

Securities and Exchange Commission Historical Society
Interview with Charlie Niemeier
Conducted on December 17, 2019 by Lucy Harvey

Lucy Harvey:

I'm Lucy Harvey. I'm here with Charlie Niemeier, who is a founding member, board member of the Public Company Accounting Oversight Board. We're doing an oral history for the Securities and Exchange Commission Historical Society. And we are in the Washington DC offices of Williams & Connolly on December 17th, 2019. Hello, Charlie. Thank you for joining me.

Charles Niemeier:

Hi, Lucy. Great to see you.

Lucy Harvey:

Tell me about your early education and career.

Charles Niemeier:

I graduated from Baylor University in 1979 and went immediately to work for Arthur Andersen in Dallas. I had a business degree with a concentration in accounting. And I worked 10 years as a CPA working first for Arthur Andersen and then for Ernst & Whinney at that time, and then for actually a regional firm before starting my own practice, which was focusing on forensic accounting, doing work primarily for law firms. Which is what led me to come to Washington because I was doing a fair amount of work for law firms in Washington, including Williams & Connolly, which enticed me to come to DC and work for them full time. From there, I always intended to go to law school. I kept just putting it off until I realized that I really shouldn't put it off any longer. And I actually went to Georgetown Law School at night while working at Williams & Connolly during the day.

Lucy Harvey:

And they wouldn't let you go. That was one of the reasons you did night school, right?

Charles Niemeier:

Well, it was something that it was nice that I could work at the law firm at the same time as going to law school. And as I often have said, some of my best legal education didn't come from law school itself, but came from my ability to work at Williams & Connolly.

Lucy Harvey:

And then you, after becoming a lawyer and a partner at Williams & Connolly, you were enticed to go to the SEC. Tell me about that.

Charles Niemeier:

I was doing a fair amount of work for audit committees, and there were a couple of fairly high-profile investigations that I was involved with that I think caught the interest of the SEC. And of course, at the time, Arthur Levitt was the chairman in the late nineties, and he was focused on some things that was near and dear to what I was doing. And he gave a speech called the Numbers Game speech, which was I think well recognized as sort of saying some things that had not been said, but it was there and people knew that there was something about that that rung true. And it enticed me to really focus on what he was doing and what was going on at the Commission. But at the same time, he found out what I was doing because of these high-profile investigations and primarily focusing on larger companies, and it was something I think that the SEC at the time was having difficulties doing, that is large investigations in a reasonable timeframe. And so I'm not sure how it all came about internally, but I got a call from the SEC Enforcement Division, I believe Dick Walker was the director at the time, and asked me if I would be interested in working with them to help do investigations of larger companies.

Lucy Harvey:

Your interview was pretty interesting. Tell me about that interview.

Charles Niemeier:

Well, I did interview with a number of people, and as a part of it, they had me interview with Walter Schuetze, who was at that time the Chief Accountant of Enforcement. And I didn't think much of it except afterwards, it's just another person I was interviewing with. And I knew Walter's reputation. I didn't know him personally. But afterwards, I think it was Dick Walker said, "Walter thinks that you should take his job." And one of those things where they were looking to me to come in and head up a task force to do financial fraud investigations, but what they offered me was to do two jobs, to be co-head of the Financial Fraud Task Force, but also be chief accountant for the Division of Enforcement.

Lucy Harvey:

So tell me what was happening at that period of while you were at the SEC?

Charles Niemeier:

Yeah. When I first started, it was fairly quiet, but it was something where there was a lot of things brewing in the background. I knew from what I was doing that things weren't all perfect. And there were problems in financial reporting in the system, and not just smaller companies, but larger companies as well, which is one of the reasons why I was enticed to take the positions there. And then pretty much all heck broke loose. Enron, WorldCom, Adelphia, everything sort of came out of the woodwork. At one time, I think we had 300 financial reporting investigations underway. And the one job I had, to co-head the Financial Fraud Task Force was a great job, but the real important job it turned out was being chief accountant for the Division of Enforcement because in that role, I was involved with virtually every financial reporting case and certainly financial reporting cases were what was high on the agenda.

Lucy Harvey:

Then Enron came. And talk about following Sarbanes-Oxley.

Charles Niemeier:

Certainly whenever I think the idea of Enron, it was sort of viewed as a one-off at first, but then WorldCom occurred and sort of on its heels, there was an understanding that something needed to be done and needed to be done quickly, and Sarbanes-Oxley was the answer that Congress came up with. As a part of that, one of the main thrusts of the Sarbanes-Oxley Act was the creation of the Public Company Accounting Oversight Board. It was viewed as being necessary because of all the things that had occurred, it became a big question is, well, what happened? How did the auditors miss this? And previously the profession up until that point had been self-regulated, and there was some questions as to whether that self-regulation was really working. And I think it's really at a low point for the profession as far as its credibility.

So that really led to something that I wasn't looking to do because I was working at the SEC and quite busy, but there was a change in administration, a change in chairman. Harvey Pitt became the chairman. And Harvey called me to his office one day and said that he had to appoint five people to this new board, the PCAOB, and that two of those had to have CPAs, and that he had a list of people that he would like to have appointed. And if he couldn't get that list through the system, would I be interested? I did point out that I obviously wasn't on his A list. And to his being kind, he said he was happy with me being at the SEC doing what I was doing, and that's why I wasn't on his A list, at least that's what he said. And I told him, fine, I'd be happy to entertain that idea if that was something that was, he couldn't get his people through.

Lucy Harvey:

So then there were a series of, not scandals, but there were a series of problems with the beginning of the PCAOB. Talk about the first chairman who was named.

Charles Niemeier:

Yeah, so Bill Webster was named to be the first chair of the PCAOB. Obviously a well-regarded individual, been former head of the CIA and the FBI. Unfortunately, he had been chair of an audit committee that had a problem where an individual had committed a serious fraud, and it raised questions as to whether or not Bill was the right person for the position, to be head of the PCAOB. He removed his name and that left just an empty spot, and Harvey Pitt named me to be the acting chair.:

Lucy Harvey

What did you see as job one when you became the acting chair?

Charles Niemeier:

Right. Job one was basically to put us on the map. We had zero as far as space, we had zero as far as individuals working for us. We had a tremendous amount to do in a very short timeframe. The statute laid out a very short timeframe in order for us to be established, which meant including establishing a series of bylaws, a series of different things that had to be done through procedures where we actually had to get approval from not only our own board, but then we had to get approval from the SEC in order to be considered up for business. So even though we were being formed in January, by April, we needed to be up and running and have these rules in place. So that was really job one.

Along with that though, we needed to hire people. We needed to be able to conduct inspections. And the statute required us to inspect the largest firms every year, and then it gave a little more flexibility once every three years for other firms. We also had to have a registration process. We had to register the firms because all these things are just, it's a brand new organization that was just being created. So there was a lot of things that we needed to do in a short amount of time. So if anybody thinks working in a government position or a regulatory position is going to be an easy job, don't start a new group because it's a lot of work involved.

Lucy Harvey:

I understand at the very beginning, people, board members were paying with their personal cards because you didn't even have a system of you didn't have money.

Charles Niemeier:

No, we didn't have our money yet, and it became something where the funding had to be set up. Fortunately, the SEC did give us a loan, which we were quick to pay back once we did have our funding, but it helped us get started. But before we had any funding at all, we had to dig into our own pockets. I remember signing a lease for the space before we had our funding in place and telling my wife that it's very possible that we will be broke for the rest of our lives if this falls through.

Lucy Harvey:

Oh my goodness. Then there was a change at the SEC. Then with Harvey Pitt having left, there was a new SEC chairman. And what was his kind of position towards the PCAOB?

Charles Niemeier:

Yeah. Bill Donaldson became the chair, and Bill had his own ideas and we worked well with him. He certainly wanted, he had his vision of what he thought the PCAOB should be like. And I think all in all, it worked fine. We had some discussions about the approval of bylaws and how much power should be given to the chair, and we had to do some back and forth during that period of time as to the appropriate level of power and how governance should work. But we worked it all out and I think Bill became a big supporter of actually what we were doing.

Lucy Harvey:

Yeah. I understand that you were one of the most prolific recruiters for the PCAOB. Tell me about how you got people to come work for this very new organization.

Charles Niemeier:

Yeah. Well, I think I probably was shameless and begging and whatever I had to do in order to get people to come work for the PCAOB. I was fortunate because this was an area that I had been involved with from earlier, doing investigations and that type of work as well as the work I was doing at the SEC. So I did have in mind people that I thought would be very good for key positions. But we were a brand new organization and it was going to take a leap of faith for people to come join us. And we were very fortunate to be able to attract some very good talent. I do view it that whatever we did as a board

though, we did collectively. And I just happened to be in a position or in positions where I knew individuals that I thought would be good, but whatever we did, we did do it as a whole.

Lucy Harvey:

You have a very funny story about the difference in ease for hiring accountants versus attorneys.

Charles Niemeier:

Well, we did run into very interesting reactions and big differences between lawyers and accountants. The lawyers were, "You have no rules. You don't have anything that actually inhibits you. You're going to change the world." And the accountants would say, "You have nothing. You have no history. What does your health plan look like? Call us when you have something that we can actually talk about as far as that makes sense to us." But I think we did find that there were accountants that also saw that the mission was important, and they took chances as well to jump into it. It's just we had to hire a lot of accountants and we had to hire actually fewer lawyers. So it would've been nicer for us if it had been the other way around.

Lucy Harvey:

And I do understand some of the early staff, you didn't even know what their pay was going to be. You're just like, "Will you come on?"

Charles Niemeier:

That's true. We hadn't established exactly what the pay was going to be. We knew we had some flexibility in salaries, but we didn't know exactly how it was going to work out. So people did truly take a leap of faith to come work for us in the early days.

Lucy Harvey:

That's amazing. There were a series of early controversies about the startup around surrounding the startup of the board, and one of them was the salaries for the board. So can you talk a little bit about that?

Charles Niemeier:

Sure. A lot of things were set by statute. Sarbanes-Oxley laid out a lot of the details, and that was the roadmap that we used. Salaries was actually one of those. The salaries was not set by us, but it was set to be aligned with what was being paid to FASB. So I thought that that would be a very simple thing since it was already set by statute. But I think there were plenty of people who thought, gee, well, you're getting paid a lot more than other people in government, so is that really appropriate? So we did get, I remember I think there was some group that flew a big pig balloon or something outside the window for a while, but all that did die down after a while.

Lucy Harvey:

And then one of the first tasks that was very important or significant was the bylaws. Talk about the writing of the bylaws.

Charles Niemeier:

Right. I mean, the bylaws really is how the board governs. And so we looked at how the SEC governs, very similar in that you have a commission, as opposed to a commission, you have a board. But it's five individuals if it's fully staffed. And so we looked at how that board would operate as in comparison to the chairman, so just like the commission would with the chairman at the SEC. And so the bylaws lay that out. And so we spent a fair amount of time looking at it and thinking through as to what would be the appropriate way to do it, and we end up actually following very closely to what the SEC's bylaws allow.

Lucy Harvey:

And then I do understand that you got some communication and a lot of calls from other organizations in Washington, other bureaucracies, who a little bit wanted a piece of the action of the PCAOB, and you had to fend them off a little.

Charles Niemeier:

Yeah. Well, when you established a new organization and it has a certain amount of power, it is interesting that other groups find that you're either invading their territory or they want to do what you're doing somehow. And so we did have more interactions than I expected to have in that regard. But it all worked out. We just had to be thoughtful in how we approach things. And again, we actually had a lot of things were laid out for us by the statute. So in some ways it was simple. It allowed discretion, and those areas of discretion is where it becomes a little bit more difficult because other people could read the statute as well. But we worked through those things.

Lucy Harvey:

I've heard more than once people say the to-do list was the statute.

Charles Niemeier:

That's right. Exactly.

Lucy Harvey:

The act gave you the choice of whether or not you would set standards or delegate that to someone else.

Charles Niemeier:

Right.

Lucy Harvey:

So talk about that whole decision.

Charles Niemeier:

Yeah. The profession had set the auditing standards up until that point. The statute gave us the option to allow the profession to continue to set the standards, although they would have to go through rulemaking processes at the PCAOB as well as go through a rulemaking process at the SEC as well. The more we looked at it, the more we realized, although the statutes gave us discretion, it really didn't give us a lot of practical options. Because it was going to be a three-step process as opposed to a two-step process if we allowed the profession to take the first cut because that's all it would be. With the rulemaking process at the PCAOB and then the following rulemaking at the SEC, it really made sense to streamline it and to set the standards ourselves.

Lucy Harvey:

Talk just about those early days and how small and tight the staff was.

Charles Niemeier:

I think we started with eight people. We had the board members and each board member had one person with them. And it was a little bit crazy. We did have space. There was just happened that Arthur Andersen no longer needed their space, so we found offices on K Street that typically would not have been available to us, and that became where we based out of. And then we started the most basic things, getting a coffee machine and putting up, getting a few chairs and very simple type things. But again, we had to do a lot in a shorter period of time. We had a big whiteboard that we would use and we would have the number of days counting down to when we had to have what they call the determination, which would be the approval by the SEC of all of our rules and it deemed us to be in business.

And that part of that process was every day we had to tick off what we had done and it was a number of different things, as I mentioned before, which is hiring people, being able to bring in staff to fill the positions, as well as being able to do the work at the same time. So it was a little crazy, but when you're so busy, you don't have time to actually think about it that much, time goes by very quickly. And that's really what we were doing, we were just working at a feverish pace.

Lucy Harvey:

I've heard of people, early staffers coming for their interviews and knocking on the door, no receptionist. You would come and open it and bring them in.

Charles Niemeier:

That's true. Yes. We were sort of building the parachute after we had jumped off the cliff, so we had times everyone had to be the chief cook and bottle washer too.

Lucy Harvey:

Charlie, what divisions did you focus on building first when you were at the PCAOB?

Charles Niemeier:

The first thing we actually focused on was inspections probably more than anything else. There was still a focus on standards, and it was on the back of our minds, we knew we had to do the enforcement group. But the statutory mandate for inspections meant that we needed to be up and running and being able to do inspections the first year. There was pressure on us to not do any inspections the first year, but we decided that it was important that we actually jump in with both feet and that we take advantage of the momentum, and because our job was to reestablish credibility in the profession. And we believe that being able to have boots on the ground, being able to engage with the firms, and be able to have an inspection process that was working was an important part of that. So what we did do is we did what we called limited inspections the first year of the Big Four, which just meant that don't treat this as being the full scale inspection. This is not what you're going to have every year after this, but it is a start. And that by doing limited inspections, we were able to conduct those inspections in a reasonable timeframe and be able to get through the process.

Lucy Harvey:

I understand those were known as the Sweet 16 because there were four engagements at each of the Big Four firms.

Charles Niemeier:

I see.

Lucy Harvey:

And one of the gals who got inspected, Sharon Virag, then came over to work in Standards, and she told me that.

Charles Niemeier:

How about that?

Lucy Harvey:

Yeah.

Charles Niemeier:

The Sweet 16.

Lucy Harvey:

Sweet 16.

Charles Niemeier:

See, I learned something.

Lucy Harvey:

Why did you push for those limited inspections that first year?

Charles Niemeier:

Right. Again, we really wanted to be able to engage early and on and being able to show that we're not just there for the establishment of the organization itself, that we really wanted to have substance, and that it was important that we not wait for another year before we actually started doing that. And really, if you look at the SEC, one could say that the crown jewel of the SEC is probably in the Enforcement Division. It has the largest number of people, and it's what people read about and what think about when you think about often the SEC. Ours was different, ours was inspections. Our focus was on being able to do the inspections and to give feedback as to what was to the firms themselves as well as to provide some transparency in regards to what we found.

Lucy Harvey:

On August 26th, 2004, the board released its first limited inspection reports. What were the board's concerns about releasing those first, the first work product?

Charles Niemeier:

Well, we had so many concerns, I would say, because we wanted to make sure first we just had the spelling right. We were trying to do the most basic things. But we were setting a tone. We were also establishing a precedent. And so there was a lot of different factors that went into those first reports that we had to do a lot of thinking. And again, we knew we weren't going to get everything right the first time, but we did treat it as if this was a very momentous occasion and it was something that we wanted to do the best we could. It was still, if you really think about how quickly that occurred, it was, again, there was a lot that went into it that probably it would be boring to get into all the details, but where do you draw the line, making sure we're consistent with all the other firms, making sure that we were establishing what could actually be in part one of the report versus part two. There was a lot of things that, again, it's part of it's statutory and part of it's policy, but all of those factors were considered when culminating in the issuance of those reports.

Lucy Harvey:

Describe the function of the Office of Research and Analysis.

Charles Niemeier:

Right. Well, that was something that was near and dear to my heart because it wasn't in the statute, but I understood from the work that I had done in private practice as well as the SEC, that there was a fair amount of information that we were going to have access to through the audit review process that would give us insights that no one else would have. When you think about the fact that virtually, not all, but many of the larger scandals, the auditors actually would identify high-risk areas, and it would be just nuggets on the top of the ground in the work papers that you could see, but no one else could because it never ended up in the public report. That's information that we had access to immediately because of the inspection process. So the idea was to combine the information that one could glean publicly that was available, which was a fair amount of information, and combine that with the information that we

had that no one else had and create a relative database that would allow us to track issues, not just issues of the past, but where things were in the more current environment.

The analogy I used at the time was thinking about weather forecasting. Because a hundred years ago, a person may get in a fishing boat and go out and hope, well, maybe the sky was pink last night or something and you hope that the weather was going to be fair. But there was a lot of hope involved. It wasn't as if there was forecasting. It wasn't until you had radar and you had the computer models and such that really took everything into where we are today, where we expect, we don't walk outside the door without looking to see what the weather's going to be for the day. The idea was just to do something similar to that to take us into the modern age where we weren't just trying to guess as to whether or not there were issues that were developing in financial reporting and auditing. And I would say today that PCAOB probably has one of the best forecasters of where there are problems developing in financial reporting. It's not something that's well known because it's not publicly issued, but it is something that, as I've been gone for a while, but I understand the PCAOB still uses to help identify the audits that they will inspect and give them an idea about where issues may be developing.

Lucy Harvey:

And you have said it was your crown jewel.

Charles Niemeier:

It was my crown jewel. It was something that I did push for. And because we didn't have, it wasn't in the statute, we had to fight for it in order to get it included in the budget.

Lucy Harvey:

Talk about international inspections.

Charles Niemeier:

Right. Sarbanes-Oxley gave us the option to exclude audit firms outside the United States. That was a bit controversial because there were plenty of people who believed, especially because we were a brand new organization, that there was no way we could actually conduct inspections of the US firms, nonetheless conduct inspections of firms outside the United States. But very early on, we decided that in order to have a complete process, we needed to be able to have inspections of the non-US firms as well. And the misnomer is that all of these firms are maybe residing outside the United States. The only reason why they were falling into the jurisdiction of the PCAOB is because they're auditing either a company that is based in the United States with international operations or is a foreign private issuer. Either way, these audits are actually audits that are being relied upon by US investors. And because of that, we believe that it was very important that we'd be able to have the complete subject area covered, which would be a big hole if we didn't have firms outside the United States but yet connected to and being relied upon US investors in our purview.

Lucy Harvey:

Early messaging around the PCAOB was talking about restoring confidence, but you actually had kind of a different message, and that was about integrity. And specifically in a speech that you gave at the AICPA National Conference in 2004, I want you to talk about that integrity.

Charles Niemeier:

Right. Yeah. The part that it always concerns me, auditing and accounting for that matter, being a CPA is a profession. It's often I think described as an industry. To me that would be where we had gone astray, because it's really the profession and the integrity that went along with being a professional that was most important. What happens is if the audit becomes a commodity and it's only a matter of cost, it's not important really because it's just a function. But the reality is is that whatever is being relied upon is really the integrity of the professional. And that's what we were missing. That's what it seemed like somewhere had gotten lost. And I think it is unfortunate that it had to take a large number of scandals in order to refocus and is back to what the profession is really all about and what the audit is about and why it's so important.

And those early speeches was my attempt to emphasize why the profession needed to get back to basics and to focus on the most important thing that it had to offer, which was not about ticking and tying numbers, and it wasn't about whether or not you had this person who was really actually super smart, which the profession's filled with super smart people, but it's a person who's actually known for integrity. And that's really what those early speeches were about is just focusing on that. And I think they were, at least I was very happy to get a lot of good feedback from that time period. And I think we found, and it was helpful, even people who came to work for the PCAOB, that there were a lot of accountants who really, truly believed that that was important. And because of that, they saw that coming to the PCAOB was something that they could do to add value and to help bring the profession to a higher level.

Lucy Harvey:

Talk about particularly the golfer and what happens when people aren't looking.

Charles Niemeier:

Bobby Jones. Yeah. Bobby Jones is known because of a particular incident where he actually touched the ball but no one saw it, and he actually dinged himself a stroke. And it's incredible because of how important it was for him to not lose that stroke for that particular tournament, but he did. And because of that, he was actually well recognized for his particular integrity. He went on obviously to be a very famous golfer and won many tournaments and one of the greatest golfers of all time. But that incident where he didn't actually win, he actually lost, and he actually dinged himself that stroke, maybe what I think, at least for me, what he's best known for.

Lucy Harvey:

And I think you said it's what you do when no one's watching.

Charles Niemeier:

That's right. Yeah. Integrity is what you do when no one's watching. Exactly.

Lucy Harvey:

Another early challenge at the PCAOB was AS-II or internal control. So talk about that approach.

Charles Niemeier:

Sarbanes-Oxley 404 was all about internal controls. And certainly that was an area that needed to have focus. It was an area where companies, even though there was a requirement in the securities laws for all companies to have an adequate system of internal controls, it's not something that had been treated as a separate audit. And it was not something, therefore that companies necessarily had good internal controls. That really is a very important part of auditing is that you have to be able to rely on a good system of internal controls. And so Sarbanes-Oxley said, okay, look, you're going to have to have an audit of your financial statements, but also have an audit of the internal controls over financial reporting. And there had to be a process in place in order for management to first establish whether the company had a system. This was all brand new.

It was one of the things that we were told we needed to do first by the statute. And it was very controversial because there were plenty of companies who believed that this was very costly and they didn't want to do it, and they believed that this was one of the things that showed that we were over regulating in the United States. So if left to me, I probably would not have started with Sarbanes-Oxley 404 implementation just because we were probably at our weakest point in those early days, and we had so many other things to do, and this was going to be a very controversial process, which it turned out to be. But there you have it. It was the job, and that's what we did.

Lucy Harvey:

Yeah. And then you did talk about AS-V, which was you did not stand down.

Charles Niemeier:

Yeah. AS-V came in a couple of years later. The idea of AS-V, from a marketing standpoint, it was important because it was viewed as being sort of AS-II light. But if you really read AS-V, it's the same thing as AS-II. Again, I think the only real change was basically the marketing. And even if you look at inspections of the firms today, you'll see that compliance with AS-V and the internal controls is still an area of heavy focus. And I think that it's served well, both AS-II and AS-V has served us well.

Lucy Harvey:

Oh, there's another speech actually that you talked about, and that was at Baruch College Financial Reporting Conference and that's in 2006. And really you were talking about Rural Free Delivery and you made the analogy to internal control. So talk about that again.

Charles Niemeier:

Right. RFD, it's probably a lot of people wouldn't know much about RFD today. It was very important. I was brought up in Central Texas in a rural community, and so I had some familiarity with RFD. But over a hundred years ago, there really was not the type of mail service in the rural communities that one sees

today. In fact, it was very spotty. You might have to travel a long ways actually to get to a post office. So the idea of Rural Free Delivery was you're going to get delivery to a post office near you, and you're going to get mail actually at your address. And this became something that was very controversial in its day because it was believed to be too costly and didn't make any sense. And why in the world would we want to have all of these delivery products to all these places in the United States and remote parts in particular?

So it was very difficult to implement because people were holding back. But the reality is that it was pushed through and it had a tremendous impact almost immediately. The world changed really for these rural communities, and it changed for businesses. Sears and Roebuck suddenly showed up as being a very important part of their existence and being able to deliver products. It also then expanded the roadways. Everything became, it sort of ignited the economy throughout the United States, and yet it all started with this one controversial thing, RFD, that people believed would be far too costly and wouldn't make any sense. And my tip was is to show how that believe the focus on internal controls and implementation of 404 was very similar in that it could become the basis for the audits. It added credibility to it. It also made things a lot simpler. It actually would actually be something that you could build on that was far greater than just focusing on individual numbers within the financial statements. But the internal controls allowed you to build a foundation that could go in many directions.

I think even today we see that that's still expanding, where a lot of financial reporting is not actually the GAP financials, but it's more the non-GAP metrics, the key performance indicators and various other metrics that are followed. If you really think about it, internal controls could be the basis for those as well. It's easy to expand, to go from financial reporting to things like metrics.

Lucy Harvey:

And at this time now, Chris Cox is the chairman of the SEC, and he's trying to make a little bit of a change in the way that the SEC oversees the PCAOB.

Charles Niemeier:

That's true.

Lucy Harvey:

So talk about that a little bit.

Charles Niemeier:

Right. The SEC gave delegated authority to the Office of Chief Accountant to oversee the PCAOB. It is something that I had resisted, and mainly because when you deal with independence, and we talk about that often in the context of the audit, but to me it was also very important for the PCAOB. Again, the PCAOB was created to be an independent overseer of the profession. And there are parts of OCA (Office of Chief Accountant) that's wonderful and it's great and I think all in all, it's great, but there are aspects of it that may be for good reason, they have professional accounting fellows that come in from the firms and actually are part of that. And the part that I was resisting was having professional accounting fellows be a part of the process to oversee the PCAOB. I think it works fine. I think everyone's professional throughout the whole process, but it is something that I did resist during that time period. I still believe it's important that we have independence in fact and in appearance. And I think that that's an area where we want to make sure that there's continued to be independence in both.

Lucy Harvey:

Let's talk a little bit about enforcement, which was also a big area of your focus. And the first million-dollar penalty came on December 10th, 2007, and Deloitte was censured with a settled disciplinary order. Was that a big milestone for the board?

Charles Niemeier:

It was a milestone. I don't know that I would say it was a big milestone, actually. I think it was a milestone to indicate that the PCAOB was on the map as far as being able to do enforcement cases. I think there was some question whether it would. The main focus had been inspections and that the enforcement group was certainly not the first thing that we focused on. And I think having that penalty certainly was important for recognition that we were also an enforcement group. To me, I don't treat it as being the most important thing we did, but I think it was very important in the history of the PCAOB. In the continuum.

Lucy Harvey:

Right.

Charles Niemeier:

There was a headline that said, "PCAOB has teeth."

Lucy Harvey:

There you go. Right.

Charles Niemeier:

The next year was the first time that one of the Big Four firms failed to address quality control concerns, and their Part Two was made public. So talk about that. Was that a big milestone?

That was a big milestone because we had not faced that before. And the way Sarbanes-Oxley set up the reporting is that the firms had one year to remediate any issues that would fall into Part Two. And the Part Two is actually the bigger issues because these are the things that would affect the quality control. So it's a broader type issue as opposed to Part One which tends to be more one-off issues. And if a firm didn't actually... So it was not public unless the firm failed to remediate within that one year period, and then it would become public. So this was the first time that we had determined that a firm had not remediated the issues within a year. They would potentially become public depending on how the process worked from there. And it was something that, because we had never done it before, was a milestone for us. And we had to see how it would work. And we knew this was something that the firms themselves would not be happy about. But we believed that for the system to be effective, although we didn't, our ideal would be is the firms would remediate, if a firm didn't, then in order for us to truly be effective, we needed to take that next step and make it public.

Lucy Harvey:

And was it effective, do you think it was?

Charles Niemeier:

I think it was very effective. I've always said that the accounting firms are actually very good at making sure that they have good systems. I think the firms actually do a good job on their own. But they are concerned as much as anything about competition with each other. So in a way, the public report card becomes a very important competitive issue for the firm. So if that's helpful to improve quality, then I think the public aspect works well. Otherwise, again, we're happy for the firms to remediate and always were happy to have for the firms to remediate in a non-public environment.

Lucy Harvey:

Describe how PCAOB's mandate was suddenly enlarged after the Madoff scandal and the Ponzi scheme.

Charles Niemeier:

I see. The SEC had always had questions about smaller broker dealers and particular the audits of the smaller broker dealers because they were being audited, but often the auditors, because the broker dealers themselves were small, the auditors were also tend to be fairly small. And there was real questions as to whether they were conducting audits that the SEC felt comfortable with. But because of the fact that there were so many of these smaller broker dealers and these auditors out there, they didn't feel like that they could actually effectively regulate it. I always thought it was a little odd that we're talking about Madoff, which is a very large really investment advisor, not just broker dealer, that all of a sudden the way that it got translated by the SEC was is they would have us now be in charge of auditing the auditors, inspecting the auditors of the broker dealers.

It wasn't something that we were actually that excited about, to be honest, because we had a lot to do already. And expanding our mandate to actually go beyond looking at audits of public companies and looking at the audits of broker dealers just seemed to be potentially diluting the mission. And so we had to work through how best to go about that. We had to look at how we're going to hire the right inspectors because it actually was a different group than what we had focused on. So yeah, it was a big challenge for us, and it was an interesting development that kind of was a sideshow in a way to the original mandate.

Lucy Harvey:

Yeah. But making the financial system more...

Charles Niemeier:

It's all toward the same goal, which is helping investors.

Lucy Harvey:

Helping investors. Exactly. Talk about the challenges presented by the Free Enterprise Fund lawsuit against the PCAOB.

Charles Niemeier:

I see. Yes. Well, yes, the PCAOB's existence was put into question by a challenge that was to whether Sarbanes-Oxley and the creation of the PCAOB was constitutionally sound. It did go all the way to the Supreme Court, and it took years for that process to unfold. I think there were plenty of people who didn't like the PCAOB who were happy to point it out. So there was that constant drumbeat back there knowing that maybe we wouldn't be around. And I think they were probably used to try to keep people from coming to work for us and that sort of thing. For me personally, I didn't worry about it much when it was outside of my control. It wasn't much I could do about it. And I really believe that if we could, the longer it took for the process, the case to go through the system, the better it was for us because I had faith that if we stayed in existence long enough, that the fruits of our labor were going to pay off and that it would begin to actually take hold.

And we were fortunate enough that we had a number of years of the internal controls implementation and the decline in the number of restatements, even public companies began to feel more comfortable with what they were doing. And many CFOs said that they felt much better about their accounting systems and their ability to have confidence in what they were reporting because of all this work. So I think in some ways, by the time we got to getting to the Supreme Court, the case was a lot of history then was working in our favor. There were plenty of people still who were saying that the United States was losing their competitiveness and Sarbanes-Oxley was part of the reason there, and certainly the PCAOB was maybe the main reason why it was a problem. But the Supreme Court in their great wisdom found a way to find us unconstitutional, but then correct it with a couple of word changes because Congress couldn't have intended to create something that wasn't constitutional. And so the problem was fixed.

Lucy Harvey:

Pretty seamlessly at the end. Yeah.

Charles Niemeier:

It was, yes. It was nice to know we were found unconstitutional and the problem was fixed at the same time.

Lucy Harvey:

Exactly, yeah. Your time at the board was extended in part because of the case, and the SEC did not name new board members. So what did you kind of focus on with your extra time at the board?

Charles Niemeier:

Right. Well, we had got a lot of the infrastructure in place and there was a lot of good things that was already working. In some ways, my goal as a board member is always to make myself redundant. That is the staff would do everything and there was really no need for the board to be that active. I think in a lot of ways we had gotten to that place, but there was still a lot to do. We were not too aware we had reached the complete level of what we would want to. If you take just about any area, but just take inspections, which was really important area for us, we were getting more into international but we hadn't really developed the international area as well as we could have. Also, just looking at the root cause of issues, we'd found already in inspection reports there were similar issues, and they were often time and time again, we would see those again. But we had not really focused on, in my mind, the areas

that was really the key, which is what I'd started out looking at, which was really the business context in which audits are performed.

And how do these audits actually, what can you do to actually improve the audit as opposed to focusing on technical compliance? What is it that's really going on when you have a problem? How can you actually remediate that so that you minimize the chances that you have a similar situation? Because it wasn't the smaller issues that was really, they were more nuisances. And yes, you want to focus on that. You want to have them be as good as possible in those areas, but that was not necessarily what was leading to, led to the bigger financial reporting and auditing failures. So what do we need to do to focus on that? Some people's belief was you need to eliminate all consulting or whatever. That was never my belief because I really saw it as more focusing on the audit itself in that sometimes there was so much pressure coming from clients and the way things were working that the auditor was at a disadvantage. So what could we do as an organization, as a PCAOB to actually improve upon that?

The other area that I was focusing on as well was this Office of Research and Analysis. And there was a number of people that had helped with that process to develop it, Phil Wedemeyer, a guy by the name of Dick Clark. But we were also looking at what could we do outside of the PCAOB in pulling information in. And we really found Samantha Ross had connected with the academia and what was actually being written, and we found a lot of very helpful information that gave us insights into areas that we had not previously focused on. And that has developed actually today into being another expansion really of the Office and Research and Analysis, but more in the academia world and more into economics. Which I think is very helpful to see this from a bigger picture and helps guide the organization hopefully into not just what is the smaller issues, but again, report it but also to focus on the bigger ones as well.

Lucy Harvey:

How in your estimation has the profession kind of embraced this external oversight?

Charles Niemeier:

I think the profession has done a remarkable job of embracing it. It's never easy to say now you're going to have a babysitter sort of. It's like, I'm a big kid, I don't need a babysitter. And I think that was a tough pill to swallow. It would be for anyone. But I think the profession's done a remarkable job of recognizing that the existence of the PCAOB is not actually to do, it's not a us and them type of thing. We're all in the same position. And improvement of quality of the audit is really the goal of the profession, as is the PCAOB. And at times, I'm sure it may feel like we're not on the same team but I think it's always been there. When you really look at the individuals, again, CPAs, whether the CPA is working for an accounting firm or whether they're working for the PCAOB, it's amazing the similarities of how both are really looking for the same thing. They want the same thing. They really want to have a high standard for the profession, and they want to be able to be proud of what they're doing. And I think the firms have done a great job of working with the PCAOB. It's really a matter, it's not where you have a need for a subpoena. This is where the firms voluntarily make themselves available. And that coordination does not work in unless the firms actively and voluntarily participate. And I think that's what we see today is really not just the success of the PCAOB, but really the success of the profession.

Lucy Harvey:

How do you look back on your time at the PCAOB? Explain what it was as a part of your career.

Charles Niemeier:

Yeah. I feel very fortunate to have been able to be a part of creating something from scratch. It was a very just a bit overwhelming when you're in the moment, but being able to look at back on it now, I feel incredibly fortunate to have been a part of it. But mainly it was the camaraderie, to be a part of a group of people that was really trying to make a difference, that put their personal, even whatever goals they had really aside to come together to try to do something that would be to make an improvement. So there was a lot of great people that were a part of all that, and I'll be able to cherish that for as long as I live.

Lucy Harvey:

Thank you, Charlie. This was great.

Charles Niemeier:

Oh, thank you, Lucy.