

Michael Conley Oral History

Interviewed by Kenneth Durr, February 10, 2026

KD: This is an interview with Michael Conley for the SEC Historical Society's Virtual Museum and Archive on the History of Financial Regulation. Today is February 10th, 2026. I'm Kenneth Durr. Michael, it's great to talk to you again.

MC: Thanks. Pleasure talking to you again.

KD: Yes, it's probably been five years or something when we first talked about the OGC.

MC: That may be. I remember one with David Becker about the Office of the Solicitor. I think that was more recent. That might've been a couple years ago.

KD: That was it. Well, I want to talk about the Office of the Solicitor for sure, and I want to talk more generally about the Office of General Counsel today. So let's dig in. First thing is getting some background, and I want to take you back to your undergrad experience, see if we can unwrap the ways that you got interested in law.

MC: Sure, yes, I'm happy to do that. I think I had a somewhat different path than most people to the law and the Commission, and that's largely attributable to the high school that I attended in Rhode Island, which was staffed by a Catholic religious order. And as I approached the end of my high school years and was applying to colleges, it really struck me that the happiest people I knew were the Brothers who were teaching at my high school. And to the surprise of my parents—and in fact to the surprise of the Brothers—I indicated that joining their community was something that I might like to explore. And so at that point I entered what was referred to as “formation,” which was the period during which, in your undergraduate years, you'd be living in community with other people who were at about the same place in the process. And it was really designed—I think very intelligently—as a discernment period. You got experience with this to ultimately figure out if this path—which would have to be acknowledged to be different than the one most people would follow—was something that was right, whether there was a good fit.

At the conclusion of that time, which tracked across my undergraduate years and then an additional year beyond that, I realized that although I could be very content in that life, and there was a lot about it that appealed to me, ultimately it probably would not be completely fulfilling for me. And so I made the hard choice to leave. It was a very hard choice, because I had entered the community when I was just 17 years old, and I was very close to the people with whom I'd been living and studying. But I decided that it wasn't the right path for me. And so I left and went back home to Rhode Island. I'd completed my undergraduate work, so the question naturally arose, what am I going to do next?

My stepfather was an attorney and he said, “You can do whatever you want to do, but one possibility might be to go to law school.” He said, “Whether you ultimately want to be a lawyer or not, law school teaches one how to think about issues and solve problems, which could probably put to good use no matter what you decide to do.” He was a Boston University law alum, and he took me there to meet some of the faculty. I didn't have anything else in mind at the time, and so I decided I'd give it a shot and, as it turned out, he was exactly right.

KD: Did you have any influential professors, anything like that?

MC: I did. As in most law schools, we were split up into sections first year and moved in lockstep through the foundational courses. As it turned out, I had a fantastic set of professors for those classes. For torts, I had Colin Diver. For contracts, I had Clark Byse, who had been at Harvard and then retired from there and came to teach at BU. And I had David Seipp for property and Bob Bone for civil procedure. Bob Bone and David Seipp were just beginning what turned out to be stellar teaching careers. And Clark Byse and Colin Diver were already major contributors to the law.

I didn't know precisely what I wanted to do even as I was finishing law school. I figured that I would probably stay in Boston. I knew clerkships were a possibility, but I wasn't really focused on that. But Clark Byse encouraged me to pursue a clerkship. At that point I'd also had him for administrative law, which is what he's really known for beyond contracts. And he brought that to life. He had been in Washington in the '30s when a lot of administrative agencies were just getting going and he had literally written the book on administrative law. He suggested that the DC Circuit would be a place that I might want to consider applying for a clerkship. And he wrote letters of recommendation for me. Ultimately, I had the good fortune to be selected by Judge Abner Mikva.

I went down to Washington fully intending to come back to Boston. I had already accepted a position at a firm in Boston, and my plan was to do my clerkship and then come back. Of course, things don't always work out the way you imagine. Working with Judge Mikva was great. He had been in Congress before he was appointed to the DC Circuit by President Carter, and that gave him an insider's view of what happens in Congress and great respect for the legislative process.

And my good fortune continued, because after clerking for Judge Mikva, I was selected to clerk for Justice Blackmun, another incredible judge and person. One of the things they had in common that most distinguished them for me was how conscious they were of the effect that the decisions they were making would have on people.

There are of course circumstances in which the law simply is what it is and you have to figure out what the right answer is, even where it will have some negative effects on some discernible individuals. But at least thinking about that impact, being conscious of it at the time they were making the decision, helped shape the way in which they approached cases. As I was thinking about today and talking to you, I recalled a dissent that Justice Blackmun wrote in a case decided a couple terms before I clerked that captures for me just who he was as a judge and as a human being. It was the *DeShaney v. Winnebago County* case. I don't know if you remember that one, but it was about the failure of a Wisconsin Child Protective Services Bureau to protect a child from a violent parent. A majority of the Court held that there was no right of action under Section 1983, and Justice Blackmun wrote a separate dissent, saying, in part:

"Poor Joshua, victim of repeated attacks by an irresponsible bullying, cowardly and intemperate father and abandoned by respondents who placed him in a dangerous predicament and who knew or learned what was going on and yet did essentially nothing except as the court reveals dutifully recorded these incidents in their files. It's a sad commentary upon American life and constitutional principles, so full of late of patriotic fervor and proud proclamations about, quote, unquote, 'liberty and justice for all' that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded. Joshua and his mother as petitioners here deserve, but are now denied by this court, the opportunity to have the facts of their case considered in the light of the constitutional protection that 42 U.S.C section 1983 is meant to provide."

I read that and I can totally hear him. He didn't write every word of the decisions in which he was designated as principal author. But I have no doubt that these were his words, and it really does, I think, capture just who he was as a man.

KD: And an approach to law that maybe is not ascendant right now, I think.

MC: No, and if anything, I think some of the words that I just read could well apply. You hear a lot of rhetoric that's very "highfalutin'" as Justice Blackmun would've said, but when push comes to shove, there's not the follow through.

KD: Right. That's great. Well, let's get you started on the road to the SEC. You went into practice for a little while, is that right?

MC: I did, actually for quite a while. I clerked for the DC Circuit '89, '90 and then Supreme Court '90, '91, and so in October of '91 I started at what was then Pillsbury Madison & Sutro. I interviewed at a number of different places before deciding and ultimately picked Pillsbury because it had a very substantial presence in San Francisco as well as in Washington. I thought I wanted to live and practice in one of those two places and that it would be helpful to have a firm that had presence in both.

And so I started out in the Washington office and I met my then partner, now husband, within a couple of years of leaving the Court. He's from this area, and I likewise have East coast origins, as I told you, so both of our families are fairly close to here. So I decided that this was going to be the place that I would make my life.

KD: Didn't make it to San Francisco though?

MC: I spent a lot of time in San Francisco because Pillsbury was San Francisco-based and a lot of the clients for whom I did work were in California. I was in California courts a whole heck of a lot, including the Ninth Circuit any number of times. My practice was a typical appellate-legal-issues type of practice. Some of it was appeals. Often I was involved in complex commercial litigation where I would work with the trial team from the get-go to assist in framing legal issues and handling summary judgment motions and the like, to help best position a case if it ultimately were to go on appeal.

After a few years I became a partner and within a year or so of that, the firm asked if I would serve as managing partner for the Washington office, which I agreed to do somewhat reluctantly, honestly, because it involved a lot of administrative work. After assuming that role, I would appear periodically in cases and I would supervise some matters, but really I did a lot of administrative stuff. In the beginning of 2000, I was approached by a law school friend of mine who also lived in DC and I saw periodically, Arthur Laby, who is now a professor at Rutgers Law School and has been for a number of years and is an expert in investment management law in particular, but securities law generally. And Arthur was then in the Commission's Office of the General Counsel and he called me and said, "What would you think about coming to the Commission? There's this new program, the Jennings Attorney Fellow program, and you might think about it as something that you'd be interested in trying." And I said, "Well, Arthur, it sounds like fun, but I'm not a securities lawyer." He said, "That doesn't matter. The program's designed to bring people in who are along in their careers, not newbies. And the idea is that you can bring whatever skillset you have in practicing law," mine would be appellate litigation, "and pick up essentially this extra interesting area, which would be securities law, in a way that a lot of people don't get to do. You'll get an insider's view, and you can do it for a limited period of time." The fellowship was designed to be for an initial two-year term of appointment, potentially extended to four years. That's the way it was structured.

KD: Was that pretty new at the time? The Jennings program?

MC: It was new. I believe Professor Jennings had died the year before, 1999 is my recollection. I was an inaugural member—probably not a good one, because I didn't stay only two years or four years and then go back to the firm. But that's what I thought I was going to do. I took a leave of absence from my partnership. And the firm was, I think, pleased to have me do it with the idea that I would be coming

back. But in any event, I came, I worked in the Office of General Counsel and in particular in the appellate group. And really right from the beginning I was involved in incredibly interesting things and, happily for me, I had returned basically to practicing law myself. I was writing briefs and arguing cases and doing all the stuff that I really liked to do with zero administrative responsibility at that point. So it was like the old days for me, and that was very welcome.

KD: Who was doing the supervising?

MC: The assistant general counsels in the office, in the appellate group, and then ultimately Jake, who was the Solicitor. Between Jake and me were the assistant general counsels, who were managers without being senior officers.

KD: Okay. Well talk about some of those experiences, generally speaking. I'm assuming you kind of worked your way up through cases, through different levels of complexity. Is that how it happened?

MC: Yes, as I said, securities wasn't my background, so I really needed to get up to speed. It's a code-based practice effectively. There are a set of laws and regulations that are applied. There's a large but not insurmountable body of case law that has been developed over the years. I was something of a generalist before I came, and I was familiar with getting up to speed on the relevant law and facts of whatever it is I was dealing with. And I was just doing that every time I was working on a new matter. I didn't have something to fall back onto in terms of cases that I'd already done.

It took a while to build up that expertise, and Jake was very willing to help me do this. I wanted to try lots of different things, and so I didn't want to become the expert in the 33 Act or some other narrow area, and he really accommodated that. It was a wonderful opportunity to work closely with the folks who were managing me at the time. Very accomplished lawyers. They were terrific. I will say that having the opportunity to work with Jake as closely as I did, was a real gift. Certainly you've heard this before, probably countless times from people who worked with Jake, but he was really one-of-a-kind. It's funny because he was born in 1934 and people used to joke about it and say, "Yeah, he was created by the 34 Act," at the same time as the agency. And he came to work at the agency in June of 1962, which was six months before I was born.

So there really was a generational kind of thing there. And he was unique. He had incredible recall. People always joke about his office being a disaster. An outside observer would walk in and think, "Oh my God, what happened in here? Did something explode?" But we knew better. He might be talking to you about a matter and he would realize that some issue in the case had come up before and he would stop for a minute, look up, go over to one of those many piles, reach down into it, and pull something out. And sure enough, it would be a brief in a case from five, 10, 15 years earlier where the issue had come up. So he had his own kind of random access memory. He had that going on long before there was a computer capability for doing it. Thank goodness there is computer capability because I lack that skill. I never had it. And certainly he was just unique in that way, so it was great to work with him.

KD: What were some of the formative cases that you worked on when you were coming up?

MC: Early in my tenure, I did some work on auditor independence cases. When I first came to the Commission, Arthur Levitt was still chair. It was the very end of the Clinton administration, and auditor independence was something that he had been very focused on, and he had met resistance on both sides of the aisle. The auditing firms had substantial support across the board. And then of course, you had Enron, Arthur Anderson, and WorldCom, all of those major collapses that gave rise to substantial litigation, but also proved the wisdom of Chairman Levitt's suspicion about auditing firms being responsible for conducting the audits that were necessary to certify and simultaneously selling assorted services to those

very same companies. In retrospect, it was an obvious conflict. He saw it. But others were turning a blind eye to the conflict of interest there.

I guess I had been at the agency almost ten years at the time that the Madoff scandal unfolded. And that was huge, obviously not just in terms of dollars. It was the biggest fraud that people had seen to that point, but it was also an existential moment for the Commission itself. You had a huge miss by the agency, all these people who were devastated, and Madoff was involved in the kind of thing where our folks were supposed to be in his offices, not infrequently, right?

KD: Right.

MC: And simultaneously you had folks coming forward and saying “Something’s not right here.” Markopoulos is the probably best known. And it was hard for people who were running the agency at the time. That’s what greeted Mary Schapiro when she walked in the door as chair in January 2009. She was remarkable. She was really an incredible person. And I think that she testified before Congress more times than any other chair—even those who had a longer tenure.

She was the chair for four years—which is normal—but she was up on the Hill a lot. And it was necessary for that congressional audience—and others as well—to show that we as an agency could learn from this and do what was necessary in order to get better.

And one of the things, for example, that Chair Schapiro came up with that’s been a rousing success is the whistleblower program. That came into existence because of somebody having come to the agency and the agency not responding in a way that would’ve been most helpful. And the whistleblower program that got up and running under her has resulted in information gains from whistleblowers, and I think on balance really changed the dynamic inside a lot of these companies.

KD: Right.

MC: But that was what’s necessary. So that’s a great thing that Chair Schapiro did. And also at that point we were dealing with the Dodd-Frank Act, it was in the wake of the financial crisis, and you couple that with Madoff and Stanford and so on and so forth. It was a very busy time. But the Dodd-Frank period was incredibly busy. The agency was assigned by Congress a record number of rulemakings to complete in a record short amount of time. Simultaneously. You have to assume that Congress had some sense of what the agency’s staff was in terms of sheer numbers, but it was all out.

KD: Yes. Let’s jump into sort of an offshoot of that. All that rulemaking went through the General Counsel’s office as well as the divisions. And I want to get a sense, you’re in the appellate side, and I want to get a sense of how much you interacted with the other folks in the General Counsel’s office.

MC: The answer is a lot. Typically, within OGC, it was the legal policy group that worked with the rule-writing divisions. And it was kind of a check. The divisions do what they do. But OGC had people who were very expert in administrative law and in the substantive law that was going to be involved in these rules. And they would work together with the divisions to make sure that what ultimately was put out for notice and comment and then responding to the notice and comment and ultimately included in the adopting release was as good as it could be, as accurate as it could be.

But when you had all the stuff that was going on with Dodd-Frank and these other things on the margins, which were raising questions about the competence of the agency as a whole, the appellate group got involved in a more substantive way earlier in the process. And so we had people who would actually be assigned to the various rule-writing teams. Formerly, legal policy staff might call an appellate person for a one-off question, or at the very end, to the extent that there were people out there threatening to sue if

the rule was adopted, they'd let the appellate folks know that. But now that was happening much earlier. So that really diversified and multiplied the appellate group's work.

When I first came to the agency, the group's focus was on more traditional appellate work, such as appeals taken from federal district court cases or appeals of commission decisions or orders. That was historically the bulk of the work that was being done by the appellate group. But as the need increased for early appellate involvement in rulemaking, that changed.

KD: So the Madoff period, the Dodd-Frank period was when this happened?

MC: Yes, I would say in combination. It wasn't because of Madoff, but Madoff just happened to be plunked right in the middle of when Dodd-Frank was being implemented. You might ask why the appellate group would have some involvement in Madoff. That was largely attributable to the fact that the appellate group had long been involved—and this is a relic of history—in monitoring the bankruptcies of broker-dealer firms under the Securities Investor Protection Act of 1970, or SIPA. And the Securities Investor Protection Corporation, or SIPC, which was created by that statute, was responsible for that in the first instance. This came out of the late 1960s, the back office crisis, when a number of these firms went under. People thought they had money in their accounts or securities and they didn't, and they were stuck. I mean, they could try to sue the firm, but if the firm is gone, what are you going to get?

So SIPA was a very important piece of legislation and SIPC was an important entity that was created, and we were very involved with that. And Madoff was the biggest broker-dealer bankruptcy ever. It was particularly disastrous at Madoff, because it was also just a complete fraud. It wasn't as if there were just somebody at the broker-dealer firm engaging in transactions without getting authorization from the client. Those are typical things. And so when a firm goes under, there's some stuff there, but there's other stuff that isn't that should be and so on and so forth. By contrast, Madoff made it all up. He was printing and sending out account statements to customers that were not connected to anything real. It was completely fabricated.

SIPA is designed to make sure that customers of the broker-dealer have what's supposed to be in their account, but the assumption is there are real transactions that are occurring or that could have occurred, or that something happened after the fact and money was taken and so on. But there's a real thing that's going on with the market that was not made up. But in Madoff we had to confront a circumstance where the only real thing you could look to was the money that was being invested and the money that was taken out by these customers. And that "money in, money out" approach was ultimately what we concluded as a legal matter was the only supportable way to read the statute, but it was horrible for these customers. They were operating under the assumption, and living a life predicated on the idea that these totally bogus statements they were getting were real. It was disastrous and just crushing for these people. And it was a horrible position to have to take, I will say. I went, and I testified in Congress about this.

KD: Right. And you testified about assets. Basically you're trying to figure out what to do with Madoff's assets, right?

MC: Right, to the extent that there were assets. But there was also the coverage that existed under the statute. I mean, that was the protection that these customers got, but it wasn't anywhere near enough to cover the losses that most of these folks were suffering. But the idea was, yes, do we count these fake transactions as if they were real or not? And once you decide you can't count them as real, that left these customers in a very difficult position. I think it's the correct legal conclusion, but it was a hard position to take. But it's the one we did. And my testimony was, at least in part, about that.

KD: Tell me about the experience, what it was like preparing to testify before Congress and actually doing it. I would think that it was sort of an all-consuming experience.

MC: Very stressful at a minimum. I had never done it before. But I had great help from our legislative relations folks. We had these prep sessions, they call them murder boards, during which people pretend to be members, and always they would pretend to be the most difficult members, and they'd ask you all kinds of stuff. It was like, "Ugh, who wants to hear that?" But it's better to hear it from people on your home team than hear it the first time when you get there.

And a particular difficulty that I faced initially was that I am an appellate lawyer. I go to court, I argue cases, I'm entirely familiar with judges on a panel asking me questions and responding to them. The thing that I needed to have drummed into me, and it took a little while, was they're asking questions but they don't care a whit about what it is you say. This isn't about you. This is about them. And so sometimes you just have to let the questions roll. And if they're cutting you off, that's fine, because once again, it's not about you; it's a totally different process. It's not a fact-finding endeavor or a way for you to persuade them of the correctness of the position that you're articulating. That might happen at the margins, but that's not what this is about. And that was hard. And like I said, I think it was harder for me because I am familiar with something that was kind of similar to this, but just entirely different in terms of purpose and the way it worked.

KD: That's really interesting. I'm not sure anybody's ever described it that way before.

MC: Well, there are other people who are probably a lot better than I am at going and testifying to Congress. As it turned out, I think it went okay, except for, as I said, the folks at the other side of the panel who were testifying on behalf of the investors who had lost, for whom I was like this demonic figure. And that was bad. That was hard. It was right in terms of the things that we had to say, I think. But still very difficult.

KD: Somewhere in this period you become Deputy General Counsel.

MC: Yes.

KD: How did your work change at that point?

MC: It changed a lot. Mark Cahn was the General Counsel at this point, and Mark had been Deputy General Counsel before becoming General Counsel. And then for a brief period, Annie Small was Deputy General Counsel, and then she was asked to go to the White House Counsel's office, which she understandably did. And at that point, Mark asked me if I would consider serving as deputy. At first I said no. I said, "I like doing what I'm doing. This is really what my work is." And he said, "Well, you'll still be responsible in this capacity for the appellate group. It'll just be different. You and Jake will swap positions. You'll be his supervisor." I love Mark. So I said, "Okay, I'll do it."

At that point, the office was organized differently than it is now. There were only two deputies, and one deputy was responsible for part of the legal policy group, which did the rulemakings and so on—a very, very busy position. But the other deputy was responsible for everything else. And that included the general litigation group matters, which are incredibly diverse—everything that's not securities law that an agency has to deal with, including personnel issues, leasing, when the agency itself gets sued for things that it's done or alleged to have done, they have all that. So I was still responsible for the appellate group along with the part of legal policy that did enforcement review, and the adjudications group. But I was very thinly spread, put it that way. I got better at it as time went on.

Mark Cahn really liked the general litigation portfolio, which was great for me because he would often be willing to directly oversee that group's work. And it really became our operating understanding that I wasn't going to be doing that stuff anymore. When Mark left the agency, the next General Counsel was Geoffrey Aronow. And Geoff is great. He was really fun to work with. But when he came, he was looking

at the org chart and said, “Okay, I get how this other stuff works. But why is it that the General Counsel is responsible for the general litigation group instead of you?” I said, “That’s the deal.” And so he always jokes about that.

What happened subsequently was the responsibilities got divided up. There were more deputies. Now there’s a deputy who’s responsible for general litigation.

KD: Okay. About when did that happen?

MC: It was gradual, starting when Annie Small was the General Counsel.

KD: Oh, great. Okay. That’s important. And I hadn’t known about that. So you’re still looking at the appellate group? I mean, was that...

MC: I was.

KD: ...the main thing that you were doing?

MC: I probably spent more time with the appellate group because it was my stuff. But as I said, I was also responsible for the part of legal policy that does enforcement review. Those are the two main parts. And maybe I should have clarified that earlier. I talked about the part of legal policy that works with the rule-writing divisions, and they’re incredibly important and have a huge responsibility. There’s also the part of legal policy that does enforcement review. Every matter that the enforcement division handles starts with a recommendation to the Commission. The Commission has to authorize it, and before any of those recommendations go to the Commission, they go through the enforcement review component of the legal policy group within OGC.

We would have meetings every week, calendar meetings they were called, during which we would review the enforcement recommendations that were coming up. And it was a great way for me to learn a lot about the upcoming cases. And then there’s also the adjudication group that drafts commission opinions, and so that was an OGC component for which I was responsible as well.

KD: Okay. Moving through this period, the 2010s, I guess, were there common denominators to what you were looking at? Were there things happening in the economy and securities industry that led you to deal with certain types of cases or certain types of challenges?

MC: Yes, I will say certainly in the beginning years, a lot of it was Dodd-Frank related. There were challenges to rules that had to be written in the first instance and adopted by the Commission. I don’t know if you want to start to talk about cases now, and one set of cases that I think was significant were the cases involving challenges to the commission’s economic analysis. That started while I was still Deputy Solicitor, the economic analysis challenges, the first of those.

KD: We’re right into that. I think one of the big landmarks here is that you became Solicitor.

MC: That’s a little later.

KD: Okay.

MC: Thinking about areas that were consequential during the time that I was at the agency, I would say that there were three big ones. And one of them, the first of them is the role of economic analysis in commission rulemaking.

KD: Let's jump into that. Let's take about five minutes and we can come back and start talking about a lot of really interesting cases.

MC: Perfect. Okay.

KD: All right. Well, we got you to running the appellate group. I want to talk a little bit about how things changed when you became Deputy General Counsel and then when you moved up to Solicitor. Can you take me through that transition?

MC: Sure. Among the things that I would do as Deputy General Counsel was attending the weekly closed Commission meetings. And I would often speak about enforcement matters and other things that the Commission would be deciding. That was a major change in my responsibilities and my access to the people who were making these decisions. I was there every week, and although there might rarely be something I wouldn't be in the room for, by and large, I heard everything that was going on with the agency.

I don't think there's a better way to get a sense of a wide range of things that come before the agency and how carefully the Commission works through them. I've often thought that it's too bad that people can't see just how much deliberation there is and how hard the Commissioners think about the matters before them. These aren't snap decisions.

An important part of that, I think, is the bipartisan nature of the Commission's composition, because when you have that, it's much more likely, not always, but it's more likely that the staff is going to have harder questions to respond to. And it's my judgment that the work of the agency is better when people have to answer hard questions or have to think about them at a minimum. And that was one of the things that I was very impressed by during my time as Deputy General Counsel.

KD: So you had a very broad perspective in this period it looks like. Did that help you when you became Solicitor?

MC: I think so. Even though my focus narrowed in the sense that I was back to doing appellate work and being responsible for appellate work, I knew more now. I knew how things worked and periodically I'd go to closed Commission meetings. But in any event, I think I had broader relationships across the agency to draw on. I will also say that, the way I became Solicitor, we've sort of alluded to this but haven't really talked about it, is that Jake retired. Jake at that point had been Solicitor for decades and had been at the agency for more than 50 years.

Annie Small was the GC at that point. And I went to her and said, "You know that appellate work is really my love, and I would very much like to be moved into Jake's former position." She agreed but asked that I continue to be part of the group that we refer to it as the "front office." It's the smaller group of senior officers in the Office of the General Counsel who meet regularly and advise the GC on the countless difficult issues that the GC has to confront. So I remained part of that group, which was a different thing than had been the case previously.

KD: Really?

MC: Yeah. After Annie left and Bob Stebbins became the GC, I worked very closely with Bob. He was another excellent GC. I've been so lucky. I have to tell you. I know that there are other folks in different parts of the agency who might not have such good things to say about those who supervised them. But OGC has been very, very fortunate to have incredibly talented people head up the office, people who are willing to work closely with, and rely on, those who have been in the office for a while. They put their egos to one side in order to be able to offer the best advice to the agency. Bob was clearly one of those

people, and he basically decided that my position then of solicitor would be a direct report to the GC. Appellate would not be under another deputy. So, that sort of formalized what Annie had begun by having me remain part of that front office group. So, yes, I was responsible for the appellate group again, but I was also part of the group that was batting around and trying to come up with ways to resolve various issues that were arising.

KD: Okay. So, when Jake was running things, he had his own little shop over there on the side. Is that how it worked?

MC: I think that's a way to think about it. Jake was obviously a counselor broadly, who was enormously respected throughout the agency. And when people would call him, he was more than happy to take the time necessary to help them with whatever it was. But that wasn't his regular job.

KD: Got you.

MC: His regular job was appellate.

KD: Okay. Well, your regular job was appellate, too.

MC: True. But I had this other component to my work.

KD: Let's talk about the cases. This discussion of structure has been great, but let's talk about some of the cases that you were dealing with both before, and after you became Solicitor. And we started to talk about those a little bit ago, but let's talk about the economic analysis. I remember the Chamber of Commerce decision.

MC: Right, yeah. That was a big decision in 2006, and it concerned the first of what I think of as a trifecta of significant issues that the agency confronted during my time there. And full disclosure here, the cases you're going to hear about are not cases in which we won. As is often true, the cases that have the greatest impact are those that sort of shake things up. The first set of these cases involved economic analysis in SEC rulemaking. The second concerned the agency's approach to disgorgement. And the third set is cases addressing the agency's use of ALJs. In all three situations, you're talking about a substantial shift in the way the Commission and courts had looked at things.

Starting with economic analysis, there were three DC Circuit cases that came in sequence that dealt with that issue. The first was the 2006 *Chamber of Commerce* case, in which the Chamber was challenging an exemptive rule that required mutual funds to have boards that were 75 percent independent directors, and also have an independent chair, in order to be able to engage in certain transactions that would otherwise have been prohibited by the Investment Company Act. The Chamber came in with a whole bunch of different arguments, including that the agency lacked the authority to promulgate this kind of rule. And the court rejected all of those, concluding instead that the SEC could act in this space.

But in an opinion written by Judge Ginsburg, the court concluded that the rule didn't satisfy the APA because the agency hadn't adequately considered either the compliance costs for the rule or the proposed alternative that had been presented to the independent chair condition. In so doing, he looked to a provision that was added to the SEC's statutes by NSMIA, the National Securities Markets Improvement Act of 1996. That provision said basically that whenever the agency is engaged in rulemaking and is required to consider whether a rule is in the public interest, it must also consider the potential impact on efficiency, competition, and capital formation. It had only been there for 10 years at this point, and this was the first time that a court had interpreted it. And Judge Ginsburg wrote that what it means is that when the SEC is engaged in rulemaking, it has to inform itself, the public, and Congress of the likely

economic consequences of the rule that it's considering. And he said further that the agency, even in difficult matters, has to do what it can—that's what he said—to inform itself of these impacts.

And so the court was injecting, I think, a bit more of traditional cost-benefit analysis, certainly more than the agency had understood was required. The agency was considering efficiency, competition, and capital formation, but this sort of affirmative obligation to go out and do more, was something that came from this case because it's not in the statute.

KD: What was the response when you realized that this was really going to reset the stage?

MC: I don't know that the agency realized it at that point.

KD: Oh, really?

MC: Yes. I think it still was not clear exactly what the court was requiring the Commission to do. The agency had historically done efficiency, competition, and capital formation analyses, post 1996, but those were typically no more than a paragraph, sometimes a footnote, in the release saying, we have considered the likely impact on efficiency, and we believe that efficiency will be increased, or decreased. It wasn't a full-blown analysis of the sort that you would find in traditional cost-benefit analyses like OIRA would see routinely and require of executive agencies.

KD: Right. Well, let's move into the next two D.C. Circuit cases addressing economic analysis..

MC: Next was the *American Equity* case in 2009. I argued that case, which involved a Commission rule that classified certain fixed index annuity products as securities rather than insurance. And in this space, the big question is are you going to be subject to the securities laws, or are you're going to be subject to the laws of state insurance regulators? And not surprisingly, the insurance industry wanted to be regulated by insurance regulators instead of securities regulators. And so the American Equity insurance company brought this case, and the D.C. Circuit, with Judge Ginsburg once again on the panel, rejected all of the statutory interpretation arguments that were made against the rule. As to all the big arguments that we thought of as hard, the court said, "Nope, nope, nope. The agency can do all of this."

However, once again, the court found that the agency had tripped up in its economic analysis, because it didn't adequately assess what the state of regulation was under the states' insurance laws. So, in other words, the court found that the Commission did not explain sufficiently what making these products subject to securities laws would do from a regulatory standpoint. What's the delta? And unless you know that delta, you can't meaningfully fully analyze a likely effect of this rule on these products. That's not an unfair approach. But it was brand new. This was not an argument that had been made by the challengers. This was something that the D.C. Circuit itself raised and concluded was a necessary component. Again, it was well beyond what the agency had ever imagined it would be required to do. Undertaking a survey of every state's insurance

laws would be a mammoth undertaking, and it would probably be disabling in terms of the resources required to engage in rulemaking in this space. And this is where the agency was starting to say, "If this is what it means to do an economic analysis, do we have the resources to engage in it? And if we don't, are we just sort of out of the rulemaking business in a lot of what we do?" One of the things that was never disputed—there was, I think, general agreement on this—is that when you're doing these analyses in the financial regulatory space, they're particularly difficult, because there are so many factors that come into play, and so many uncertainties, including that how various market participants are going to respond depends on how other market participants respond. So, it's hugely difficult, but we're being told that you have to do it, and in this case you have to do it for every state.

And that came as something of a shock, but not as much of a shock as the *Business Roundtable* decision, which was about the proxy access rule. Dodd Frank gave the Commission explicit authorization to engage in that rulemaking. It wasn't one of the mandated rules, but it was one for which there was zero question about the agency's authority to regulate. So, the turf over which challengers and the agency were going to be fighting was the adequacy of other things. And chief among them was the economic analysis.

This rule was designed to provide a certain category of substantial long-term shareholders an opportunity to get their own candidates for the board on the company's proxy. That would be more powerful than submitting their own proxy, which they theoretically already could do. So in terms of likelihood of having impact, this was huge.

This was the most devastating of the three economic analysis focused opinions. The court analyzed why the rulemaking had inadequately considered possible effects, including by itself assessing the relative reliability of studies that the agency considered. And that was just way beyond what anybody would've imagined a reviewing court would do where an agency had itself reached conclusions about the basis for the rule. I'm not saying the rule was perfect, but the tenor of the opinion, and the essentially de novo approach to balancing available evidence that the court undertook, raised serious questions about whether the agency was ever going to be able to adopt a rule that survives challenge. The D.C. Circuit was, for all intents and purposes, our home court for challenges that would be likely to be brought because every rule could be challenged there. In the wake of that decision, we decided that we needed to find a way to answer the concerns that had been raised in these cases without basically surrendering and doing full-blown cost-benefit analysis that essentially would bring rulemaking to a grinding halt.

To avoid that, we in our office, together with the Division of Economic and Risk Analysis, developed guidance for the use of economic analysis in SEC rulemaking—which remains in place today. The guidance incorporates critical components of economic analysis drawn from a variety of sources with the goal of answering the concerns raised by the D.C. Circuit cases and other critics of SEC rulemaking. The guidance was a way to say, “We hear you. We want to do serious, rigorous economic analysis, and we can do it in a way that will work within our rulemaking structure as an independent agency.” And every chair since Mary Schapiro has endorsed using that guidance in rulemaking.

KD: Okay.

MC: The guidance has been successful, because there have been no subsequent successful challenges to rules on economic analysis grounds.

KD: Right. So, Judge Ginsburg really reshaped the SEC to some extent.

MC: Very much so on that. Yeah, I think that's true.

KD: All right. Let's move on to the disgorgement piece, we're getting in this even more, I think, notable cases. Cases that people know the names of these cases. *Kokesh*, for example. Did disgorgement start with *Kokesh*?

MC: It was *Kokesh*. Remember that disgorgement has been ordered in SEC cases going back into the 1960's. Courts awarded disgorgement to remedy wrongdoing by taking the unjust enrichment away from the wrongdoer. And courts saw this as a component of their remedial authority to enter injunctions, which was clear and longstanding. Disgorgement was effectively injunctive relief compelling wrongdoers to cough up the unjust enrichment that they got from violating the securities laws.

The agency had sued *Kokesh* for concealing the misappropriation of funds from business development companies that he managed. The district court awarded disgorgement for the violations, which took place

over a 14-year period. And it rejected the argument that disgorgement should be capped at five years under the Section 2462 statute of limitations. The court said that disgorgement wasn't a fine, penalty, or forfeiture, which was what was necessary in order to trigger the Section 2462 limitations period. The 10th Circuit affirmed, consistent with what everybody had thought at that point, certainly we had at the agency. But the Supreme Court unanimously reversed in an opinion by Judge Sotomayor saying that disgorgement, for purposes of the statute of limitations at least, is a penalty. The Court ruled that it's a penalty because it remedies the violation of a public law as opposed to just some private transaction, and it's punitive because it is intended to deter and it's not exclusively compensatory.

Making disgorgement subject to 2462 meant that the period of violations for which a court could award it was capped at five years. That was a huge change for the agency. There was also the ominous footnote 3 in the opinion, which said basically we're talking about statute of limitations here only. We are not resolving the question about whether the SEC statutes authorize disgorgement when you're in a federal district court action. And the Court went on to answer that question three years later in *Liu*.

KD: What was that case? An EB-5 case?

MC: EB-5, yes. These are where foreign nationals can, if they contribute a certain amount of money to projects in the US, get visas. It's a longstanding program. And these people were told that the money they were investing would go to build a cancer treatment center, whereas in fact, most of the money was misappropriated by the people who were enticing them to come. So, the SEC brought a case seeking the total amount of the funds that were raised in this fraudulent endeavor, the district court ordered that, and the Ninth Circuit affirmed. And in the Supreme Court, the question that had been identified but not decided in *Kokesh*—what is the basis for the SEC to seek and courts to order disgorgement?—was now teed up for decision. And the court in an 8-1 opinion, also written by Justice Sotomayor, said, disgorgement is available.

Okay, so I was mistaken when I said each of the cases I would discuss was a loss. This one isn't a loss, or at least not a total loss, because the Court said that disgorgement is authorized as equitable relief. But it also found that, under the statute, disgorgement must be "for the benefit of investors," which imposes certain limits that the Commission had not always adhered to. First, unlike the SEC's longstanding practice, disgorgement wouldn't automatically be sent to the Treasury. In most cases, it would have to go to harmed investors. And then second, joint-and-several liability for disgorgement, which was also very common, was no longer available because holding somebody accountable for money that they didn't get would be impermissibly punitive. And finally, a court ordering disgorgement must deduct legitimate business expenses, an approach that had not been followed consistently. The Court acknowledged that there are going to be exceptions. And so that has been playing out since.

So disgorgement is another area in which long-accepted understandings were upset by a series of court decisions. Everybody thought they knew what the agency could get. The agency thought it knew what it could get. And it turns out it's totally different than what had been thought previously.

And then the final area of consequence, and a really big one, as you said, concerns the SEC's use of administrative law judges, or ALJs.

KD: Yes.

MC: I'll just say very quickly that Dodd-Frank changed things in lots of ways. And one of the things that Dodd-Frank did was to expand the range of cases that could be brought by the agency administratively, and that included cases that previously the agency had to bring in federal district court. And as others have observed, some of the cases brought before ALJs under this new authority included proceedings

against individuals with the resources to mount a whole range of challenges that previously the agency was unlikely to see. And among those were a variety of constitutional challenges to the use of ALJs. The first of those was the *Lucia* case in 2018.

The Commission instituted administrative proceedings against Lucia charging that he'd engaged in securities fraud in connection with the promotion of what he referred to as the "buckets of money" investment strategy. And the ALJ issued an initial decision finding liability and imposing sanctions. Lucia sought review by the Commission, arguing that the ALJ was constitutional officer who needed to be appointed under Article II, which hadn't happened. The Commission rejected that argument, and on appeal to the DC Circuit, the three-judge panel that first heard the case unanimously rejected Lucia's appointment argument as inconsistent with an earlier DC Circuit case. The D.C. Circuit then granted en banc review and split evenly on the issue, which meant that the original panel decision affirming the Commission's order remained in place.

The Supreme Court then granted review and, in an opinion written by Justice Kagan, held that ALJs are constitutional officers based on an earlier Supreme Court decision in *Freytag*. Interestingly, or ironically you might say, *Freytag* was decided during the term that I was clerking at the Court, and it was written by Justice Blackmun. Every sitting, Justice Blackmun would take one case that he would do all on his own. We'd normally assist, but *Freytag* was one of the cases he handled on his own.

And the the opinion he drafted for the Court held that "special trial judges" (or STJs) of the Tax Court were constitutional officers based on the fact that they occupied a continuing office that had been created by statute, and they did important things, basically. They were acting essentially in the same way that a federal district court judge does.

KD: Right. Right.

MC: So it was appropriate that they be understood to be officers that required appointments consistent with Article II. Applying *Freytag* in *Lucia*, the Court said, "You look at these special trial judges, you look at ALJs, there's basically no difference. If the STJs are officers, so are the ALJs."

KD: Right.

MC: That's what they concluded, and consequently, ALJs can't just be picked like any regular employee, they have to be appointed by the Commission. So that was the first ALJ case.

And then all sorts of other constitutional challenges to the ALJs were emerging. I *think* Lucia basically opened the door, and people saw that just because everyone thought things worked a certain way forever doesn't mean they were right. And you have courts that are increasingly suspicious of administrative agencies. They are particularly suspicious of administrative agencies that are adjudicating matters on their own without having to go to federal district court.

And several of those constitutional questions were raised in *Jarkesy*.

Here again, you have a circumstance where the Commission institutes administrative proceedings against someone who's managing investor assets, charging them with fraud. And ultimately, the ALJ entered an initial decision finding fraud. The Commission rejected the constitutional arguments that were raised by Jarkesy, and he appealed to the Fifth Circuit.

The Fifth Circuit accepted all three of his constitutional arguments for why the case should be tossed. First, the court found that proceeding administratively was a Seventh Amendment violation because this kind of case needs to be brought in district court. Second, the court found a non-delegation violation

because it concluded that there was no discernible principle on which the Commission was deciding whether to bring a case in district court versus administratively. And finally, the court concluded that there was a separation-of-powers problem because the ALJs have two layers of insulation from removal, and that is impermissible.

The case then proceeded to the Supreme Court, which affirmed exclusively on the Seventh Amendment ground. It acknowledged that the Fifth Circuit ruled on these other bases but said the Seventh Amendment basis was enough.

Once again, the Court says, “Easy case,” because it involves fraud claims and the imposition of civil penalties. And both are things that were known at the common law. And therefore, the Court concluded, the Seventh Amendment creates the right to a jury—which does not exist in an administrative proceeding.

The Court further concluded that this case did not satisfy what had come to be known as the public-rights exception to that Seventh Amendment requirement. In so doing, the Court gave really short shrift to the *Atlas Roofing* case, which we, along with other agencies and courts had long understood to mean that Congress can decide to assign precisely this kind of case to a non-Article III court. So *Jarkesy* left the Commission in a situation where it could not bring this kind of case administratively. And that had the effect of substantially limiting, if not completely undoing, what Dodd-Frank had done in terms of expanding the scope of matters that could be decided administratively.

KD: In the case of *Jarkesy* where it’s moving slowly and you can watch this thing unfolding, were you and the Solicitor’s Office thinking about strategy all the time, figuring out how you might respond or adapt to what’s happening?

MC: Yes. Under the non-acquiescence doctrine, if a court in one circuit enters a negative decision, that does not foreclose an agency from adhering to a contrary view in cases where an appeal would be taken to a *different* circuit. But it certainly constrains the agency.

KD: Right.

MC: If it were the DC Circuit that decided something, that’s a different ballgame, because everything can go to the DC Circuit.

But in any case, once the Supreme Court had taken the case, as a practical matter, the agency wasn’t going to be authorizing any new proceedings of this sort.

KD: Yes.

MC: I think everybody was shocked that the Court decided *Jarkesy* on this Seventh Amendment ground. We were not really worried about that, because of *Atlas Roofing*. We had greater concern about the separation-of-powers challenge.

KD: Okay

MC: We also didn’t think that the Court would buy *Jarkesy*’s non-delegation argument. Were it to do so, that would effectively upend administrative agency authority in a way that I think people hadn’t even really conceived of previously. So we really thought the case would turn on the separation-of-powers argument. Everybody—including those in the SG’s office who were

working on the case and the Deputy SG who argued the case—was very surprised by the Court’s almost exclusive focus on the Seventh Amendment at oral argument.

KD: Okay. So your career as Solicitor is very interesting, because you're sort of in this interface where the courts are reshaping the SEC. Did you see yourself as responsive, more than having agency of your own?

MC: I have to say, I think we were largely in a responsive mode. I mean, so much stuff was coming at us. Now, we did strategize, as I indicated, and tried to anticipate ways that decisions could go in order, to the extent possible, to limit the negative impact on the agency's agenda. And that happened, as I said, quite effectively in the economic analysis space.

Other issues were harder. The ALJs could be appointed. That ultimately happened. But in terms of the Seventh Amendment, there was nothing we could do about that. There are no juries in ALJ proceedings.

KD: Right.

MC: So for certain things, I think, yes, there was a wave that was moving and that grew over time that really sort of overwhelmed us. The SEC was unfortunately at the leading edge of a lot of these cases. But these rulings didn't affect us only, obviously.

KD: Right.

MC: Lots of administrative agencies are living with the results of these cases.

But looking back, are there things the agency could have done to avoid this? I suppose it could have been more circumspect about the kinds of cases that it was bringing administratively after Dodd-Frank created that authority. That might've done it, might've. Who knows? It might've at least postponed some of these issues coming to the fore. But it's kind of hard to imagine that the agency wouldn't exercise authority that it had expressly been given.

But in retrospect, yes, that might've changed things. But I also think that there are other things in play here vis-a-vis the administrative state writ large. There are lots of people out there who are suspicious about it, including judges.

KD: Right.

MC: Including many judges who have been on the Supreme Court for some time. And so I think there's only so much you can do, and so you are of necessity going to be responsive.

KD: Right.

MC: You get the decisions, and you do what's necessary to implement them. And you try to help the agency come up with ways to do so while not entirely undermining its regulatory agenda.

And so that's what we worked on. We've worked very closely with the divisions and the commission itself to try to make that a reality.

But it's hard. I confess that it's a difficult time to be at an administrative agency. I think if you took somebody who worked at the agency in 1978 and plunked them down in, say, 2024, when all of these decisions had come, I think they would be shell-shocked. "What happened? Everything we thought we knew to be true is now up for grabs." And so looking forward, you say, "Well, what's next? What's on the horizon?"

KD: Yes.

MC: And the truth is, I don't know. We have to continue to do our best. As I said, you have to live within the law, and so these decisions necessarily affect how the SEC carries out its mission.

The Commissioners are the ones who make the decisions. The operating divisions are the ones that initially formulate policy that they're proposing to the Commission. And OGC's job is to assist all of those actors in accomplishing their mission in a way that is consistent with what we understand the law to require and is most likely to withstand challenges, which are inevitable. It's the one thing you know, there's always going to need to be an OGC.

KD: One thing we haven't talked about is amicus briefs, that General Counsel in 1978 would've had a fairly strong amicus program.

MC: Right.

KD: Was that the case when you were the Solicitor?

MC: Yes. I think it's useful to think about how Commission amicus participation occurs. There are two main ways.

The first is when a court invites/orders the Commission to supply its views. And the biggest of those is Supreme Court. Anytime the Supreme Court requests the views of the Solicitor General in case that concerns a securities law issue, which happens all the time, the SG immediately hands it over to the Commission.

When that happens, people in the appellate group consulting with others within the agency would take a first crack at formulating a view on the securities-law question at issue. And I would then discuss it with the SG's office—typically with Malcolm Stewart, who has long been the Deputy SG who handles our matters—and he'd ask: "What do you think about this? What do you think the agency's going to land? What's the best way to approach it?"

Then we would meet with the parties, the SG would invite both sides in, ask questions of them. We'd have a discussion again about it. Then we would go back and ultimately do a draft. We would do the first draft and then send it on to the SG. Because it is the SG appearing in the Supreme Court, it's the SG that has to be comfortable with whatever position the amicus brief takes. But it does so in consultation with the Commission.

The SG considers the Commission's views and has ultimately says, "Okay, this is the brief we're going to file. Do you want to be on it?" And the Commission votes on whether to have the Commission's name included.

When it's not in the Supreme Court, most of the time it's a court of appeals that is requesting the SEC's views. By definition, it's going to be a case in which the Commission hadn't previously participated. Most often it's going to be a private case.

So we would on our own, do the same sort of thing that the SG does. We'd invite both sides in, figure out what we think an answer would be, draft something up, talk to the Commissioners' offices about it, and ultimately submit a memo saying, "This is what we recommend the Commission do in response to this Court's request."

The Commission votes on the staff's recommendation and, if the Commission authorizes participation, we draft the amicus brief and file it. That's the way it works when an amicus request comes from a court.

The second avenue for Commission amicus participation is when private parties ask the SEC to participate in a case. There's a whole process for that. It's on the website. They can submit requests for amicus participation. Those come to the Solicitor and another person in the appellate group, usually one of the assistant general counsels.

Most of the requests don't result in a staff recommendation for amicus participation. In many cases, the request does not involve an issue that we are ever going to confront or that we think it would make sense for us to weigh in on. Also, people sometimes submit a request that the agency file a brief next week, which would be impossible given the timeframe of our amicus process. And that's the biggest point I think I would make.

If the appellate folks receive a request and conclude it might be something that the Commission should weigh in on, we would invite the parties in, meet with them, obtain the views of the staff within whatever operating division is going to be implicated by this position, and then draft a memo to the Commission setting out the recommendation. The Commission has to vote, because it hasn't previously participated in this. That's before we even write a brief.

KD: Wow.

MC: And then we have to draft whatever it is that gets filed, assuming the Commission supports the recommendation to participate. That takes weeks at a minimum, if not months. And so, people frequently ask for amicus participation that's simply not doable as a practical matter.

KD: Yes.

MC: One of the things I always try to tell people about amicus participation is that they should come early if they think they might want the SEC to be involved. There's no guarantee that it's going to happen. But it will definitely not happen if there's not enough time to actually complete our internal process. We can't just file something without the Commission really thinking through it and authorizing participation.

KD: It sounds like there's a big resource issue here, where you really can't pull people off of things that are more pressing, all those things we were just talking about.

MC: I think that's true. I mean, you have to find resources. If the Supreme Court asks you or if the Second Circuit asks you, you just do it.

KD: Yes.

MC: We have to do it. And obviously, what the Supreme Court says about one of our statutes will often also affect us. And so it's hugely important, not only because the Supreme Court has asked and we obviously want to respond, but because real-world impact comes from these cases. We need to pay attention to it, and we need to give the resources in order to respond. But you're right that it really has a limiting effect. That and all the other things that we've been talking about that our office is doing, there's only so much that we can do.

But I don't think there were many matters in which I thought it would be good for the agency to participate as an amicus, and we had time to do it, where we said, "No." I can't even think of one to be honest, off the top of my head.

KD: Something else I want to touch on before we wrap up. And that's you were Acting General Counsel for a little while, and we know how much you love administrative positions. Tell me about that.

MC: I know. How about my path, right? I come to the agency in an effort to escape all the administrative stuff, and ultimately I wound up there anyway.

So yes, I was Acting GC for a total of about seven or eight months. In 2021, I agreed to do that. When Bob Stebbins left, he asked if I would do it, and the new folks asked if I would do it. And after about six months, I said to the chief of staff for the chair, "Remember, I have a day job."

And so John Coates came and was General Counsel for a couple of months. It was never the idea that he was going to stay long term, but at least it freed me up to focus on my responsibilities as Solicitor.

And then when John went back to Harvard, as he was always going to do, I again assumed the role of Acting General Counsel until Dan Berkovitz arrived, which was sometime in November, maybe early December, of 2021. And that was my tenure. I was an easy person to pick for it, because I'd been around for a long time. I knew everybody. The Commissioners knew me, and so, in a sense, that was easy. But it's not a position I aspired to.

KD: Did things look different at all when you were sitting in the General Counsel seat? Or was everything just what you expected? You'd seen it all before?

MC: I can't say that I had necessarily seen all of it before. It was the beginning of a new administration. Gary was just starting as chair, and he had a huge agenda already. He walked in with all kinds of stuff that he wanted to accomplish. I hadn't dealt with that. That was new. And I was dealing with it at the start, because there were all kinds of things that had to be done just to keep matters on track for him and his timetable and so on. And so that was new.

But because, as I said, I'd been around for quite some time, I was very familiar with much of the day-to-day work and processes that exist in every administration.

KD: Yes.

MC: I don't think I was shocked by anything, but it was pretty busy.

KD: Yes. Well, this has been great. I've really appreciated getting into the nuts and bolts of things. It comes at the end of this project where I've been studying the OGC's Office. Is there anything else that springs to mind that we haven't talked about?

MC: I don't think so. It's probably clear from what I've said that I consider myself extraordinarily fortunate to have been at the agency and especially to work with the people that I have worked with. It really is a unique group of folks.

People throughout the government who have experienced our agency in some way or other typically say that it's a special place. That's true. And OGC is a special place within that special place.

Just to come full circle, when I entered religious life and while I was there, one of the things that I found most satisfying and most attractive was the sense that what I was doing and would've done as a career had I stayed in that community was something of genuine value. And I was surrounded by people who had a zeal for that same mission. I found that same sense of shared mission again in the agency. Who knows how these things occur? As I said, Arthur Laby called me and presented an opportunity I had never considered. And that happened shortly after a very close friend of mine had died. So when Arthur called, it was one of those lift-up-your-head moments. Otherwise, who knows where I would be? Almost certainly not here, and I wouldn't have been here for 25 years. And it's really been great.

There have been challenges. We've talked through a number of them. Who knows the future of the administrative state and independent regulatory agencies? But I have confidence that the folks I know who are continuing to pursue this mission are doing so with a genuine desire to get it right and to be of service. And that gives me great satisfaction.