Securities and Exchange Commission Historical Society
Interview with Mary Jo White
Conducted on December 15, 2022 by Kenneth Durr

Kenneth Durr:

This is an interview with Mary Jo White for the SEC Historical Society's Virtual Museum and Archive on the history of financial regulation. Today is December 15th, 2022, and I'm Kenneth Durr. Chair White, good to talk to you today.

Mary Jo White:

Terrific to be with you.

Kenneth Durr:

Thanks so much. There's a lot of background I'd love to talk about, but of course, there's no way we'd have time. So, I want to hit a few highlights on our way up to your time at the SEC, and I want to start with that transition from psychology to law. It's intriguing.

Mary Jo White:

Well, I'd avoided a little bit the family lawyer legacy, only partially. I actually ended up in applying to graduate school of psychology. I'd majored in it at William & Mary and law school at the same time. So, I had a decision to make, which to go to, and I went to the New School for Social Research and got a master's degree in psychology, and what tipped me over to going that route first anyway instead of law school was I had a Woodrow Wilson Fellowship that you had to use the next year after graduation from college, and it was a fellowship that in those days at least helped you get college teaching jobs should you decide that's what you wanted to do with your career.

So, I had a wonderful experience at the New School, professors I'd heard about for my whole life, wonderful experience, but my husband, who I just married, was going to NYU Law School the same year I attended a couple of his classes, and I was more interested in what he was learning than what I was learning. So, the next year I went to Columbia Law School and made that choice to preserve the marriage, different law schools, and that seems to have worked out.

Kenneth Durr:

So, you went to Columbia. I understand you studied with Bill Perry there?

Mary Jo White:

Yeah. I mean, what a wonderful man, mentor, professor. I took securities regulation from him and learned so much both subject matter-wise, but also how to be a person and how to be a lawyer. He actually became a bit of mentor. For whatever reason, he took a shine to me and followed my career afterwards, tried to encourage me to go to his law firm. I ended up going to a different law firm, but it was just wonderful to hear from him how he regarded the securities markets, the regulation of them and in the very high duty it was to be just a model public servant focused on mission, only on mission, not oneself, not politics or anything else.

Kenneth Durr:

So, it sounds like he talked a bit about the good old days at the SEC?

Mary Jo White:

A bit, but he was very formal in his classroom. So, it was more learning as much as you could in the period he was allotted to be with you in the class. I mean, he really took that mission very seriously as well. So, not too many jokes actually coming there.

Kenneth Durr:

Another notable person you worked with, Marvin Frankel?

Mary Jo White:

Yes.

Kenneth Durr:

Take me through.

Mary Jo White:

Yeah, I clerked for him. Actually, I waited a year to clerk. I wanted to clerk on the district court and not the circuit court because I thought it would be... I'm always focused on the learning curve, being as vertical as it can be, and I considered right or wrong that the circuit, wonderful experience, but more like another year of law review. So, I wanted a district court judge, and I'm in New York. I wanted to stay in New York, and he was just the top choice for a district judge in New York. He was associated with Columbia, so there was a tie there, and he also was a mentor, but he's just brilliant. I mean, there's no other way to say it, and I don't use that word that often.

So, to be with him for a year, a beautiful writer The only time I've been praised for my writing was the year right after I clerked for him. I was obviously emulating him rather than using my natural more truck driver style, and it just could not have been a better learning experience. Again, that vertical learning curve. I think I chose right to go to him.

Kenneth Durr:

Let's talk about some of the interface you may have had with the SEC over the years when you were at the Southern District, when you were at Debevoise.

Mary Jo White:

Yeah, I mean, I was US Attorney for about nine years in the Southern District. I guess it's 1993 to 2002. That was my main learning experience about the SEC. I'd clearly at Debevoise before that, had some cases on the other side of the table from the SEC, but my practice tended to be a mixture then of more civil, some DOJ and some SEC. So, it wasn't an exclusively SEC practice at Debevoise, but... And obviously, in the US Attorney's Office, I didn't just do securities cases, but the Southern District of New York, US Attorney's Office has a very, very long tradition of working with the SEC on securities fraud cases, and we did a lot of that. I prioritized those cases when I was US Attorney and worked very closely with... As I remember, Dick Walker and Bill McLucas, our securities fraud unit, and I just became such an admirer of the expertise of the agency and the independence of the agency.

And we actually started... I don't know if it still exists, I hope it does, but bringing in SEC staff attorneys as special assistant US attorneys and watching both sides of that equation, learn from each other, was

really quite impressive. I mean, the synergies and value-add of the criminal prosecution expertise and the SEC staff attorneys' substantive expertise really, really worked very, very well, and I think we brought a number of very significant cases really aimed at deterrence. I mean, Bill and Dick and myself in particular were quite focused on that aspect of securities fraud prosecutions.

Kenneth Durr:

Deterrence. That was your main focus?

Mary Jo White:

Well, the cases have to lend themselves to that, but in thinking about what cases to bring criminally particularly because typically you could bring a case either civilly by the SEC alone, criminally with the US Attorney's Office alone or together, parallel proceedings, and the SEC when they wanted to achieve greater deterrence, clearly there's nothing like the deterrence of jail for white collar defendants particularly. So, they were already focused on that, but I also was focused on where do you use your scarce resources to send those messages of deterrence to the marketplace? So, your cases are your cases obviously, but you pay attention as you're prioritizing to how much impact is this going to have beyond just the individual case.

Kenneth Durr:

Arthur Levitt would've been the chairman for much of that time. Did you ever work with him?

Mary Jo White:

We did. He was also involved. Again, I worked mostly with the enforcement division chairs on the cases I tended to be rather hands-on as a US attorney, probably as an SEC chair as well. So, I worked with him, but I also met with Arthur a number of times. We discussed this issue of deterrence a number of times. He also proved to be a bit of a broker between Bob Morgenthau and myself as we were fighting each other a bit over who should be doing various securities fraud cases. So, he was a bit of a diplomatic liaison as well.

Kenneth Durr:

Well, let's talk about the nomination and how you heard about it. Did President Obama just call you in one day and say, "I want to talk to you"? Or how did that work?

Mary Jo White:

Well, as I mentioned, I stepped down as US Attorney in 2002, went back to Debevoise, and I'd actually had a couple of other opportunities to go to different jobs in Washington, and when I'd gotten those calls in the past... And this will tell you something about myself and my views of Washington, I suppose, but I said, "Move the building to New York, and I will think about it. Otherwise, I'm staying here," and essentially I just felt like at that time... When I was the US Attorney, I also worked in Washington in connection with that and just in terms of efficiency and focus on mission, it's more challenging in Washington, I think, than it is in New York, but I got the call right before Thanksgiving. That would've been 2012 from Kathy Ruemmler, who was the White House Counsel at the time, and we'd had cases in private practice.

I was on trial at the time in a case involving... One of my clients is the NFL. So, I was polite. I said, "Look, I'll call you back after Thanksgiving. I'll think about it," fully intending to very politely decline, and then I

got a little more pressure to... I was on trial after Thanksgiving as well, and they said, "You got to really decide now, and I said, "Well, I can't decide now. I'm in the middle of a trial," but the trial ended a couple of days later, and I said, "I would come down and talk," but I wanted to make sure that in my own mind, if it were offered to me, I would accept the job because again, my history had been to say, "Bring the building to New York."

So, I was 65 at the time. I did get an indirect message from the President initially that he really wanted me to do this job, and you don't say no to the President, I think in terms of your duty to the public, frankly. So, they really wanted me as opposed to just... I happened to be somebody they were calling. So, I went down in December to the White House and met initially with Jack Lew, sat with Jack Lew, Tim Geithner, and George Sperling, President Obama's economic advisor, and it actually turned out to be horrifically the day of the Sandy Hook shooting, the day I was down there, and I didn't know what had happened because I'm in the White House, not that I'm there that often, but it's just got a lot of conference rooms without windows, and you're just in a closet for most of the time.

So, George told me about it, and I was obviously stricken by it as well and just said, "It's the guns. It's the guns," and then maybe half an hour later, I met with the President, and he was clearly stricken by what had happened there, and I said to him, "Let's just not talk about the SEC today." I mean, it was just that kind of horror and really both of us, but him in particular was just devastated, and you can just feel it. I think the only exchange we had on what I would call SEC substance is at some point, I made a remark about the Volcker Rule, which had not been adopted yet, and I thought it was of importance. I knew he thought it was of importance, and I said, "If that doesn't get done under your tenure, it won't get done," and I don't remember what else we said, not very much, frankly, because of the Sandy Hook background.

He then left to address the nation, basically. I don't remember even how we parted, but he hadn't quite offered me the job. I hadn't accepted the job, but I went back to see Kathy Ruemmler was in the White House as White House Counsel. By the time I arrived back in her office, he'd obviously given word to offer me the job, and I accepted the job.

Kenneth Durr:

Talk about what your priorities were when you were thinking that you might be willing to take the job, even though it was in D.C. Did you think about the SEC? Did you [inaudible 00:12:11] some kind of agenda?

Mary Jo White:

Yeah. I mean, look, yes. I mean, I'm a person who... Whatever job I'm in, I'm rather absorbed in it. So, I hadn't been in the SEC or let alone the Chair of the SEC in November of 2012 or in the middle of December of 2012, but as soon as I got the call from Kathy Ruemmler, I studied up on it quite extensively and what the issues were. I'm an admirer of the SEC's independence, of its importance to our investors and the marketplace. I'm dedicated to public service and the President wanted me to do the job, so I was going to do the best job I could. What I learned, so in terms of priorities, more generalized priorities than specific ones, I guess, but one specific area of priority was that the SEC had, I guess... I would say gotten to loggerheads on the commission about a number of the... And maybe most of the JOBS Act mandates and the Dodd-Frank mandates.

So, a priority that I knew I had and did have was to move those mandated rulemakings, both sets of them forward in the best way possible, in the most efficient way possible as well, and that actually ended up... Would I rather have been in an era when the SEC did not have 100 mandated rulemakings, about 80 of them left to go? Yes, I think I would have. One of the challenges was to basically fulfill those

priorities, which I thought were very important and the SEC, basically its reputation had taken some hits because of the loggerheads, but also to make room for non-mandated rulemakings that I thought were important to the marketplace, important to investors.

So, one of the couple of areas that became priorities very quickly was the data, if I could say, systems integrity of market participants. So, there was a rulemaking that had been proposed but not adopted, not a mandated one, which became, I guess, a systems compliance integrity. I think it's SCI. That became an immediate priority because of how big a risk I thought and think that is to the markets globally and locally. So, that whole area of systems integrity, security, and then the asset management space became... And the SEC is the primary regulator for what? 75, 80 years, really hadn't had an overhaul.

They'd gotten to be a lot bigger players and different players. So, I made that reform, that update of a regulation of asset managers a real priority, enforcement, which is my background. The priority there was just to strengthen in ways that I could this SEC's enforcement program, because again, it needs to be a credible cop on the beat across market strata. So, I would say those were my priorities, and obviously the range was a little bit limited because of the mandated rulemakings.

Kenneth Durr:

Right. Well, you've set the table to give us some things that we need to talk about. You mentioned asset management. That was one of the things that FSOC was looking at. You got involved with that pretty quickly.

Mary Jo White:

Yes, I did. I mean, that was FSOC, which essentially is the Financial Stability Oversight Council, all chaired by the Secretary of Treasury, who became Jack Lou. He came into that job as I came into SEC Chair, succeeding Tim Geithner, and all the other top regulators, the Fed and the FDI, OCC, CFPB. I mean, state regulators, et cetera, and really, the main mission focused on financial stability. Obviously, we just recently come out of the financial crisis and some things had broken down rather badly in very risky kinds of ways. So, one of FSOC's authorities was to designate big players in the financial system as systemically important enough, SIFI, so called. Systemically important financial institutions I think is what it stands for, and there've been some designations of broker dealers, banks, but it's a mixed business, and what one consequence of being designated would be to be regulated by the Fed.

It was your prudential regulator and to look out for not just your regulatory issues in each particular space, but also just the impact on the global economy. So, asset managers had been under consideration as the next tranche of kinds of institutions to look at before I arrived, and there were a number of the other heads of the banking agencies, not the Fed. It was deciding whether it made sense or not, but the FDIC, the OCC, others who really thought that asset managers, or at least the big ones, ought to be designated as SIFIs. My area, SEC, area of primary responsibility, again, that learning curve on that, mine had to go up to vertical to learn as much as I possibly could about the issues. So, that was a major priority the day I walked in the door actually, and I did that and basically, at one FSOC meeting said, "Look, I think I owe it to the group to give you my views as to whether I think asset managers should be designated."

And I said, "I don't think they should be designated. I think it's an agency business. It's quite different than the financial institutions and banks. It's just a different... " I said, "There are some activities that asset managers are involved in more and more and bigger and bigger that I think we need to look at in terms of additional regulation with an eye on financial stability." So, I remember the day rather distinctly, and I think I can say this without violating anything, is that I... Here I am. I've come up a

learning curve, but I'm sitting here with people that this is their life in the Treasury Department, the Fed, et cetera.

So, I said, what I thought, why I thought it, and Ben Bernanke said, "I agree with everything Mary Jo just said." So, if I had a will, he would be in it because... I mean, I'm not saying it's an endorsement of me, but I certainly appreciated the support. Let's put it that way, and it was a contentious issue. I mean, that's no secret. But ultimately, the decision was made to turn toward activities and not toward the institutions themselves.

Kenneth Durr:

Great. Well, let's move on to the rulemaking. So, to get that out of the way. So, as you mentioned, you had two big mandates. You had the JOBS Act and Dodd-Frank. There was a lot of discussion during the years about which to prioritize, and they're very different. One is deregulatory and the other one was adding new regulations. Did that have anything to do with how you acted on those different-

Mary Jo White:

I mean, not much in the sense that I considered them... I mean, there are many more Dodd-Frank mandated rules, so in terms of numbers, and fewer JOBS Act ones. So, to some degree, I try to decide I guess on two scales, which are most important in some ways to get done sooner than down the road a bit, which ones were nearly ready maybe from the staff so that if they're ready to go, they come up in the queue, and then there was a sense... I mean, everything in Washington is politically divided. The Democrats didn't like the JOBS Act rulemaking for the most part. The Republicans hated Mad Dodd-Frank mandates for the most part. So, I thought it was important, all other things being equal, to do them both. I think we ended up finishing the JOBS Act. Once again, 3 versus 100. I mean, that's going to happen.

So, it wasn't a matter of my prioritizing the JOBS Act, but the JOBS Act had also become because of that political divide another loggerhead at the commission as I walked in and a real... It was tainting the commission's reputation for independence in a strange way, but in the ways of Washington. So, there were some that were closer to being ready. I got those done, and then I turned toward a method of... changed the method of rulemaking in the commission actually, so that we were running parallel work streams on more than one big rule at a time. So, we had three or four going. At some point, you run into DERA. The economists have to look at them and do the cost-benefit analysis, and then they get to the commission, but you can have a lot of work streams up to that point and move them, I think, more quickly.

So, in terms of the efficiency, I took some measures there and also I had the challenge of then getting, of course, a pretty divided commission to adopt the proposals and then adopt the final rules and because of the political charge on those, every time you would do a Dodd-Frank mandate, a little less so with the JOBS Act, but still there, you revisit the whole controversy of the Dodd-Frank Act, and one of the things that I'm sorry to see has happened to the commission, I think, in recent years is how politicized it has become in some ways. So, that for the most part, I could tell I knew what the votes were. It wasn't a matter of, "People are going to consider each one, and here's going to be the final outcome on consensus or wherever we come." It would be party line. Not every commissioner in fairness but some.

Kenneth Durr:

Yeah. You've been talking about the commission and the politicization. I mean, what would be the background for that, given that the commission's always been selected the same way? What has-

Mary Jo White:

I think in terms of the selection... I mean, in fairness to the commission and the commissioners, part of that is because the commission has been handed by Congress things that are politically loaded more in recent years than in the past, where I think there may be a need in an area that the Congress mandates the SEC to do, but leaves to the independent agency to take care of as opposed to drawing those very prescriptive firm lines along political lines. So, it's made the agenda a bit more politicized. But in terms of the selection process, and I do feel strongly about this, I've mentioned why I was so attracted to the SEC in part is its independence. It's an independent agency, and to give a great compliment to President Obama, he strictly observed that he was not...

In fact, the day that he announced my appointment, he said, "Congratulations, and I'll speak to you again after we're both out of office, out of deference to that independence," and then just another tiny story. He did call me the day I got confirmed to congratulate me, but before he said a word, he said, "I've checked this for the ethics officer and the general counsel, and I'm allowed to call you to Congress." So, that's pretty impressive for somebody like me, right? The independence nuts here. That was a good way to start, but in any event, all five commissioners are, as you know, appointed by the President, confirmed by the Senate, and by statute, no more than three can be a member of the same political party as the President.

The idea of independence, bipartisan, let's really think about these issues from all perspectives. So, all five are presidential appointments, but in recent years, I think it's actually date back to President Clinton, actually, as I looked into it a little bit. In reality, the President selects the chair and then the minority and majority leaders of the Senate select the other four. I think in the early years of that process, the President of the White House weighed in on whoever it was, the other four were going to be. In prior years, the heyday that I wasn't part of, the chairman really weighed in as well on the other commissioners, but in more recent years, it's also become a political issue.

So, the President really doesn't weigh in on those choices, and you've had in recent years, which was not true in earlier years, a number of congressional staffers coming to the SEC and that doesn't necessarily mean they won't be the best commissioner possible to serve, but it has meant in practice that you've injected politics into the commission in that way, and that's what I was alluding to earlier. I knew how people were. Most of my commissioners were voting on everything because of which political party they were in. I'm an independent. So, I'm in between them all most of the time.

So, I think what I would like to see is the President take back that appointment's power. These agencies are, and certainly the SEC is, critically important to the markets, but it's a technical set of jobs. It's not a political job or it shouldn't be, and you want people with the expertise in there, and with their serious about carrying out the mission of the SEC with that expertise. So, I have spoken to at least two presidents about this, but I haven't yet succeeded. So, we'll see what happens.

Kenneth Durr:

Well, speaking of technical challenges, let's talk about some of the rules. Which ones were the toughest for you to move through and why?

Mary Jo White:

Well, I mean, some were tough, some following the category. They were tough to get through the commission. I mean, the Money Market Fund Reform, which was not a mandated rulemaking, but the one that had broken down the rulemaking process within the commission before I arrived. So, to give Elisse Walter who was a commissioner for a short time while I was chair, she had moved that, and she served as chair for very brief time after Mary Schapiro stepped down and really worked on getting some

consensus on the money market proposal and reforms before I got there. So, getting that through was an early priority and difficulty. It had broken down before. So, there was a lot of back and forth that one had to do to land that one. So, that was a challenge and then the others. I mean, the Volcker Rule, highly controversial.

I had the commissioners who were opposed to it. They were going to be away for the holidays for every time it needed to come up on the agenda. You really had that kind of silliness, frankly, but barriers between you and getting it done. We should not use our whole time on this. I mean, I think the crowdfunding is a different kind of challenge and difficulty, which is basically that the concept is good, but what Congress did on that one, and I've commented on this publicly, is to try to write the rule themselves and by the way, they don't have that expertise that I was talking about that you need to have in the agencies, typically. So, it made it very, very difficult because of how unworkable some of those requirements were to actually pass the rule consistent with the mandate, but make it workable so that you at least had a chance of it reaching its objective, but many, many work challenges. I mean, of different varieties.

As I say, I had a lot of three, two votes, which was not my idea of how to run an airline if one could run it otherwise and achieve consensus.

Kenneth Durr:

Right. Are those the reasons for a couple of the Dodd-Frank rules that were left on the table when you took off?

Mary Jo White:

Probably more than a couple, but yes.

Kenneth Durr:

Security-based swaps, for example? Executive comp?

Mary Jo White:

Yeah. Well, there are two different challenges. The executive comp rule was controversial and difficult for everybody, and I think near the end of the Obama administration, even though regulators who were very strong proponents of that rule thought, "It's just not worth trying to get this across the finish line. It'll get reversed." So, I don't see that happening. I mean, it really was quite a fundamental change in having government dictate salaries. So, that made a lot of effort to get it there, but I never actually thought it would get there, frankly, and I participated in trying to get it in there. What was the other one you mentioned?

Kenneth Durr:

Security-based swaps?

Mary Jo White:

Yeah, security-based swaps. I mean, that's one where obviously the CFTC did the bulk of that rulemaking because of the bulk of their jurisdiction is there, obviously, and did it faster. I mean, the SEC, that was another set of rules on the SEC side that we advanced. They actually were ready to go in December when I was still chair, but by that time, we had become a three-person commission. We were for I think over a year, and we all had to be there for there to be a quorum. So, we had some new tools in the

arsenal to slow things down that you didn't like, but basically after the election in November, when President Trump became president, I could not get the other two to basically advance anything.

I could not get a quorum at that point. So, they were actually ready to go in December. Obviously, they just went, I think. So, obviously some changes were made. Although interestingly, some of the others that were ready to go, executive compensation, fallbacks. I mean, they've gone now. I mean, they basically are the proposals we left behind ready to go, and I'm glad to see them go because I think they were well done by the staff and mostly not changed to any degree, but it had to wait an entire administration. So, that tells you about the politics piece.

Kenneth Durr:

Right. So, reg SCI, I guess, was less politicized?

Mary Jo White:

Yes, it was not easy, but less politicized. Yes. Look, I mean, systems integrity. It's awfully hard not to see that as a priority. So, actually, it was the first robust rulemaking in that space that there was. So, the SEC should be very proud of that because I think it's made a big difference. It doesn't mean you're not going to have issues. You always are going to have issues, but it's prescriptive. It has notice requirements and their internal regulatory requirements of the exchanges, the big ATSs, you could expand it beyond those participants to others and there have certainly been thoughts of doing that as well, but it was a critical rulemaking, I think.

Kenneth Durr:

Let's move on to examinations, and the big one was the rise of private equity funds during this period, and I talked to Drew Bowden, and he touched on the presence exam approach. Tell me a little bit about the discussions in that one.

Mary Jo White:

Well, again, I'm not sure what he's alluding to specifically, but I can say a couple of things about that and then follow up, please. My view in the private equity space was that that's a corner of the market where there are investors that need protecting. Also, there are more sophisticated investors. There're richer investors by and large. So, there is a philosophy that they can take care of themselves, but we did see a number of mostly disclosure issues that cut across the industry and fee splitting issues, so that who was going to absorb the fees and the funds? They were probably troubling.

So, I think in terms of the presence exams... I mean, one of the challenges for the SEC exam staff was to expertise themselves on that industry, which they really had not been expert in before. So, a very large part of the at least initial exams in that space... They were learning on the job, which we heard a lot about and a lot of complaints about from private equity and rightly so. I mean, one of the changes I made in that space of exams was to try to assign both the most expert in that space, the ones that had come up that learning curve and keep them with the same private equity entities so that they actually understood the business. And look, credit to the industry, as much as they did not like what we were doing, and they really did not, they got what we were doing and as soon as they got what we were doing, they made their reforms. I mean, we didn't have to keep bringing cases in that space because pretty quickly, we got pretty high conformance.

Kenneth Durr:

Okay, and the other big thing happening is the investment advisor sector is still booming, and this was a conundrum for the SEC for a long time. You had oversight of the NASD or FINRA. Tell me a little bit about the discussions regarding investment advisors and how the SEC was going to deal with this.

Mary Jo White:

Yeah, and it's a resources issue, obviously. I mean, mainly it is, and the reason it's of such concern and such risk is it's uncovered space and the space kept growing and growing and growing both in terms of dollar amounts and investors and kinds of investors. So, you couldn't possibly cover the field you needed to cover. I did not think... I mean, I didn't really want to exit the broker-dealer space. First of all, that wouldn't have solved the problem. It was that significant a problem that wasn't going to be enough to solve it, but certainly I understand the move to have FINRA do all of that and so forth because of just the coverage set of issues.

I mean, my view on that was I wanted the SEC to do it, but I had to have the resources. So, I did pound the pavement to try to get those resources unsuccessfully to cover it. So, once again, we had to get smarter, use technology better, do the best we can, try not to leave segments of that space uncovered. So, you'd try to send the message out even though you weren't there with the asset managers, not nearly as much a big problem.

Kenneth Durr:

Well, let's move on to enforcement then. One of the interesting things is... I think it's a first is you had co-directors and tell me about the reason for that and how it worked out.

Mary Jo White:

It worked out very well. First, it's always people to make things work out well, too. I mean, my intention was my partner, Anderson Resnick, who was one of those co-heads to come down with me to the SEC, and look, I think the SEC, I mean, on enforcement, and again, my background is enforcement, so I didn't need extra expertise, but I did need to have someone I had complete confidence in because it's both an area where there's risk for the agency if they don't do it right. It's of critical importance that the SEC be a strong enforcer, and you really want to have your director run that division. It's the biggest division the SEC has. So, Andrew, who I thought was a great choice. George Kanellis at the time was acting, as I recall. Both Andrew and George worked for me as assistant United States attorneys when I was US Attorney. So, I knew them both. Huge admirer of George also.

So, as we got to talking about it, before I arrived, I thought, "Look, they're both excellent." Andrew and I are from the same firm, so we were going to have some recusal issues. So, that was a little extra ingredient so that particularly in that early period, we would not have the director and the chair recused on any major enforcement case, but that wasn't by any means the driving for us, but it was certainly an extra benefit, and they worked together with their friends. I mean, that worked. I mean, that relationship worked and obviously Steven Peikin and Stephanie, I think, was a success as well. I don't think it's ordinarily... It would be number one on my model list, so to speak.

I think it's better to have one person in charge of whatever it is. There's more continuity, consistency, and someone's accountable, right? Say, "Oh, well, I thought Stephanie was doing that." There's a little bit of that when you have two heads, but I thought it worked exceptionally well because of how great Andrew and George are, how smart they both are, and how really expert in enforcement they are, and they got along terrifically well. So, it worked terrifically well.

Kenneth Durr:

And George Kanellis was in there for about a year, right?

Mary Jo White:

Yes.

Kenneth Durr:

Well, let's move through some of the signature initiatives, and I have to bring up the phrase, broken windows.

Mary Jo White:

Yes. It's been brought up before.

Kenneth Durr:

We know that goes back to Rudy Giuliani. Talk about the discussions that led to bringing that into the SEC.

Mary Jo White:

Yeah, I mean, and I'll define the it a little bit, too. I mean, essentially it was my idea not... and I'll get to the title in a minute. But what was my idea? And again, there were a couple of ideas that I imposed on enforcement. The no admit, no deny and requiring admissions in some cases was another one, but when I got there in getting up the learning curve and hearing from the exam staff actually more than... We were hearing about different rules, really across the rulemaking specter that were just routinely not being complied with by broker dealers and the industry. Some more important than others, but frankly shouldn't have a rule if it's not important enough to enforce in general, but again, some more important than others, and I said, "Look, I think what we need to do is bring a number of enforcement cases on particularly those rules that we have systemic non-compliance," and they really are quite important.

It's not the biggest Ponzi scheme in the world. Obviously, in that sense of the word, but they really are important. So, I think we ought to, in my phrase for the initiative, which not broken windows, but was blitz and bundle. No one's actually quite owned up to who did this, but I let it happen. So, I was giving an early speech on my enforcement agenda, and someone changed blitz and bundle to broken windows, and I let it go. So, would it have been the same controversial set of cases if it hadn't done that? I doubt it, right? I doubt it, but look, I do think it's... I mean, the philosophy, I do believe it in I terms of... I think I didn't regard this as the broken light in the street. I regarded these as important rules that were systemically not being complied with, and how do we get the industry to take these seriously?

But I don't think you can leave the smaller violations, the non-frauds unattended to, and I don't think they work. The way we did it, they were not really very resource intensive. We did a number of initiatives where we offered come in and admit you did this and pay a fairly modest penalty and get on with it. So, we were very successful at those kinds of self-reporting initiatives in that space. They weren't all broken windows cases or blitz and bundle cases, but a number of them were. So, and again, I think it sends a stronger message if you are bringing cases across the market, strata and across market participants. That's how the job enforcement and the SEC is very different from being US attorney because US attorney doesn't have the same challenge as the SEC does in terms of how many rules, how many pockets and kinds of participants that you have to regulate and get to walk straight.

So, of course, you're not everywhere, but you want the industry to think you are nearly everywhere, and you're not going to leave some piece of the market unattended to. So, that's the birth of broken

windows, which I think was quite successful, by the way, although I had to keep answering this question. So, I wasn't thinking Rudy Giuliani, by the way. It was Bill Bratt's idea, I think, but don't tell him that I said that.

Kenneth Durr:

Okay.

Mary Jo White:

Okay?

Kenneth Durr:

Yeah. I think Giuliani took credit for it later.

Mary Jo White:

Yeah, I think there's no doubt about that.

Kenneth Durr:

Characterize some of this systemic, noncompliance. What were the kinds of things that you were looking at there?

Mary Jo White:

I mean, some of it was recordkeeping but of importance. Some of it was the policies and procedures on data security. Some of it was in the quality of information being filed with the commission. I am trying to remember now. I'd have to go back and look to see what the particular ones were that we did, all of the ones that we did in terms of the self-reporting construct as well, but it was a variety, mostly technical, but ones that we really thought had the most impact, but I can't bring them all to mind at the moment.

Kenneth Durr:

The idea here was that you're going to enforce across the marketplace, and I understand that at heart there was this hope that you'd somehow change the culture, get people to think differently. Do you think that happened?

Mary Jo White:

I think to an extent it did happen. I mean, we talked about the private equity space, the disclosure issues, the fee. I mean, but you're always doing in enforcement, and we've used the word a few times today, is to deter as well as punish for the particular violator because scarce resources send your strong message, and in these areas where we use the self-reporting blitz and bundle to some degree kind of mechanism, you could see in a very short period of time the industry change, and you don't usually see... I mean, first you never quite know for the most part, have you really succeeded in deterring others? And it's very almost impossible to measure, frankly, but here when we proceeded in that way, and you could see before your eyes in a pretty short period of time, you actually had affected change in a very positive way.

In general, I think you need to be a strong enforcer because I think people need to worry about whatever it is they're thinking they're going to do that they might get away with. So, you need to be not just working in specific areas in that way, but have a reputation of being a tough cop, I think. So, you've

got to bring a variety of cases to do that, and then you've got to message them. The staff has to message them for the most part.

Kenneth Durr:

Yeah. Speaking of messaging, the admission of wrongdoing policy, clearly this was intended to send messages.

Mary Jo White:

It was, and it was also intended to enhance the credibility of the SEC's enforcement strength. When I came in, and this is actually one that I had in mind to do when I came in because I think it had become controversial, I think because Judge Rakoff, and I think it was the Citibank case, had gone after that among other things, but all you'd have to do is read every press account in that timeframe, which would've been 2011, 2012, maybe a little before that, and every story about an SEC enforcement case would be... And there was no admit, no deny. There was a no admit, no deny. So, I thought it was really weakening that message and then basically where the idea... People think it came from Judge Rakoff. Actually, he's my friend, and I've known him for years, big admirer of his, but it actually didn't come from him.

I mean, it was part of the press. I'm reading obviously in terms of what I think the SEC's impact is, but when I was US Attorney, I did the first deferred prosecution agreement against a company as opposed to an individual. Financial securities, and there were no templates for this, but when you got to, "Am I going to make them admit this or is it going to be no admit, no deny," the decision I made was that it was going to be admit. You have to admit your wrongdoing. I had a particular reason for that at the time. SEC actually had already brought a case, and they were having some difficulties because because they didn't have an admission, frankly, to get monies to the investors. So, I decided to do it that way, and I think that became the template then for all deferred prosecution agreements. So, I had that in my mind as well.

And I clearly, companies and others don't like to admit wrongdoing because it has collateral consequences in private securities litigation and in other areas, but that's part of the message, frankly. I mean, I think what I focused on is in certain cases, I thought there was a greater need for public accountability of wrongdoing to send a strong message to frankly be sufficiently strong in the particular case. So, we aimed at those most important egregious cases that had or risked the most harm to the markets. We could have done them in individual cases because you have a lot of individual brokers and others who have egregiously harmed their clients, but that's not where we went.

We went to the high end, which are the financial institutions and the other registrants, and I think we ended up doing about 80 of them. I mean, I clearly was not suggesting the abandoned, no deny, because we would've done 80 cases and not 4,000 or whatever. So, you wouldn't be covering the space. So, you had to make choices there. I actually think it's an important component. I mean, I like to deal with it now because I'm on the other side of those issues, but I think in certain cases not to have that admission of wrongdoing really weakens the action that you've taken.

Kenneth Durr:

The Falcone case, that was the one where the staff had already set up a no admit, no deny settlement, right?

Mary Jo White:

Right.

Kenneth Durr:

And you told that. Had that taken place before you came in?

Mary Jo White:

I mean, some of it had taken place before I came in. I can't quite recall precisely where it was, but it was very, very... I think it was mostly baked. I think it was mostly baked, and then I think there was a leak of the settlement in the press by the other side, not the SEC, which just caused me to look at what the staff was proposing to do. I also didn't like it that they leaked it. I didn't think it was a tough enough deal, and I didn't like it that they leaked it to diminish its impact even more.

Kenneth Durr:

That was a pretty big-

Mary Jo White:

So, first, Kanellis I would tell a little inside baseball when everyone was complaining that I changed the deal, and he said, "There's a new cop on the beat here and don't call her bluff. Never call her bluff." I mean, I wasn't bluffing about anything at the time, but the point was this was me, not him, to his credit or my credit. I don't know whose, but yeah.

Kenneth Durr:

Okay. Yeah, that was a pretty big step to take, and I just wanted to get to the effect on the staff, that sort of thing.

Mary Jo White:

Yeah, I mean, look, I don't know. You may know more than I do about the effect on the staff. I mean, clearly you never want to undermine, and I certainly wasn't trying to undermine the staff here. I thought the staff had in that instance had not been tough enough, frankly, and then the behavior after the deal and principle had been reached, I thought further diminished our credibility as an enforcer, but George probably protected me from most of the fallout with the staff.

Kenneth Durr:

Was it tough to get an admission in that case and in others? You mentioned some of the very good reasons why people would-

Mary Jo White:

Yeah, I don't think it took very long to get that. I mean, I'm sure there was back and forth. I mean, it happened, and I don't remember being prolonged. Some cases, we didn't get the admissions in where we sought them, and you had to be prepared then to go to trial, and we did. I think in each of the ones where we did not get the admissions that were litigated, eventually they agreed to them. I mean, to the credit of Andrew Ceresney and George Kanellis and the staff, I mean, we did try to pick the cases that made the most sense that we thought really should have admissions in them and not apply them too broadly.

So, again, they bore the brunt of how difficult it was, but from my chair, for the most part, it added to the discussions. Clearly, there was resistance certainly by some more in the beginning than the end. I

think people got used to... We were going to, in certain kinds of cases, seek admissions, and then some just said no but ultimately said yes.

Kenneth Durr:

Anything else we should talk about regarding enforcement that we haven't touched on?

Mary Jo White:

I guess the only issue that I think is always the current one is what's the appropriate relationship between exams and enforcement and shouldn't they stay separate, or frankly, are the other policy divisions? You show up at a meeting with Corp Finn and all of a sudden, there's an enforcement attorney sitting there, and that certainly bothered me when I was in private practice, before I went to the SEC, and certainly gets my antennae up after I've been at the SEC, because you want to be able to deal with the exam staff, Corp Finn staff, trading in markets on whatever your issue is. You're trying to work out an issue, get guidance, and then all of a sudden enforcement's in the room, and you got to be careful about that. I think you can mix them in a way that's not appropriate, but in terms of exams and enforcement, it's always work. Exams decide, "Gee, there are certain cases at the end of our exam that we think we should refer to enforcement."

My view of that was enforcement and exams should work closer together than that, that there are certain priorities that frankly they both have in terms of the enforcement issues and what's important to be sending a stronger message on. So, I don't think they have to stay apart in a way that I think some others may. I think they need to be sensitive to the difference between exams and enforcement, but in certain cases that you have a lot of information on already, they're properly married up earlier rather than later, I think.

Kenneth Durr:

Was there a way you could do that systemically, programmatically? How could you keep that space intact?

Mary Jo White:

Well, I think a couple things. I mean, one, it was ensuring that the communication lines were open at the senior levels and frequent. WHat are we seeing? What are we seeing? And then it's a matter of having in mind that sensitivity in those senior leaders, which I think they did. I mean, I really think they handled it quite well.

Kenneth Durr:

Okay. Let's talk a little bit more about working with Congress, which is something that you had to do, whether through the commission or literally working with Congress. You mentioned statutory mandates. Was that the big corporate political donations mandate that you referred to?

Mary Jo White:

Well, no. The political contributions issue was not a mandate. In fact, Congress had actually tried to pass that mandate but failed. So, those that were in favor, and I knew that was also a very highly charged issue when I came in because Citizen United had occurred, and this was one where the Democrats wanted mandated disclosure and the Republicans really, really didn't want it. So, it was highly charged in that way, but because they had failed to pass a bill in Congress to require that even though they had

passed 400 other mandates, but not that one, the Democrats wanted some agency to do that. Now, obviously, the logical agency to do that because it's in their subject matter area, is the Federal Elections Commission. That's what that's about, but they were completely deadlocked, I think, the whole time and prior to my time, you couldn't get anything out of that agency.

So, I think initially they went to those components of this, went to the IRS to try to do it that way in some way, and then obviously went to the SEC to try to do it. Look, that was obviously very controversial. Senator Warren was particularly not happy. Senator Schumer was not happy. The Democrats were not happy about that. I mean, I essentially studied that one. Again, it's not a mandate, and I'm prioritizing these mandates, fighting space for other high priority things that aren't mandates. So, to some degree, it was a time consumption priority issue, but it was obviously such an important issue to both sides that I met with the Corp Finn folks talked to them, studied the issue. My advice from the Corp Finn staff was not to do it, both because of bandwidth, but also even more so not appropriate for the SEC to do it.

It already is required if it's material, if that issue for a company is material, it's required, and I agreed with them. So, I stuck to my guns on that with a few barbs being thrown my way for doing that, and the SEC chair always does this as well. I'm all for companies disclosing political contributions. So, on the merits of, "Do I want companies to disclose it? I do because you have enough people that want to hear about that." So, I used the Bully pulpit to some degree, to encourage, and a lot of companies did voluntarily disclose. A lot of big companies did differently, but not everybody did. Unless you have a mandate, you don't get everybody to do it, but we also, of course, only have jurisdiction over public companies, and I remember one rather contentious lively hearing about that. I think it was the Senate Banking Committee.

I think it was Senator Schumer actually, who's just... I've known him forever, and we have, I think, high respect for each other, but different on this issue, and he was just... How do you get... and I was telling him, I said, "Look, I encourage the companies to do this." I'm for it to do it, but I don't think it's... Already disclosure is required if it's material, and I don't think it's not the SEC's job to do this particular mandate for public companies, and he says, "But what about the Koch brothers? What about the Koch?," and I said, "Senator, they're a private company, and I don't have any jurisdiction over them whatsoever."

So, it was almost a revelation that we have some space that we would be mandating this in outside of, in my view, the core mission of the SEC kinds of issues, but our swath of requiring these disclosures, it was much narrower than I think they appreciated.

Kenneth Durr:

Yeah, Senator Warren certainly acted like this was an obligation that the SEC did.

Mary Jo White:

No, look, I think others did too, in fairness to her. I mean, I think investors wanted it, and certainly some investors wanted it. I mean, that whole issue cuts across a lot of discussions today on the ESG disclosures, and so forth. I mean, what's material is determined by what's material to an investor in making their investment decisions or their voting decisions. As a citizen, I would like to see this happen. I mean, that's not what the law actually defines it as, and it's one where he looks at that to try to say, "Okay, if you get enough investors who want it, you just do it," right? But obviously, you can't just write a rule that you might want to have. It's also got to pass muster on cost, benefit, and the courts, and it's not easy. It's not an easy space, but no.

I mean, Senator Warren, I was on her favorite regulator, eventually. I don't know if it was only over this issue she had very strong views on, other issues too, where I differed the waivers, for example.

Kenneth Durr:

WKSI waivers.

Mary Jo White:

The WKSI waivers and the other waivers that I think she and at least one of my Democratic commissioners saw as part of the enforcement arsenal and that ought to just be added routinely onto penalties that you'd negotiated in settlements. I thought it was a different... I still think it's a different issue that an enforcement action is brought is a disclosure case or not a disclosure case. There's standards that apply to whether you give a waiver or not that aren't enforcement standards. They're really standards of, do you need to disqualify this company from having a WKSI waiver or another kind of waiver because of the injury they may do to the public, given what they've done in the past? And you were very often doing something enforcement-wise in one space of the business that has nothing at all to do with the disclosure, integrity, or strength of the company.

And yet, if you take their WKSI, if you don't give them a waiver in the WKSI space, you're basically adding on a penalty. That is, in my view, not how you should be looking at it. And look, the irony of this is I've always been known as a pretty, I mean, Attila the Hun on enforcement. I'm a pretty rigorous enforcement person. I just think it's a different inquiry that you make after you make it on a different set of merits in deciding that, but again, it's part of the, "Are we being too easy on the banks?" The banks are often in this or other kinds of companies. Obviously, the WKSI applies not just to banks, it applies to all kinds of companies, but it was part of let's get tougher on the banks, I think in the financial service industry, which I was all for, but not in the waiver space. You had to do that based on those standards, not something else.

Look, I think it's also just... Speaking of Senator Warren... I mean, Washington is a political town, and I'm an independent who has no home basically, and you're with him or against, right? And if you don't follow the party line on every issue, you're not their favorite person. If they're particularly politicized and strong in their views, my view is I chair an independent agency that has a mission, and I'm not saying I'm going to be right about everything, and I'm certainly not saying everybody's going to agree with what I do or I don't do, but it's my job and my duty to call them as I see them, and I've done that all my life, and I wasn't going to change because I was in Washington.

Kenneth Durr:

Yeah. So, in a lot of respects, this difference between you and the senators was inevitable.

Mary Jo White:

Yeah, I think it was inevitable. I mean, look, we're talking at the moment about Senator Warren. I think she's a very smart, able senator. I mean, obviously, but I actually thought by and large, I had an excellent relationship with Congress, both sides of the aisle. I was responsive to them. House Financial Services Committee, one of the SEC's Oversight committee, 60 of your closest friends keep you there for nine hours. I mean, it's part of the job, and I answer the questions. Somebody asked me a question, I answer the question, and that seemed to work pretty well, actually.

The SEC was treated very well in its budget. We were called up there less often than many of the other regulators because I think we were perceived to be independent actually to a degree, and not just on the Republican side. I mean, I had great relationships on the Democrat side, too. So, Senator Warren and I had some issues. I mean, I think more on her side than my side, frankly, but that's going to happen. That's going to happen. You have to be prepared for that to be happened. That's why here before, I said, "Move the building to New York," right? So, it's a way to get away from some of that, but that's politics.

Kenneth Durr:

Yeah. I want to return to just the principles of working with the commission, the things that you learned along the way. You made the case that this was definitely one of the biggest challenges, was just working with the other commissioners on a day-to-day basis. To start with, you had some two-to-two splits early on, right? Due to your recusal. Was that just a matter of, since you're recused, you have to let them work that out?

Mary Jo White:

I think I remember one waiver where that was the case. I can't remember what case it was now. I think it was only one case actually, and it did show you, you needed the fifth vote, I guess, but I think it was only one case. So, it didn't become... I mean, that case became a... It took a long time, and it was I think not easy for the other four to work without me, but I believe it was only one case.

Kenneth Durr:

Okay. In that five-person commission, how did you learn to move things through? How did you learn to make deals?

Mary Jo White:

Yeah, I mean, I guess, and everybody watching this probably knows about Sunshine Act, which is just a horrible thing, not its objective. It's a good thing. You know what? Backroom deals being cut, but the open meetings which are in public is the only place you can gather with your fellow commissioners, and by the time you get there, everybody knows exactly what they're going to say and exactly how they're going to vote. So, it's not as much of a forum as you'd like it to be for public discussion. It just really isn't that. So, what that means is that, literally, you cannot discuss a policy issue of rulemaking with more than one of your commissioners at a time. That is not built for consensus. That is not built for efficiency.

When I came to the SCC, I remember the first day. There's a whole box of old photographs sitting in a closet or something in the office, and it was the pre-Sunshine commissioners were among the photographs, and you saw five of them sitting around the table discussing the business of the SEC, and I was so envious and stricken that I couldn't do that. I mean, it's a terrible barrier that you can't get in a room with your fellow commissioners and discuss the issues of the commission. So, what you have to do instead is the walk around diplomacy, right? The shuttle diplomacy, I did a lot of that and again, that had stopped I think before I had gotten there, but once a week I would meet with each of them, even if we didn't have anything that we were discussing in terms of a rulemaking or a policy issue, and I think that helped, but it's still an awkward, inefficient mechanism to try to achieve consensus, and it varied.

I mean, I think it took the money market funds' rulemaking, which is the one that had broken down and reached loggerheads. We ended up being three to two on that one also, the two votes being the more recent members of the commission who come from Congress, actually. So, whatever that means, or it doesn't mean. So, Dan Gallagher, Luis Aguilar, and myself were the three votes. So, we ended up working very, very well together. One at a time, one-on-one, not all three of us in the room ever. S, that was quite successful in that way. Again, you're also trying to get 5-0 votes, and I had a bunch of those, but I had a bunch, not those.

But eventually you're not going to get the other vote on something, and you still try to talk to that commissioner, listen to their issues, but it's really all or nothing to some degree on these, particularly the mandated ones. So, I mean, I think you have to do that when you're the head of these agencies. There are other commissioners or the chairs, I should say, of other commissions and maybe of the SEC as well who think, "I'm just not going to do that," but it depends on who your commissioners are. Do

they follow the chair? Just lockstep with the chair? I don't think that happens much in Washington anymore, in any of the agencies probably, and they shouldn't. I mean, they shouldn't do that. What they should also not do though is just vote a party line. They really should look at the issue on the merits.

Kenneth Durr:

Right. Talk about the challenge of that three-person commission that you had because of the holdups in appointments.

Mary Jo White:

Yeah. I mean, look, it was a challenge, and it was partially a challenge. Again, all three of us had to have a quorum. I think the CFTC is a little different when that happens there. Each agency has slightly different rules, but all three of us had to be present to vote on something, but we couldn't pass anything without all three. It could be a two-to-one vote, but it had to be all three. So, there were times when a commissioner would use that to try to stand in the way of something passing or some enforcement case being approved. So, what I did with that, I mean once the election happened, the second of those commissioners also wanted to just shut down basically. So, there was nothing I could do then clearly. But before that, I would basically say, "Look, I'm going to call the meeting," and if there's an empty chair at the meeting, there'll be an empty chair at the meeting. We won't be able to vote.

I'm going to call the closed meeting on this enforcement initiative, and if we don't have a quorum, we'll explain why, or maybe you want to come and explain why and then leave the room. That worked a few times. We got the quorum. We got the approval. I think I remember one open meeting, can't remember which rulemaking it was where we had to wait 15 minutes for that third person to come, but we waited that 15 minutes for that third person to come. I mean, you don't know me that well other than through our interview. I'm a very A2B2C on the merits, no nonsense person, but when you go to Washington, you have to know that you've got to be able to use other gears in order to get things done.

I think it's easier in errors when you don't have what we had on our plate in terms of the Dodd-Frank mandates and the JOBS Act mandates, I think much easier just because it's less political when that isn't on your plate. So, I think it was a particular challenge for me, and a three-person commission, that isn't how they're designed. I mean, they just do not work well when that's the case both because of the quorum games that can be played, but also just you want the input of all five.

Kenneth Durr:

This has been a great talk. Is there anything that we have not discussed from your time as-

Mary Jo White:

Listen, it was absolutely a fantastic experience. I mean, I think it's a, "I'd do it again." People ask me, "Would you do it again?" Then I'd say, "Do it again in a heartbeat." I mean, I think it's one of the crown jewels of the US agencies, and it's an important one. It's so important to the markets and investors and the staff is beyond any staff. I mean, they're just so dedicated that it's one has to take care to preserve its strength, though in ways we've talked about to some degree, and you can see issues now where if, for whatever reason, you're losing that expertise and that dedication in the senior staff. You got to deal with that because that's going to weaken the agency.

Kenneth Durr:

Well, Chair White, thank you very much. It's been a great discussion. I really appreciate it.

Mary Jo White:

My pleasure. Thank you.