later, we felt we did not want to take any cases away from a private practitioner. So we had eligibility requirements, it's basically small amounts of money. And so, these attorneys who represent investors thought, "Great, I get these letters and phone calls from investors with a \$5,000 claim. I can't take that case. Now I've got a clinic I can refer it to."

Everybody that I talked to was very encouraging. And if you asked them to come up one evening, speak to the clinic, meet with the students, they were very generous with their time.

Ken Durr:

How about the students? What was the feedback after the first couple of years?

Barbara Black:

I think all the students thought it was a good experience. I think in a clinical setting, it depends a great deal on what you did, what was the case you worked on. I remember some of them were stressed out because it was a real-life experience. It was different from other experiences in law school. But I think, in fact, as I recall, everyone thought it's a positive. They were glad they had taken it.

Ken Durr:

You mentioned that when the SEC came to you with this idea, it had also come to others. Were there other law schools setting up these programs that you talked to?

Barbara Black:

I remember going to a meeting in Downtown Manhattan with SEC attorneys and a number of representatives from area law schools. And I think when I walked out of the meeting, I thought, "Well, I'm the only one who's going to start a clinic." Law schools have different priorities and different areas where they want to focus. And at some other law schools, perhaps, it wasn't what they had in mind. Fordham Law School opened a clinic very shortly after Pace did. There were a couple other law schools, Brooklyn, St. John's, in the New York area, that opened clinics.

I held a conference. I think it was '97. Fairly early on. Yes, I think it was '97. I held a conference inviting other law schools nationally. Inviting other law schools to come in and sort of, "You can do a securities arbitration clinic and we'll teach you how." And we got a few clinicians who came. And so, I think perhaps a few clinics opened up after that.

A clinic for a law school, clinical education is expensive. Because again, when I'm teaching corporations, you can put me, one professor, in a classroom, a classroom filled with a lot of students. And it's a very cost-effective way of teaching. Clinic, I think we had six to eight students in the clinic because you have to keep the numbers small. I mean, you're looking at everything they're doing. You're reviewing everything, you're sitting in on the client interviews. And so, it's a more expensive form of education, and law schools have their budget issues.

I tried to encourage law schools. Whenever anyone reached out to me over the years, I tried to encourage them and help them anyway in setting up a clinic. Some law schools did. At one point, FINRA had grants for seed money for clinics that they put out there. And at that time there were a number of law schools who took the seed money. Unfortunately, many of those law schools, after the grants ran out, chose not to continue the clinic. So we have not a whole lot of ... I want to say ten but that might not be the right number, but not as many as I think we needed.

Ken Durr:

Yes. Well, it sounds like at the outset, and aside from all these volunteers that you talked about, that you're kind of running this thing all by yourself?

Barbara Black:

I was running it all by myself. Yes, I was. I was.

Ken Durr:

When were you able to bring in some help, somebody who could carry the program forward?

Barbara Black:

Yes. Going into the third year, that's when Jill Gross enters the scene. Jill Gross was a private practitioner. And I recall this quite clearly. She sent me a letter outlying her credentials and her experience and said, "I've heard about what you're doing, this really sounds interesting. Is there a place for me in the program?"

And I remember I called her up and talked to her and I said, "I'd love to bring you on board. Unfortunately, I don't have any money." But we kept in touch, and we kept talking, and eventually we worked out a way to bring her in to the clinic, first part-time and then full-time. And when she came in, she actually had securities arbitration experience in private practice.

Ken Durr:

Oh, okay.

Barbara Black:

So that was quite valuable. And then over the years I was able to turn more and more of the responsibility over to Jill.

Ken Durr:

Right. Let's talk about the work you did. You got the opportunity to do an empirical study on arbitration in general. And you did it with Jill Gross?

Barbara Black:

Yes.

Ken Durr:

Was that the work you did for FINRA?

Barbara Black:

It was done under the umbrella of SICA, which is Securities Industry Conference on Arbitration, but essentially the funding came from FINRA, and at the time I believe New York Stock Exchange still had its own arbitration program. The money came from the regulators, although it was done, as I said, under the umbrella of SICA.

Ken Durr:

Okay. So what was the ask? What were they looking for?

Barbara Black:

All right. *McMahon*, remember we talked about that, was decided in 1987. And as I said, since then, mandatory arbitration. So by 2007 we had twenty years' experience of SRO arbitration, and yet there still was this raging debate about the fairness of the arbitration forum. Many investor advocates argued, and continue to argue, that securities arbitration is unfair. It's inefficient, it's expensive, and it's biased toward the securities industry. The securities industry on the other hand contends that the arbitration process works well. It's faster, it's less expensive than litigation, and it's fair to all the participants.

The debate at that time, in 2007, centered in particular on three aspects of securities arbitration. One, its mandatory nature. Two, the inclusion of one industry arbitrator on every three-person arbitration panel. And three, the lack of transparency in the process. Because as I explained before, while there are awards, normally, they don't usually give explanations. They set forth the claims made; the defense made. They'll say who won. They'll give any recovery, they'll state the recovery, but there won't be any explanation of how the arbitrators arrived at that decision.

And so, what Jill and I thought, so FINRA was thinking, SICA was thinking, that it's time to do a study of the fairness of the forum. And what Jill and I thought was missing from all the analysis and all the studies that had been done to date was any empirical research on perceptions of fairness to the participants, especially investors. And so that was the empirical study that Jill Gross and I did. We mailed out 25,000 surveys to participants in recent securities arbitrations involving customers. And we asked them a number of questions about that experience.

And so, you may ask, and it's a question we asked ourselves and focused a lot about, why are we focusing on perceptions of fairness? Isn't what we want to know whether or not it's substantively fair, whether or not the form reached the right result?

Well, as we thought about it, we realized there's really no way to determine that. First of all, the hearings are confidential. We couldn't go sit in on the hearings and make an assessment about whether it's fair. No explained awards, so we couldn't read the awards and figure out what they had done. And so we couldn't really figure out a way of really getting to the question of whether or not the forms are reaching the right result, because we don't know anything about the merits of these cases. I mean, if you wanted to determine that, you'd have to have substantially similar cases, and run them through the arbitration forum, and run them through litigation and see if you got the same results. That would show that arbitration, "Yeah, it's fair. It's the best they could do." Well, you can't do that because none of these cases are going to litigation.

So we thought about that a lot and we decided the only thing we think we can do that would contribute to this debate is just asking them, again through a series of questions, "What do you think about the process? What were your thoughts about the process?" And so, we asked them for perceptions about the attentiveness, competence, and impartiality of the arbitrators, as well as their satisfaction with the outcome. And in our survey, we had a 13 percent response rate, which is above average actually for a one-time mailing survey. So we were pretty confident in our results. And the questions, we formulated the questions with help from a research institute at Cornell University, which specializes in doing surveys, so we got expertise on drafting the survey.

Ken Durr:

Okay.

Barbara Black:

You want to know about our findings?

Ken Durr:

Yes, what did you find out?

Barbara Black:

Okay. All right. The bottom line was, customers had a more negative view about their most recent arbitration experience than the other participants in the process. Now they did have, a majority of customers did have a favorable view about the arbitrator's attentiveness and competence. So that's kind of good, that's good.

But a significant percentage of the customers believed that the arbitration panel was biased, and they were dissatisfied with the outcome. They did not believe that arbitration compares favorably with litigation. And again, the bottom line, there are unfavorable perceptions overall about the fairness of the securities arbitration process.

Ken Durr:

Hmm.

Barbara Black:

Yes.

Ken Durr:

That was not what SICA wanted to hear.

Barbara Black:

It was not what they wanted to hear. No, it was not what they wanted to hear, unfortunately. And the industry didn't want to hear that, the securities industry was quite vociferous in their attack on our survey, on the methodology, on the conclusions we drew from it. We stand by our results. We're confident that it was a well-designed survey, and we certainly did not skew the results in any way.

Our principal recommendations: our primary recommendation was to eliminate the requirement of an industry arbitrator on every three-person panel. Because again, what we heard from the customers was that they thought this was a biased proceeding and they thought the arbitrators were biased against them. That was our primary recommendation.

Now FINRA initially was resistant to doing that, but in 2011 a FINRA rule allows claimants to choose a three-person public arbitrator panel. And that was a big change in the FINRA rules. I really think it's one of the most important changes. It was a change that I have heard from many people in the industry that they thought was a mistake. But I think in terms of addressing the problem that we saw in our empirical study, which is investors believed that the forum was biased. Let's get rid of the industry. Let's give them the option of eliminating the industry arbitrator. The industry's argument has always been, and it's not a frivolous argument, the industry's argument has always been the industry arbitrator provides expertise. They know the industry, they have a better understanding about the conduct of this particular broker, whether or not it was acceptable conduct within the industry.

Ken Durr:

Gotcha.

Barbara Black:

But again, bias. So that was our first recommendation. It was, as I said, ultimately adopted by FINRA in 2011. The second one, and we were less convinced about this, but we thought, "All right, what we're hearing is they're dissatisfied with the outcome. One way of addressing that is at least give them reasons. Maybe that will make it more understandable to them." Because now, the investor would think it's a black box. You got a hearing, you make these arguments, the arbitrators go away, and they come back, and they say, "You win," "You lose." Why? So we were less convinced about that because there are a lot of problems with an explained award. It adds onto the process. It adds another complexity to the process. It opens up the possibility of judicial review, which is something that I don't think is a good idea because it just drags out the process and makes it more expensive.

But we urged FINRA to reconsider the issue of allowing an investor to request an explained award. Now, currently, FINRA has revisited that issue a couple times. The current rule is that both parties mutually can request and get an explained award. It rarely happens because most parties do not mutually agree on that. That's where that stands at the moment.

Ken Durr:

Oh. So if the investor wants an explanation, the broker has to agree.

Barbara Black:

Exactly. Exactly.

Ken Durr:

Interesting. Well, let's just continue on with arbitration.

Barbara Black:

Okay.

Ken Durr:

I do want to talk about a little bit of your late career experiences. It sounds like you were on the FINRA task force on securities arbitration, and this was in the teens.

Barbara Black:

Yes.

Ken Durr:

It sounds like this would've been an opportunity to revisit these subjects that you had looked at in the empirical study.

Barbara Black:

Yes. Yes. FINRA formed this task force in June, 2014. They thought, "Well, let's just look at what we've got here. Let's bring in knowledgeable outsiders and look at securities arbitration and see where the forum is, think about where the forum is going to go in the future, and make recommendations, talk about these issues, make some informed recommendations about changes that would improve the process." In particular, they said, they want to suggest strategies to enhance the transparency, impartiality, and efficiency of the forum for all participants. So this was nearly 30 years after *McMahon*, right? Guess what? We're still debating whether mandatory arbitration is fair. We spent quite a bit of time talking about that. What became clear is the battle lines are formed and they're entrenched and nobody's moving. Investors, advocates believe investors should have a choice. They should be able to choose, after the dispute has arisen, whether they want to go to arbitration or litigation.

The securities industry believes very strongly that the predispute arbitration clause is appropriate and works and provides the efficiency and the fairness that the arbitration system is designed to bring about. So I put forward a compromise, which was that brokers should be required to offer, at least some customers, a customer agreement without a predispute arbitration clause. I had to say, that went

nowhere. It got no traction whatsoever. Nobody was interested in a compromise on this issue. So we ended up saying, "Look, we're not moving here. We're not moving. All we can do then," and I think it was a good thing to do, "is we've got mandatory arbitration, we've got this system, so let's make it the best system that's possible." So that's where we came out on that. What I thought was a really important part of this study was that it was the first study that focused on the arbitrators and what do the arbitrators feel and what do they need to make this a better system?

Because our survey, we were talking to the participants, we weren't talking to the arbitrators. We were talking to the customers and the broker dealers and the attorneys who represented those individuals. So it was the unanimous and strongly held opinion of the task force that the most important investment in the future at FINRA is in the arbitrators. We had concerns that the below market compensation rate for arbitrators made it difficult to attract high quality arbitrators who would devote the time necessary to decide these cases. We also thought that there needed to be additional and perhaps more creative ways of training arbitrators to do their jobs. I have to say neither recommendation has gone very far with FINRA. You want me to tell you about our other recommendations that didn't go anywhere?

Ken Durr:

Sure.

Barbara Black:

Our second one, second principal recommendation, was to give serious consideration to requiring explained awards, to improve transparency. You see, we got a pattern here, right? We keep coming back to the same issues. That's what we said, "Here, look. Opaqueness. If we want to have a system that's more transparent, well you've got to explain, the arbitrators should be explaining what they're doing." Again, we recognize that this would require more training of the arbitrators. We want to make certain that the arbitrators... Again, we don't want them writing legal opinions, but we want them to concisely and clearly state the reasons, that would be the objective, clearly and concisely state the reasons for their decision. We thought, "That's not an easy task to do." As anyone who's tried to write something succinctly, you'll learn very quickly, it's awfully hard to do that. So we thought there should be additional training. This is another area where the FINRA has not moved on this. Again, they've considered at several times requiring explained awards. But the rule is, as I stated previously, that both parties have to request it.

One other thing I want to mention, because we started off here with securities arbitration clinics and we spent a lot of time talking about that. Another one of our recommendations was that FINRA use some of the money it collects in fines and penalties to provide funding for securities arbitration clinics at law schools. Again, seed money for law school clinics. FINRA did not accept that recommendation either. I'm making it sound like we didn't accomplish anything in this task force report when actually we did. We had 51 recommendations and FINRA accepted most of those, many of those, if not most of those in some form or another. So, I do feel like we made a contribution. I do feel we made incremental steps in improving the forum, but not radical change.

Ken Durr:

Yes. So in retrospect, you're looking at this entity here, securities arbitration, that you unknowingly devoted a good chunk of your lifetime too.

Barbara Black:

Yes.

Ken Durr:

Has there been progress? You talk about a stalemate of sorts, but looking back to when you were first able to start the clinics, do you have reasons to think that this, while maybe you're stuck with this entity, is it a good one to be stuck with?

Barbara Black:

I think it is. I really do. I really do think if I'm representing an investor or if I am an investor with a dispute with a broker-dealer, I'd much rather be in arbitration than in court. I don't want to go to court. Oh, my God. The broker-dealers can throw up so many defenses and so many arguments and they can take you to depositions. Then if you got a favorable decision, they could appeal it. Also, as someone who studied securities law for a long, long time, the law is not particularly investor friendly. They say, "Oh, you assume that risk," or, "You should have asked more questions."

So I think the securities arbitration forum where arbitrators are allowed to apply equity, get to a right result, get to a fair result, I think it's a much better system. From what I've seen, as I mentioned earlier, I think over the years FINRA has devoted tremendous resources, both financial and staff time, to improving the forum. They've done many, many, many rule changes over the years. I mean, they're constantly rethinking this process, as witnessed by having the task force. The forum has changed a lot since I've been involved with it back in since 1997. I think it's definitely been for the better.

Ken Durr:

Okay. I want to cover a few of the other things that you did before we wrap up. You were involved in something called the Investor Rights Project at Pace.

Barbara Black:

Yes. That was Jill Gross's baby. I was delighted to work with her on that. Pace got a grant, a \$200,000 grant arranged through the New York Attorney's General's Office to advocate on behalf of small investors. We ran some educational programs for small investors. We fostered research on topics related to investor justice. One of the things I'm most proud of that we did, because then this goes back to students skills training, we supervised students in the drafting of comment letters to either FINRA or the SEC on proposed rule changes. I've been talking about all these rule changes that FINRA did. To change one of their rules, they have to put it out for public comment and then if they approve a rule, it has to go to the SEC.

The SEC has to approve any FINRA rule as being consistent with the Securities Exchange Act, and they will put the rule out for public comments. So there'll be at least one, if not two, opportunities to comment on a rule. So from our perspective, as an advocate for small investors, we would file comments on these proposed rule changes. It was a tremendous research and drafting experience for the students. I think the ones who worked on it would tell you that it was a real challenge for them and improved their research and writing skills tremendously.

Ken Durr:

Okay. What was it about Pace that made it the place where these things happened?

Barbara Black:

I think probably we were a young law school. We didn't have a lot of tradition. So I can imagine if I had presented the idea of a clinic at some other law school, the Dean would say, "No, we can't afford that," or the faculty would say, "You teach corporations. You can't run a clinic." At Pace, it was like, "All right, you want to do this? Let's give it a shot." I think that you get with a new law school.

Ken Durr:

Okay. Well, you moved on. You went to Cincinnati. Why the move there?

Barbara Black:

Well, it was 2006. I joined the faculty at Pace in 1978 and I thought, "Well, maybe it's time to move." I had been spending all that time, I loved it. I loved every minute of it, almost every minute. Probably there's some that I didn't, but I spent all that time working on the clinic, advocating for small investors, and I thought, "Maybe I should try something else." So I moved to Cincinnati. I became the director of their Corporate Law Center and ran a number of programs. It did get me to think about other areas of corporate and securities laws. So, we ran a program on corporate governance. We ran a program on federal securities class actions. It was an opportunity to look at other areas. I worked on developing a stronger business law curriculum for them. Interestingly enough, I decided Cincinnati was probably not the right place to have a securities arbitration clinic.

So, we opened a small business clinic where we hired a clinician. It wasn't me this time. We hired a clinician to work with students, to work with small business owners, and develop their businesses. I thought that was a really great improvement, addition to the curriculum. So it was expanding my opportunities and trying different things, meeting different people.

Ken Durr:

So the Corporate Law Center was an umbrella to enable you to pursue all these things.

Barbara Black:

Exactly. Yes. Basically, that was the attraction of the job because I was interviewing for the position as professor and director of the corporate law program. The corporate law program had been in existence for quite a period of time, but it had not been active. So I said, "Well, what do you want to do with it?" They said, "Whatever you want." I thought, "Oh, I can run with this." So yes, it was fun. It was fun.

Ken Durr:

So once again, there's an opportunity to look into all kinds of things.

Barbara Black:

Yes, exactly.

Ken Durr:

Well, this has been really interesting.

Barbara Black:

Thank you.

Ken Durr:

We focused on arbitration a lot, but we've touched on a lot of other things as well. Is there anything that we've missed that we should discuss before we wrap up?

Barbara Black:

I think the one thing I would say—this goes back to what I was talking about with the task force with arbitrators. I'm retired now, but the one thing I continue to do is to serve as an arbitrator on FINRA arbitration panels. So I think that has informed my experience about the securities arbitration process in a different way than as an investor advocate or as running the clinic. I mean, I currently have, I checked this yesterday, so I'd have the number, I have six active cases and I consider myself an active arbitrator. You're assigned a case and you can either accept it or reject it. So it's piecemeal, right? It's occasional piecemeal work. Yet, as I've talked about, FINRA has adopted all these rule changes, which have improved the procedures. They've also put additional responsibilities on arbitrators and this was really what the task force was concerned about.

Are there the right incentives to make certain that the arbitrators are doing the work competently and conscientiously? I wrote an article. It's an article that didn't get much play because it was published deliberately in a practitioner's journal. But I wrote an article in 2004. The title of the article really says it all. It's "Do We Expect Too Much From NASD Arbitrators?" My answer to that was, yes, we do. Well, I think that's something to add to the mix. If somebody who is listening to this and thinking about securities arbitration wants to know more about that, I think it's important to focus on the work of the arbitrators and the challenges that presents.

Ken Durr:

That'll have to be a task for somebody else, I guess.

Barbara Black:

Absolutely.

Ken Durr:

Well, thank you so much for talking to me today. I really appreciate it.

Barbara Black:

Thank you. I enjoyed it. Thank you very much.

Ken Durr:

All right. Take care.

Barbara Black:

Take care. Bye-bye.