History Associates Incorporated
Interview with Roberta Karmel
Conducted on November 18, 2005, by Kenneth Durr

KD: This is an interview with Roberta Karmel, November 18, 2005 in Washington, DC by Kenneth Durr. I want to start out with some of your early educational experiences.

RK: That's going way back.

KD: It is indeed.

RK: I was born in Chicago, Illinois and I went to a public grade school and Austin High School. I recently had occasion to read an article about Austin High School in the '50s that appeared years ago in *Seventeen* magazine; the article made Austin sound like an ideal Midwestern experience. This article also said it was the largest coeducational public high school in the Midwest. It was enormous—4,500 hundred students. I thought it was not a very good high school and I did not feel sufficiently challenged. I was quite frustrated by my high school experiences.

Fortunately some of the teachers at the high school noticed me and told my mother that I ought to apply to some school other than the University of Illinois. Only about half of the Austin graduates went to college and of the graduates who went to college there was but one question they asked one other, "Are you going downstate or to Navy Pier?" I was one of three from my graduating class who took what were then the College Boards. I had to travel all the way to some Northwestern building—not in Evanston but on the near

north side. I was afraid I would never find the building. I was much more worried about finding the location for the test than taking the test, since I did not know what this test was.

I was advised to apply to several different schools. I was interested in writing, and thought I would become a writer. One of the schools was Radcliffe. My first reaction was that I did not want to go to a girls' school, and I was told, "Oh don't worry, it's part of Harvard—it's not really a girls' school." Fortunately, I was admitted. I never quite understood how. I truly believed my acceptance was some mistake in the admissions office at Radcliffe.

I spent my undergraduate days at Radcliffe and this was an experience that changed my life and opened a lot of doors for me. I also met my late husband while I was an undergraduate. I was married after my sophomore year, but I did finish college. Then, after college, I wanted to do something interesting. I found out that it wasn't easy, even with my fancy Radcliffe degree, to get a job in Boston in the late '50s, although I did work for six months for a brokerage firm.

I worked in what you would call the back office, but I actually worked in the trading room. I had a Frieden Calculating Machine and I computed the traders' positions to tell them if they were going over their position limits and whether they could buy or sell securities. I also answered the teletype machines when they rang and I was theoretically

an assistant to the firm's security analyst. He did take me to a few annual meetings and had me write reports about them afterwards.

KD: Was it just happenstance that took you into this?

RK: Well, yes and no. I graduated from college in February because I accelerated my graduation by a semester. After I graduated, I went around looking for a job and there were not too many jobs around. There were a lot of Harvard and Radcliffe graduates in the market. My father was a lawyer, but he had always been interested in the stock market, and he used to talk to me about stocks. So I thought I would walk around to brokerage firms and apply for jobs, and at one firm, there was a job available.

So it wasn't total happenstance. I made $40 a week and I was paid in cash every Friday; I thought that was fantastic. I didn't realize then that the reason brokerage firms paid in cash is that sometimes they would tell an employee on a Friday, "Here's your last paycheck; you're fired."

I decided I wanted to work or go back to school for awhile after college and before starting a family. I felt I wasn't quite ready for a family yet and my husband also wanted to go back to school. So we applied to a variety of schools. I took the LSATs. It was a little unusual for a woman to do that but going to a professional school was something that the deans at Radcliffe encouraged. I remember going to see one of the Radcliffe

deans after I took the LSATs and told her I was a little worried because a lot of the men I had taken the exam with had received much better scores than I had. She looked at the scores and said, "Oh, don't worry, you'll get into Harvard." I said, "Well, what if I want to go to a school other than Harvard Law School? Will I get in anywhere else?" I really was that naïve.

The reason that she had said with great confidence "you'll get into Harvard" is at that time Harvard Law School had a quota of 10 percent for women, but they never got enough applications to fill their quota, so if you were a Radcliffe graduate and your grades were good, you automatically were admitted to Harvard Law School. But then I got a full scholarship to New York University School of Law, so I went to NYU instead of Harvard. Harvard Law School considered I was still the responsibility of my father financially even though I was married, but I didn't see it that way and neither did my father.

My husband and I did not have the money to send me to law school, so I went to NYU because I got a scholarship; also, my husband got a better financial deal at Columbia than at some of the other schools to which he had applied. So we moved to New York. My husband was a New Yorker anyway, and he was one of those New Yorkers who thought anyplace outside of Manhattan was not a civilized place to live.

KD: Did you decide to go into securities law right off the bat?

RK: No, I didn't. I did very well in law school and I thought I might go to a Wall Street law firm, but they were pretty much not hiring women in those days. I remember going to one interview at the only firm that gave me a callback. It was a very posh Wall Street law firm, and the man who took me around said to me about a half hour into the callback process, "We've already hired a woman, so I don't think you have much chance at a job offer." My husband said that, when he met me after the interview, I was sitting on a step on the street corner crying.

I published a note in the NYU law review on "flags of convenience," a topic involving international law, labor law, and admiralty law. I found that very interesting—I've always been interested in areas of the law that combine a variety of different disciplines. On the basis of that note I was offered a job to work in the General Counsel's Office of the NLRB and I very much wanted to take that job. But it was in Washington and my husband was still working on his doctoral dissertation, so we weren't free to move to Washington, and I was not able to accept that job. I inquired about whether I could work for the NLRB in New York and the man who ran the New York office said, "A woman? We're not hiring a woman in this office. She might have to interview teamsters." So I thought, if the Wall Street firms won't hire me and the NLRB won't hire me, I will apply to the SEC, because they had an Honor's Program and I was told this was one of the best of the government agencies, probably the best one in New York.

I had had a stint in working at a brokerage firm, and I thought the securities industry seemed interesting, so I applied. I was hired because a decision had been made in the New York office to hire women. This was all before the Civil Rights Act of 1964.

KD: This is in '62?

RK: Right. At some point during my days at the SEC, I worked on a quickie criminal investigation with the man who was then the Associate Director, Jack Devaney, a career employee who was a very good lawyer. During that investigation there was some terrified young man who came into the office and Mr. Devaney had a big American flag waving in the office next to his desk and he said to him, "Young man are you going to be candid with your government or not?" This poor guy just spilled his guts. Anyway, I worked on this investigation with Mr. Devaney. We obtained an indictment in three weeks, which at that time was a record of some sort and he said to me, "You were hired over my objection but you're working out all right." The old-timers really didn't want women in the office.

KD: What was the atmosphere life in the New York Regional Office at that point? I'm talking a little bit about with the old-timers.

RK: Well first of all this was during the Kennedy Administration. The Enforcement staff increased from six attorneys to thirty—something like that. I may not have the figures

exactly right, but the office went from approximately six Enforcement attorneys to approximately thirty in a very short period of time. We were all the same age; we were all either just out of law school or in the case of some of the men just out of the service, which they had gone into after law school because in those days there was a draft.

We were young and inexperienced and we were playing cops and robbers. We were chasing the bad guys. This was pre-Watergate; there were very few constraints on government lawyers. Usually when we went to court the judge would sign our injunctions without too much inquiry as to what our proof was; we were from the Government. There was a presumption that we were entitled to whatever we were asking for. We also tried a lot of administrative cases and the attitude of the Administrative Law judges was that they were there to help the staff prove their cases because the staff was a bunch of inexperienced lawyers who didn't know what they were doing. We had a lot of fun. I think that we had much more fun than young people do in the work force today.

KD: Was that Kennedy Administration public service ethos going around?

RK: Yes, partly it was that. People were not so ambitious financially in the way that a lot of young people are today; they were not so competitive. I was born in 1937 and so most of the attorneys in that office were in my cohort, either my age or a few years older, and we were a small generation, because not as many babies were born during the Depression,

and we never worried about getting jobs. We were not so competitive with each other as young people are today.

Even though I was a woman and I was worried about being discriminated against and I was very determined to make the same amount of money as a man would make in whatever job I got, I never worried about getting a job, even as a lawyer, even though there was so much discrimination. There was a labor shortage in terms of my age group. So I think it's one of the reasons that we found work more enjoyable and less competitive.

KD: Were there many women in the New York office?

RK: There were some, not many. My first boss, Irene Duffy—who became a judge and her husband, Kevin Duffy, after I left the New York office, became the Regional Administrator—was my first boss; so she was one of the women. There was an old-timer named Polly Antell. There were a few others—Faith Colish, who still practices law, and Kathy Warwick, Judy Shepherd. I think that was about it—so there were other women, a handful; I wasn't the only one. There were only a few in Washington even though the staff in Washington was bigger.

KD: How often did you get down to Washington? I'm interested in what it was like coming to headquarters.

RK: In the first couple of years I don't think I ever went to Washington but then I was in that office six and a half years. Later on I went to Washington with a certain amount of frequency. First of all we went through a period in the New York office where we didn't have a Regional Administrator for about a year and during that period I went to Washington more often. Also I became a Branch Chief and then an Assistant Regional Administrator in that office. So it seems to me I went to Washington more often then.

KD: Did you ever sit in on a Commission meeting?

RK: The first Commission meeting I ever went to I presented a case to the Commission at a Regional Administrators' Conference in Washington. It was kind of a show—the different Regions presented cases on their own and not through the staff in Washington and I presented a case that I worked on virtually the entire time that I was on the Commission staff. It was very complicated. It started out as a contempt case against somebody who had been enjoined in a Section 5 violation for selling unregistered stock and continued to sell the stock in this company.

He was picked up in New Jersey at some point for carrying a concealed weapon and was sentenced to go to prison for this crime in part because I went to the judge—I think it was the judge but maybe it was someone in the U.S. Attorney's Office, with a more experienced staffer. We gave them information about what a bad guy we thought this

fellow was. This was the kind of thing that now the Supreme Court has declared unconstitutional under the sentencing guidelines, but at the time it was very routine. I think the defendant owed some of the wrong people some money and he didn't want to go to jail and he was shot in what his family claimed was an accident hunting jackrabbits in Oklahoma. He was from Oklahoma.

I had worked on this contempt proceeding for some time. I didn't want to waste the results of my investigation because you don't get promoted by closing a case. This is how prosecutors operate. I developed a case against all of the broker dealers that he had used in his manipulation of the market and sale of unregistered stock. It was a rather complicated case based on market manipulation and violations of the margin rules, which are the rules that regulate how much credit brokers can extend to customers to buy securities. Then we brought a case against a number of very reputable brokerage firms and there was great resistance at that time to bringing this case. I remember being told by someone on the staff who was above me, "You can't bring this case; it's against member firms." And I replied, "Member firms—members of what; they're crooks aren't they?

This was the case I presented at the Commission table at a Regional Administrators' Conference and it was the first time I ever went to the Commission table. I have to tell you, I was very disappointed. I had heard stories about going to the table when I was on the staff as if this was almost a religious experience or was like going to the Supreme Court. At that time, the SEC was in the old Quonset hut buildings, temporary buildings

put up during World War II, and the Commission met in a small shabby room with a table that looked pretty much like an old dining room table. I gave my presentation; this was a very big event in my early career to be able to present a case to the Commission directly.

KD: Were the Commissioners imposing?

RK: The Commissioners and all the Regional Administrators were older men who all looked alike to me. I've never been very good at recognizing faces and I believe I was the only woman in the room with all these old men; that's how I saw them.

KD: Let's move on to what brought about the decision to go into private practice rather than stay with the SEC.

RK: All my friends left the Commission. Almost everyone except me had taken a job at the SEC to learn to be a lawyer until it was time to go out and get a real job—whatever that meant. I had no particular plans because it had been so hard for me to get any job after law school and then I had three children while I was on the staff. I had done very well in that office and I was promoted to Assistant Regional Administrator, which I think was the highest position any woman had ever had at the Commission; I was a GS-15.

But I didn't see much in the way of upside potential at the SEC. I was ambitious and my friends had all left, and I became kind of bored with the fraud cases; they all began to seem pretty much the same. So I started looking for a job at a law firm. In some ways that was an even more frustrating experience than when I graduated from law school because I had done so well at the Commission, and yet it seemed that all the doors I was knocking on were closed.

There was one firm that I interviewed at where a lawyer who had been on the opposite side of a case with me tried to recruit me. He was a partner in a big Wall Street firm. I was told afterwards when the firm did not offer me a job that the reason was that some of the partners thought I was too ambitious for a woman. I would want to be a partner, and the firm was not ready for a woman partner. And I think that was probably true almost everywhere, because by then I was already over six years out of law school, and lawyers who were seven or eight years out of law school were being made partners. I did want to become a partner if I was going to go to a firm.

So I looked for a job for an entire year and then I was offered a job by two different Wall Street law firms on the same day. I had to decide which one to take and I've often wondered what would have happened to me if I had taken the other offer. I chose to go to Willkie, Farr & Gallagher to work primarily for a partner named Kenneth Bialkin who had a very large practice, primarily representing broker dealers, and although it was unusual for an associate to be hired to work primarily for one partner, I had a fair amount

of expertise at that point with regard to regulation of broker dealers and Ken needed help. He wasn't the only partner at the firm I worked for, but during the years I was at Willkie Farr, I worked primarily for Ken Bialkin and his broker dealer clients.

His most important client was a firm then called CBWL, which stood for Cogan, Berlin, Weill & Levitt. Weill was Sandy Weill, Levitt was Arthur Levitt, both of whom became very important in the securities field. CBWL and its progeny gobbled up a fair percentage of Willkie Farr's broker dealer clients over the years.

Two of the most interesting transactions that I worked on in those years were, first, the acquisition of an old-line Wall Street Firm, Hayden, Stone & Company by CBWL and second, the public offering of CBWL the following year. The Hayden, Stone acquisition was extremely challenging. Hayden, Stone was a very large firm—so large that CBWL had to go onto the computer system of Hayden, Stone in order to do the acquisition, a very risky move because one of the reasons Hayden, Stone was in trouble had to do with its books and records problems. I worked with someone else who was at CBWL in those days, who also became important in the securities industry—Frank Zarb.

Frank and I concocted the formula which made this acquisition work, which was that if any account that had short differences was discovered after the acquisition, CBWL—Hayden, Stone, as it then became—could return that account to the shell company, H.S. Equities, that was left behind after the Hayden, Stone acquisition took place. In addition

to that, the New York Stock Exchange actually financed this acquisition because CBWL didn't have enough capital for the transaction to go forward. It was a fascinating matter to work on.

KD: Why did you make the jump to Rogers & Wells?

RK: Because I was passed over for partnership, and although I was assured by Ken Bialkin that if I stayed I would become a partner, the firm had no women partners and I had decided that by the time I was 35 years old I was going to be a partner at a law firm or I was going to do something else. Don't ask me why I decided this, but I did. And my 35th birthday was coming up. I thought I had been out of school long enough to either become a partner in a law firm or move on and when I was offered a partnership at Rogers & Wells I took it.

KD: Did you look for that partnership?

RK: This transpired through the good offices of Howard Bernstein, who had been one of the Branch Chiefs who worked for me when I was an Assistant Regional Administrator, who had gone into the securities industry as the General Counsel of a small brokerage firm. I should note that the vast majority of the lawyers in the New York Regional office when I worked there took jobs like that. It was the beginning of the legal and compliance

profession on Wall Street. Howard had come to me at Willkie, Farr with a matter, but his firm was a client of Rogers & Wells.

Howard and I were close friends. We used to have lunch about once a week together and our families socialized and he knew I was very unhappy at Willkie, Farr because I had been passed over for partnership. It happened that Roger & Wells and many other Wall Street firms at that time were being sued in a sex discrimination case by the New York State Equal Employment Commission headed by Eleanor Holmes Norton. Rogers & Wells was at the top of the list of defendants because Bill Rogers was a senior partner of the firm, and for somewhat political reasons, Eleanor Holmes Norton thought that highlighting Rogers & Wells would help her case.

Rogers & Wells was looking for a way out of its difficulties and my friend told Rogers & Wells that he wanted me to become a partner there because he felt his brokerage firm needed someone to represent it and in fact that he had been considering taking the firm's work elsewhere, and he had already given me some work at Willkie, Farr. So those two different circumstances led to my being made an offer to become a partner at Rogers & Wells. The first few years that I was there I spent about a third to half my time doing work for Howard's brokerage firm. It was my major client in those days.

KD: So in a way you had some affirmative action going for you there?

RK: I did—after years of discrimination, I was the beneficiary of some reverse discrimination.

KD: Here's a big question. During those years that you were working for the law firms and you're doing securities work, how did you see the industry changing?

RK: When I was working at the SEC and then when I was in private practice in the late '60s and early '70s the securities business was changing from an industry of small family partnerships to larger corporations. The industry was becoming a different kind of a business than it had been. Most of my clients at one time were partnerships. Those partnerships incorporated and some of them started to go public.

At one time it was contrary to New York Stock Exchange rules for a brokerage firm to be in any kind of organizational form other than a partnership. This was considered unprofessional. Then it was against the Stock Exchange rules for a brokerage firm to be a public company. These barriers were actually broken down by first Donaldson, Lufkin, & Jenrette and then Merrill Lynch.

KD: And this was before…

RK: In addition to that—this is the question you were going to ask.

KD: Yes.

RK: In addition to that—until the mid-'70s there were fixed minimum commission rates and in 1975 commission rates were officially unfixed. But they began to be negotiated before then, and in fact, in the years when I was at Willkie, Farr I spent a fair chunk of time on the phone with broker dealer clients discussing with them whether or not certain rebative practices were lawful or not under stock exchange rules. These rebative practices were becoming more and more intense and came to cover more and more kinds of activities and this was part of the gradual unfixing of commission rates.

KD: So they're starting to compete on price?

RK: On price, yes. Firms were starting to compete on price. In addition there was a question as to whether investment companies had to form captive broker dealers in order to lower the commission costs on trading by mutual funds. This was a big issue at the time. And this, too, was a sign that commission rates were too high for institutional customers and were going to have to become unfixed.

Then an additional phenomenon accompanied this unfixing of commission rates, which was the computerization of the back office and the paperwork crisis. In the early '70s many, many brokerage firms went bankrupt. They failed and in fact so many went bankrupt that the New York Stock Exchange Trust Fund, which I believe was $69,000,000 and seemed like a fortune at the time, was depleted in order to satisfy

customer clients for brokerage firms which failed. Starting when I was at Willkie, Farr and continuing when I was at Rogers & Wells, I worked on several very interesting broker dealer bankruptcies.

KD: So all of this is feeding the creation of fewer larger firms?

RK: Yes.

KD: And the rates were unfixed in '75?

RK: Yes, but began to be unfixed before that.

KD: Yes, unofficially. So it's shortly after that you come into the Commission. Could you tell me a little bit about the nomination—when you heard about it and what you thought?

RK: In early 1977 there was talk about a seat at the Commission that had been vacant for a while. It had been unfilled in part because the son of a New York Congressman had been nominated for this post and Senator Proxmire who was then Head of the Senate Banking Committee held up any vote on his nomination because he didn't feel that the son of a politician was an appropriate Commissioner for the SEC.

I attended a meeting—I believe it was a meeting of the ABA Federal Regulation of Securities Committee, where there was talk—gossip, chitchat—that the Carter Administration was looking for a woman for this position because there had never been a female SEC Commissioner. There was also talk that the administration was looking for a New Yorker because there had not been a New Yorker on the Commission since Bill Casey and as we've discussed very briefly the securities industry was in the throes of change. The 1975 Act Amendments to the Exchange Act had been passed, which put into place the National Market System mandate and it was obvious that the Commission was going to take some actions that were going to have an extremely important effect on Wall Street.

So at this gathering, I said to some friends in a very joking way, "Well, you can tell the people in Washington that I'm available." And someone asked, "Is that true; are you serious?" And I said, "I guess so." It was kind of a joke as far as I was concerned at the beginning because I couldn't imagine that I would be selected for a Commissioner's job. But then in some further conversations, people told me, "This is serious. If you're really interested maybe we can put your name forward." I said, "Okay. I'll think about it."

Rogers & Wells was a very political firm. Most of the active politically well-connected partners were Republicans but there was one partner who was a well-connected Democrat and I asked him, "Some people are putting my name forward to be an SEC Commissioner; I said I was interested but what do I have to do? I have no idea what I'm

supposed to do to try and move this forward." He told me, "You have to get a recommendation letter sent to the White House by someone who is in politics to get things started." I said, "Well I don't know anybody like that."

So I went home and thought about it and at that time the Westchester County executive, Al DeBello, lived in Hastings. A friend of mine worked for him and I called her up and I said some friends are suggesting that I try to become an SEC Commissioner but I need a recommendation to the White House from someone who is in politics. Do you think that Al DeBello would write a letter for me? And she said, "I'll ask him."

Al DeBello lived in a house in Hastings, which is a converted barn. Anyone who lives in that house has to give parties for worthwhile events—it seems to come with the house. Not too long after this my husband and I were invited to a fund-raiser by Al DeBello in that house and I said to him "We'd better go. I think maybe he's written a letter on my behalf to the White House about this SEC Commissioner job."

So we went and there was a kind of receiving line and we stood in line and I was introduced to Al DeBello and I said, "Hello, how are you? I'm Roberta Karmel. I want to thank you for the letter that you wrote on my behalf." And he said, "Oh yes, Governor Carey is going to be calling you soon about the MTA." And I said, "No, no, you must have me mixed up with someone else. It's the SEC that I am trying to get on to." He

said, "Governor Carey will be calling you soon." This was I think in February—something like that.

About six weeks later I get a telephone call from a woman who identified herself as Judith Hope and she said to me, "Please be available to go to a press conference on Friday because Governor Carey is appointing you to the MTA." That Friday happened to be April 1st 1977; I thought this is some kind of April fool's joke somebody is playing on me. Judith Hope—is that a real name? It is. Friday is April 1st; the MTA? I don't know anything about the MTA. So I said all right; give me the information. I'll go. And in fact, Governor Carey had nominated me to be a member of the Board of the MTA and a day or two later, there was a front-page story on the New York Times. I'd have to check this, but I'm almost sure that this was Judy Miller's first front-page story: "Woman Commuter Appointed to MTA," with my picture.

My children have teased me about this ever since, and in fact, whenever someone takes a photograph of the family they always say, "Mom, give them that old MTA smile," because, to make a very long story a little bit shorter, I never was confirmed to be an MTA Commissioner. I nevertheless served as if I were appointed for several months and went to a lot of events at which all I had to do was smile. I christened a train when the Brewster Line became electrified and I smiled; I went to a retirement dinner of 800 MTA motor men, and I smiled. I was one of about 100 Carey appointees that were held up by the New York State Legislature and never confirmed.

I did go to Albany for confirmation hearings and some of the people in my firm who were very active Republicans said, "Do you want this job? We'll get you confirmed." I said "No, no, I'm trying to get to the SEC." But I was thinking, I suppose this is good practice if I do get nominated to the SEC and have to have confirmation hearings.

Then I was called by an assistant to Harold Williams, who was the Chairman of the SEC, asking me to come to Washington for a dinner with Harold Williams. I remember the assistant said to me, "What kind of food would you like for dinner?" I probably said, "I don't care what kind of food," thinking "I'll probably be too excited to eat anything." I was taken aback by this sort of treatment, and I remember at the time thinking "I am flying to Washington, D.C. for dinner and then coming back on the same night." I thought this was extremely exciting—a real jet-set event in my life.

I met with Harold Williams and we talked about a great many things. I can't say I remember what they all were but it was a job interview. And I can't remember exactly when this was in the sequence between April 1st and July 4th but I think it was sometime in May. I also found out—this was a kind of lucky break—that one of the White House staffers who was vetting the nominations for Commissioner was an old law school friend of one of the Rogers & Wells partners. I think that was probably somewhat helpful to me. Also helpful was that Ken Bialkin, my old boss, campaigned quite a bit on my behalf for this position.

Then right before the July 4th weekend, I got a telephone call that I should come to the White House for an interview, I thought with Hamilton Jordan. At the time I remember thinking this process is all very interesting and very expensive. You get called by people in Washington, "Come for an interview; come for dinner." Nobody says they're going to reimburse you for your expenses. You have to either have money or be, as I was, a partner in a law firm that was willing to finance my trips in order to qualify for a high government position. I remember at the time thinking—it's not what I imagined when I was a child about how democracy worked.

I believe this was the Friday before the 4th of July weekend or something like that—the day before the 4th of July weekend. I flew to Washington; it was a beastly hot humid summer day in Washington. I remember going to the White House and feeling as if the streets were literally melting because it was so hot, and also I was so nervous and excited, I felt like I was a child in some strange fairy tale. I thought, "I feel like I'm Alice in *Alice in Wonderland*; this is so unreal.

I got to the White House. There was much less security than there is now but I think I had to bring my passport, and I was admitted and I was told that I was going to see the President of the United States. Well, I had not been expecting to be interviewed by the President. A woman at the desk said to me, "Oh, don't be so nervous, he's a very nice man."

I went into the Oval Office and I sat down and the President of the United States started asking me questions. He had no notes, but had obviously memorized my entire resume. He knew all about me and started asking me questions about SEC policy, particularly the SEC enforcement program, which at the time was considered by many to be overly aggressive. He asked whether I was going to be strong enough to do the job, and I said, "Yes, I think so." And he also said, "When I was Governor of Georgia I got involved a little with the securities markets because we floated bonds." And I said, "Oh, I've been doing some bond work for the City of New York." And we talked about municipal bond fundraising a little.

And then after talking about the work of the SEC, he said to me something that I think now would be illegal in an interview, and maybe was then, but he meant it very kindly. He said, "Oh, I see you have four children. Do you think you're going to have any more?" And I said, "I don't think so. I'm 40 years old and it seems to me that four children are enough at my age." And he said, "Well you know, Rosalynn had Amy when she was about your age and that was the best thing we ever did." And we talked about my children. I thought, "I'm talking to the President of the United States about my children; this is incredible."

Then he said to me, "Do you have any reservations about taking this job?" And I said, "As you know, I have four children. And if I'm going to take this job I have to move my

family to Washington and this process has already dragged on for many months and if I'm going to do this job, I have to move my family before September when school starts. So I'm really going to have to know one way or the other whether I have this job pretty soon." When I think back upon it, I realize this was a nervy thing to have said in this interview, but that's what was on my mind. President Carter then said, "Well I guess you have the job." I almost fainted. And he said, "But, don't tell anybody; it's a secret," or something like that. I said, "Can I tell my husband; "Oh yes, yes; that's alright."

The next morning there was an article I believe this time on the first page of the Business Section of The New York Times with a Judy Miller byline saying "Roberta Karmel, First Woman Appointed to the SEC." How she got that story I don't know. She must have had interesting sources back then, as now. And then I did something which today I don't think anybody would ever do. I moved with my family to Washington before I was confirmed because it did not cross my mind at that point that I would not be confirmed.

KD: Confirmations weren't as nasty then?

RK: Confirmations could be very nasty and in fact people told me, "Senator Proxmire won't vote for you. He never votes for the SEC Commissioners." I said, "Well that's too bad; I would like to have his vote." In fact, I thought it would be nice if both of the New York Senators would introduce me at the confirmation hearings and on the day we were moving from New York to Washington, Jack Wells of Rogers & Wells arranged a

meeting between me and Senator Javits and so I wasn't around the day of the move. My husband almost killed me—I shouldn't say that for the record, but he was very angry.

But that was very important to me. I knew that Senator Moynihan would introduce me, but I thought it would be nice if both of the New York Senators introduced me and I had to pay a courtesy call on Senator Javits in order to accomplish that. Very happily they did both come to the confirmation hearings. I have a nice photograph in my office of the confirmation hearings where I am sitting at a table flanked by Senator Moynihan and Senator Javits. I also thought it would be nice if Senator Proxmire voted for me, contrary to his custom.

I have to go back to my family. My father was a lawyer in Chicago and he was a partner in what was then the firm of Arvey, Hodes & Mantynband. Jake Arvey was a big force in the Democratic Party in Chicago. And although my father was never political at all—and obviously from the story I'm telling you I didn't know much about politics either—we both were in law firms with a lot of people who were very political. In the summer of 1977, Jake Arvey was very sick; he was in the hospital and he died not too long after that. And my father had already died. But Jake Arvey called me up and said, "Oh congratulations; it's wonderful that you're going to become an SEC Commissioner. Is there anything I can do?" I said, "Well, I am a little worried about Senator Proxmire's confirmation hearing," and he said, "Oh you don't have to worry about Senator Proxmire. I'm sure he'll vote for you."

Whether Jake Arvey did anything or not, I have no idea, but Senator Proxmire was there when I was confirmed and said something like, "It's about time we had a woman in this job." He was very cordial, and so the confirmation hearings were easy. Beforehand, I made the rounds and talked to all the different Senators in order to be confirmed. I was excited and nervous and impressed by these different Senators and I remember thinking at the time if I wasn't so nervous this would be one of the great experiences in my life, having the opportunity to meet all these important people in Washington.

I had some interesting conversations with the different Senators. I remember talking to Senator Sparkman who looked at my resume and said, "So young lady you were born in 1937; that's the year I came to Washington. That's been a long time. Do you think I should stay?" What do you say to a question like that? I replied, "Well are you still having a good time? Do you still enjoy your job? Then you should stay."

I have to say the only Senator who asked me serious questions about the SEC and securities law and securities policy was Senator Lugar who then was on the Banking Committee. That interview started out a little bit personal because I said "My sister lives in Indianapolis and my family used to have a business in Indiana." That led to a little bit of chitchat, but then, Senator Lugar asked me questions about financial regulation. He took this interview seriously. The other meetings were really all just social calls.

KD: Were your talks with President Carter and Harold Williams more than social calls?

RK: Yes, those were both job interviews. I remember when I was talking to President Carter thinking the President of the United States is interviewing me for a job—wow.

KD: Did you come away from that with a sense of what the expectations were and that perhaps they matched your expectations of what you wanted to get done?

RK: Yes, yes. Yes—to both questions.

KD: And what were those expectations?

RK: I think the expectations were that perhaps the enforcement activities of the SEC were going out of bounds and that if appropriate I should rein in those activities. Certainly nobody had the expectation and I did not have the expectation that the SEC should not continue to be an effective and vigorous enforcement agency, but there was a sense that the SEC was possibly abusing its prosecutorial powers, and possibly bringing cases that shouldn't be brought.

KD: Did that dovetail with your own inclinations at the time?

RK: This was all the talk in New York among all the members of the securities bar—somewhat as it is today—that the government was just going off the deep end, suing everybody for everything and bringing a reign of terror to Wall Street and corporate America, and criminalizing activities that previously had not been thought to be even civil law violations. I mean in this country we're not supposed to have common law crimes and yet somehow we go through populist periods when suing people in the business world or on Wall Street for activities that were previously thought to be all right is a great heroic thing to do.

KD: What was on the table?

RK: The other topic that was on the table that was very important was how to implement the National Market System, and at that time there were people in Washington who seriously wanted to put the New York Stock Exchange out of business, and the Stock Exchange had not handled the transition from fixed to unfixed rates very well; Wall Street firms also had not handled the computerization of their back offices very well. Wall Street was really on the defensive.

Neither Harold Williams nor the President had any particular instructions or message for me about the National Market System except that it was a matter of great importance to the country and the economy and not something to be approached other than in the most serious possible way. I think the fact that I was from New York gave rise to the

assumption that I would be sensitive to the interests of Wall Street. At the same time I'm originally from Chicago and Chicago is also a financial city. I certainly had no sense that I was a kind of a delegate from New York or anything like that.

KD: When you came to the Commission and sat down, do you remember what some of the first agenda items were?

RK: I don't remember what the exact agenda items were, but I remember at the very first meeting I started questioning the staff—I was not persuaded they should bring some enforcement recommendation—and this was considered rather heretical. Early on we started trying to put together a policy statement on the National Market System. In fact there had been off-board hearings in Washington in the summer of 1977 and Harold Williams wanted me to come to those hearings. I said, "Harold, I can't come to those hearings. I'm moving my family—my four children to Washington. Besides I've heard enough about all this in New York. I think I understand what the issues are. I'll read some of the transcripts, and anyway I think it's inappropriate for me to attend the hearings. I haven't been confirmed yet." We started on the National Market System right away. It had been going on before I even arrived.

KD: What could the SEC reasonably do to help bring this National Market System about? What were the options available?

RK: We could have abolished the off-board trading rules of the New York Stock Exchange so that trades in listed securities no longer had to be brought to the floor of the Exchange if they were effected upstairs. I think that most people expected we were going to do that. In fact, Harold Williams didn't think that was a good idea…

KD: Why not?

RK: … because it was too drastic a change, that if this was going to happen it had to be done more gradually. He was also worried about internalization of order flow at broker dealers and fragmentation of the markets. The National Market System provisions of the '75 Act are rather schizophrenic in terms of mandating that on the one hand the National Market System should be based on the principle of competition, and on the other hand specifying that this was supposed to be an integrated marketplace. Congress never made up its mind as to what this marketplace was supposed to look like, and the Commission had a hard time implementing the statutory provisions. Also, the Statute said the Commission was supposed to "facilitate" the implementation of a National Market System.

So we did something kind of in between; we abolished the off-board trading rules for agency orders but not for other orders. That was not done until much later. Harold also pretty much forced the industry to come up with the Inter-Market Trading System.

KD: Was there a consensus on the Commission about leaving 390 in place?

RK: No, there was not.

KD: Where did it come down?

RK: Many of the decisions during the time I was a Commissioner—that were not a consensus decision: five Commissioners in favor or against, usually in favor—tended to break down into votes of 4 to 1 where I was the 1 or 3 to 2 where the majority was the Chairman, Phil Loomis and me, and Irv Pollack and John Evans were on the other side. I would say that was kind of the breakdown on the National Market System, although these issues were so complicated. When the Commission finally came out with its National Market System policy statement, there were not any dissents. I think it was a consensus Commission statement and the rules were a consensus Commission statement but there was a fair amount of give and take beforehand. But I would say that those were issues where the Chairman and I were pretty much on the same wavelength.

KD: So you wanted to see 390 stay in as well?

RK: At that time, yes. I thought it would be too abrupt a change to impose on Wall Street and moreover it was not for the government to do that. I just didn't think it was the government's job to restructure the markets. I remember having a rather strange conversation one day with the head of the Enforcement Division at the SEC, Stanley

Sporkin, who said, "Roberta, I don't know what we're going to do about this National Market System." He said, "I think we should establish some sort of government agency like Comsat that should build the National Market System." And I said, "Stanley—and then what—shoot it into space?" I believe market structure had to come from the industry. The government could not dictate what the market should be. Even if that was good policy, which I did not think it was, the government couldn't do it. We would build a National Market System and nobody would come to it."

KD: Right.

RK: So I think there was a little bit of a difference between the Washington insiders view of what the government was capable of doing and having anybody pay attention and follow the rules and those of us who came from outside the Beltway. I felt that changes in the structure of the markets couldn't be top down command and control regulations; that they had to come from the industry although the SEC had so much plenary control over the Exchanges and the brokers dealers that we could certainly influence the outcome a great deal, but the SEC could not build a National Market System or even construct the building blocks for a National Market System and I didn't think that was the appropriate role of government anyway.

If a New York Stock Exchange or any other market was going to go out of business because it was not keeping up with the demands of the economy and the times, it wasn't

for the government to save that marketplace. But it wasn't for the government to decide to put our primary market out of business, either.

KD: Right.

RK: I don't know that would have happened if Rule 390 had been removed either. In a conversation like we are having now, one necessarily says things that are overly-simplistic.

KD: Sure.

RK: These issues are very complicated.

KD: You brought up Stanley Sporkin in Enforcement.

RK: Right.

KD: And even by the time you got there I think he was already legendary in some respects.

RK: He still is.

KD: You must have been prepared to come in and deal with this very energetic Enforcement Division. Was it what you expected and what was it like?

RK: Yes and no. Remember I had been part of the Enforcement Division when I was on the staff. And in fact, Stanley had been one of the people who recommended that I be promoted from Branch Chief to Assistant Regional Administrator in New York. So he had been one of my supporters when I was on the staff and I think the Enforcement staff expected me to come in and dream up creative new cases for them; that's what I had done when I was on the staff. And they also found it very difficult, since I was a woman and since I had been lower down in the bureaucracy when I was on the staff, to look at me as someone that they had to be accountable to—that they had to persuade me—that I had now become one of the bosses if you will.

I really didn't go to the SEC thinking I was going to get into a big battle with the Enforcement staff. My feeling was the Commission is losing its way a bit in the courts; the agency had lost some cases—we're going to lose some more cases; we're going to lose credibility. The agency has to be more careful concerning the kind of cases it brings—less aggressive in bringing novel cases because the courts and public opinion have changed. I should have expected the kind of resistance that my ideas were met with but to be honest I didn't—or at least didn't expect for my efforts to change Commission policy to be so difficult.

KD: How about the other Commissioners?

RK: Irv Pollack had been the Head of Trading and Markets which was the predecessor to the Enforcement Division. Stanley Sporkin was his protégé and he, I think, quite understandably as a matter of policy, favored most of the Enforcement Division's recommendations. Phil Loomis was the prior General Counsel—he also was an insider—and John Evans had been on the Senate Banking Commission. So I sat on the Commission with three career government employees who saw their roles and viewed Commission policy as helping the staff to bring their cases. I saw things a little differently.

Also Phil Loomis and Irv Pollack had been with the Commission during the Watergate years and the post-Watergate years where the White House tried to improperly influence some Commission enforcement cases. The kind of bonding that had gone on during that period, resisting White House efforts to interfere with Commission enforcement policies, carried through, while my attitude was this period is over. We have to go onto a different construct here. I was much younger than the other Commissioners, too, so I think it was harder for them to give me deference in terms of what my views were. And my views were contrary to the way in which they had thought for many years. I'm sure they felt, who is this newcomer coming in and trying to change Commission policy?

KD: Were you aware of the shift, still sort of gradual at this time, but the shift toward the right in American political culture?

RK: Yes.

KD: Like deregulation?

RK: Yes, and in the courts. There had been some Supreme Court cases that I thought were very important that I kept citing in the Commission meetings.

KD: Such as?

RK: Greene against Santa Fe. I thought it was an extremely important case at the time. There were some other cases, but I remember that one—I thought it was a very important case; I kept bringing it up at Commission meetings and staffers had the attitude—"it's just the Supreme Court."

I felt that if the Carter Administration as a whole and the Commission did not come up with some new policies that were responsive to shifting political winds that the next administration would not be a Democratic administration and indeed that's what happened. I think this was the failure of the Carter administration generally, and the SEC was just a tiny part of that administration but the same things were going on everywhere.

I think the failure of that administration to come up with the kind of policies that were responsive to the changing political mood paved the way for the Reagan landslide. Everybody was still in this post-Watergate mood that had prevailed in Washington for a while.

KD: Yes, and there's still something of the Great Society, big government initiatives as well.

RK: Right. There was the idea that the government could solve all the problems. I think this was the National Market System conceit; the government can solve these problems of Wall Street.

KD: You settled into a pattern, so to speak, and I know this is an over-simplification because there were many decisions made—but in some of the notable ones you actually issued dissents.

RK: I started dissenting—actually the first dissent was on a rulemaking proceeding that had to do with an initiative to define independent directors of public companies. I felt that the SEC did not have the authority under the statute to decide what kind of directors were independent and should serve on the boards of public companies. This was a Greene against Santa Fe issue as far as I was concerned, so that was my first dissent. I was sorry about it because this actually was a pet project of the Chairman, of Harold Williams, and this was one of the areas where Harold and I did not agree.

I didn't really want to have to dissent in this rulemaking procedure and I tried to persuade the staff to change the wording of the release in a way that I could agree to it, but in the end they wouldn't do that and I wouldn't give in either. And I said I'm going to dissent from this particular point of the rulemaking proposal. And I was told, "You can't do that; there's no procedure for doing that." I said, "Look - at the end of every Commission Order it says "by the Commission." I'm part of the Commission and I don't agree to this. And I don't care if nobody ever dissents from Commission rulemaking orders, I'm going to do this in some fashion."

So what we did—it was a very modest technique – is to drop a footnote from that part of the rulemaking proposal with which I did not agree. It was a small part actually but it was something that was important to me and it just said, "Commissioner Karmel dissents from"—I can't remember the exact phrasing but it was a sentence or two after - "dissents from." Well, I was completely unprepared for the consequences. All of a sudden I was taken up by the Main Street business interests because that's who this affected. This was not a Wall Street issue, this was a Main Street issue. This had to do with the composition of the Board of Directors of big public companies and I was saying—although it's just a little footnote—I don't think the SEC can tell public companies who should be put on their Boards. That was essentially what I was saying although it was a very low-key, I thought, subtle dissent.

KD: This was part of a broader corporate governance push?

RK: Yes, it was a part of a very broad corporate governance push. I just didn't think the Commission had the authority to take this initiative. Even if this were correct policy, and I had some doubts about whether it was correct policy, I just didn't think the SEC had the authority to do this. I thought this was a state law issue and I thought the federal government should not be dictating the composition of corporate boards. In the Sarbanes-Oxley Act, the Commission got this power that I thought it didn't have in 1977, although very indirectly. Even in Sarbanes-Oxley, Congress gave this power to the Commission indirectly by saying the Commission could compel the Stock Exchanges and the NASD to dictate board structure in their listing rules.

KD: Right.

RK: All of a sudden, I started getting invitations to speak at certain kinds of functions and became well-known in the corporate America world as someone who was—I wouldn't say on their side exactly—but who was at least listening. That's what people would say to me a lot when I was a Commissioner; you're a breath of fresh air. You listen to people in the business world. But I thought that was my job.

KD: Something else that came up was the Spartek case. Can you tell me about 21(a)?

RK: The Spartek case was my next famous dissent and this was the first enforcement case that I dissented from. It was what was then called the "going private" phenomenon and it was part of a going private transaction. In my opinion the Commission did not have the authority to say that what had gone on in that case was illegal, and maybe the Commission thought so too, because it settled this case with the 21(a) Report which set forth the results of the Commission investigation and said essentially, "We think this was wrong and the company has agreed to certain remedial action or that they won't do it again," and just published that as the result of the investigation. I believed that publishing a 21(a) Report was a sanction.

There were ferocious arguments between the staff and me on this case. The staff insisted they were going to bring it and I said I wouldn't go along with it. And they said, "Well you can't dissent because it's a settlement." I said, "Well a judge can say we don't have the jurisdiction to accept this settlement and that's what I'm going to say." This is again over-simplifying, but this was the dialogue. Actually, it hardly was a dialogue; it was a screaming match. In fact, I remember that one of the lawyers who was essentially my counsel—I think he was then called a legal assistant—said to me, "Roberta, you're really one of them," meaning the Enforcement staff. "When you're in an argument with them, you're one of them." I said, "Well yes, of course I'm one of them; that's where I came from." I was an enforcement attorney, too. I mean this became a great adversarial contest. And I ended up dissenting; a little footnote to that dissent is that the staff attorney on the Spartek case came to work in my office.

One of the changes I made in the way in which the office of a Commissioner functioned is that at the time I became a Commissioner every Commissioner was entitled to one legal assistant and a confidential assistant, but I felt one lawyer wasn't enough—that I had too much I wanted to accomplish and there was too much work to do—so I needed more than one lawyer but there wasn't a budget line for a second lawyer. I think now Commissioners have three. John Evans and Irv Pollack and Phil Loomis felt one lawyer was more than enough for them so nobody else made this demand.

Harold and I came up with an idea that let me borrow a lawyer from the different divisions for a short period of time—six weeks, two months, three months—and that second lawyer would rotate through my office. There did not have to be a new budget line for the offices of the Commissioners, because I would be borrowing my second lawyer from the divisions and he or she could work for me for a short time and then go back to the division the lawyer came from. I thought to myself, "I'll have a friend in every division who can tell me what's going on and try and promote my views." So this seemed like a great idea and Harold went along with it.

After the Spartek case became public, I found out that the attorney in the Enforcement division who was assigned to do this case was a woman whose father was the Ambassador to Iran and at that time the revolution was going on. The Shah had been deposed. She was very worried about her family and quite distracted from the Spartek

case, and I felt terrible about this afterwards. I thought, "oh this poor woman. She's worried about really important family matters and big events in the world and we're just squabbling about an SEC enforcement case." So I chose her to be the next person to come and work for me in my office as one of my lawyers. We became good friends; we're still good friends.

KD: Who was that?

RK: Anne Sullivan; she's still working at the Commission. The Spartek case became the basis for a very long friendship. I felt so guilty that I had caused her even more stress at a time of terrible personal crisis that she was undergoing.

KD: Moving to another important topic, I talked to Ted Sonde a while back, who was in Enforcement.

RK: Right.

KD: And he talked a lot about gatekeeper issues.

RK: Right.

KD: I guess this has something to do with the 2(e) cases.

RK: Right, everything to do with the 2(e) cases. I have never believed that lawyers should be gatekeepers or that the SEC should have the power to compel lawyers to "rat" on their clients. I think this is contrary to the role of lawyers, whether they are acting as defense counsel in enforcement cases or as transactional lawyers. I think the job of a lawyer is to represent his or her client zealously and if a lawyer believes that SEC policy is misguided or if the client believes it's misguided—I think a lawyer has the obligation and the right to try and challenge the SEC's interpretation of the law. This doesn't mean that a lawyer can counsel a client to violate the law.

There's a difference between challenging the government and counseling violations of the law. I don't think lawyers should be put in a position where they are agents for the government, and I have to say I feel this as strongly today as I felt it back in the late '70s. I am very alarmed at some of the policies that are being put into place today in the name of fighting terrorism or prosecuting people in the business world that are driving this country into becoming a kind of police state. I think we are in danger of losing our ability to challenge government policies that may be wrong.

I've never understood why people who can see that when it comes to issues involving the criminal law or national security don't see that when you talk about some of the excesses in the regulation of the business world—that it is the same dynamic. To me it's always been the same. Due process is due process for everyone, including a business person.

The ability to challenge government prosecutors is the ability to challenge government prosecutors, whether a U.S. Attorney or the SEC. I think that if lawyers are made into gatekeepers, they lose this ability to challenge the government.

Now if a lawyer is not acting as a lawyer, if a lawyer is acting as a principal, then that lawyer should have no protection against being prosecuted like anybody else if the lawyer violates the law. There have unfortunately been many, many lawyers who have been defendants in insider trading and other securities cases. I never understood why lawyers who have a very good job in very good law firms are so foolish as to risk their entire career and professional life by engaging in insider trading. That's crazy and there have been many lawyers, especially in the '80s, who were defendants in insider trading cases. I would never say the SEC shouldn't prosecute these people.

But I think to compel a lawyer, who is acting not as principal in a transaction but only as a lawyer, to be a gatekeeper, to be an agent of the SEC, is wrong. I think if an Assistant U.S. Attorney started doing this—saying lawyers have to go before the grand jury and testify to the crimes that their clients have committed—people would see there's something wrong with such compulsion. But to me what the SEC has always advocated is really the same thing; the SEC is a prosecutorial agency.

KD: Was the rationale given that this was a way of increasing the agency's leverage?

RK: Yes. The rationale is that lawyers and other gatekeepers should be responsible for their client's behavior and then there will be more compliance with the law.

KD: Right. You mentioned insider trading briefly.

RK: I don't know if this is enough about 2(e). When I was at the Commission I had a very different view about Rule 2(e) cases than the rest of the Commission and the staff then had. We had many debates about this at Commission meetings.

KD: Was there a notable case in which this came up?

RK: It came up in every 2(e) case; I didn't think at that time that the Commission had the authority to bring 2(e) cases against lawyers. In addition, I felt that many of the cases involved matters that were not violations of the law and many of them were settlements. So some of these dissents were like my 21(a) dissents. The question arose as to whether a settlement could be challenged. If a case is settled, how can a Commissioner dissent from a settlement? I took the view that if the Commission has no jurisdiction, I would dissent from accepting the settlement.

We did have one policy meeting on 2(e) because there was so much contention about this issue. It must have lasted about six hours and we debated all of the issues. The Commission room was filled with staff; it was like a show. I mean every seat was taken

and I remember thinking if all these people were billing a client by the hour this would be unconscionable. It was a general debate, rather than a discussion of any particular case, although the debate continued on the particular cases. But we did have a meeting on Commission policies with regard to Rule 2(e), and looking back, I realize this was a generous effort by the Chairman to achieve consensus, but we were unable to do so.

Actually the case where some of the different views came out was the Carter-Johnson case but there was no Commission decision until I left. I think that everyone might have delayed that until after I left; I'm not sure. Ed Greene, when he was General Counsel, gave a speech at the County Lawyers' Association basically adopting a view that I had articulated in my dissents and this pretty much was Commission policy for the next 25 years, until the Sarbanes-Oxley Act was passed in 2002. Now these debates have broken out all over again.

KD: That gets to the issue of what you were looking to accomplish with the dissents.

RK: I was trying to change Commission policy.

KD: Was it a sense that other people would study these dissents and it would make a difference years from now?

RK: Yes. I was trying to change Commission policy.

KD: But you realized that you weren't going to change that Commission's mind at that point?

RK: I was hoping that there might be a change in the composition of the Commission while I was a Commissioner and then there would actually be a change in policy, but when John Evans was reappointed I realized there was not going to be any change in the composition of the Commission and that whatever configuration existed on various issues was going to pretty much remain what it was. I wasn't really involved in any of those decisions but the decision as to whether or not he was going to be reappointed dragged on for some time.

KD: The Carter Administration didn't know whether it wanted to?

RK: I really wasn't a party to these decisions. All I can say is it dragged on for a long time. It was very unclear whether he was going to be reappointed or not. There was obviously disagreement in various corners about him. John Evans was a very nice man; I don't want to say anything negative about him. He died in the last few years. He was a nice man; he was respectful of me and I always tried to be respectful of him. He was very sincere in what he believed in just as I was sincere in what I believed in. But we didn't agree on a lot of issues.

I was watching the political cards and I think that if that seat on the Commission had become vacant and had been filled by someone whose views were closer to mine then my dissents might have become the majority view in terms of Commission's policy. After I left the Commission, on some issues such as 2(e), my policies did become the Commission's policy. But then after Sarbanes-Oxley, we're back to where we were, so trying to stop the accretion of governmental power seems an exercise in futility. The government just keeps getting more and more powerful and passing more and more regulations and old regulations are never repealed. I think this is a serious problem for our government and our country.

Let me say something about Ed Greene, who was at Willkie, Farr & Gallagher before he came to the SEC. I helped recruit him to the Commission to become head of Corp Fin, and then he became General Counsel. So he came from a similar background to mine and at some point while I was still a Commissioner we were sent on a mission to Japan and went together and spent about ten days in Japan talking to Japanese businessmen and government officials about foreign issuer disclosure.

The Japanese were quite exercised at that time because the SEC had brought down a Japanese government because of the Lockheed scandals and the Japanese thought that the SEC was an extremely powerful government agency. Busloads of Japanese tourists used to get off in front of the sign that said "Securities and Exchange Commission" and have their picture taken. But all of this is to say that it's not surprising that Ed and I had

similar views on an issue like Rule 2(e). We had similar backgrounds in some ways and we were business friends. And we had the opportunity to talk to each other quite a bit about Commission policy.

KD: Was he responsible for making the changes in Rule 2(e)?

RK: Yes. That was when he became General Counsel, which was after I had left. But while I was a Commissioner, he was responsible for putting into place the building blocks for the integrated disclosure system, which I very much favored and which I thought was an extremely important Commission policy. Although it seems quite integral to the Commission's disclosure policies today, it was very controversial at the time.

KD: Why?

RK: Some members of the Commission didn't favor it. They thought that it was eliminating too much '33 Act disclosure documentation and liability.

KD: Making it too easy to register?

RK: Yes. Too easy to register. Some of the Commissioners just didn't believe this abbreviated registration was a good idea, and in fact I stayed at the Commission a few

weeks longer than I otherwise might have to be able to vote in favor of the first integrated disclosure initiative.

KD: Were you a necessary part of the majority for that one?

RK: Probably, although there were no dissents. The Commission often would reach a consensus but if you dug down underneath that consensus there were disagreements.

KD: Right—it would depend on what the stakes were I'm sure.

RK: It depended on what the stakes were, it depended on what the majority was. A lot of times if there was a majority in favor of a particular action it wasn't really worthwhile to dissent. In addition to that, until I started dissenting, this wasn't done. I can't remember any time where the other Commissioners dissented from a majority decision; it was considered bad form to dissent.

KD: Integrated disclosure?

RK: Yes.

KD: Okay; and of course it would become extremely important in the '80s. But I wonder if there was some movement in regard to insider trading at this point—if that was being seen as a problem?

RK: Yes. It was seen as a problem. There were problems with insider trading and there were also debates about this because the SEC lost the Chiarella case in the Supreme Court. There's kind of two issues regarding insider trading when I was a Commissioner that followed the Chiarella case. One was the Commission passed an Anti-Fraud Rule under the Section 14 tender offer provisions that said in effect in insider trading cases in the tender offer context we don't have to prove scienter or breach of fiduciary duty. To this day it's not clear if the Commission had the authority to pass that Rule; the question came up in the O'Hagan case a few years ago. But since the Supreme Court in O'Hagan decided there was insider trading in violation of Rule 10(b)5, it said *a priori* there's a violation of the Anti-Fraud Rule under Section 14.

I was at the Commission when that rulemaking got started. I'm not sure if I was there when the final rule was passed, but in any event, I had no problem with the rule. I often felt if the SEC would pass a rule outlawing some behavior and go through the notice and comment process and the rule could be justified under the statute, that would be an appropriate way to go forward. What I often objected to was trying to get there through enforcement cases, trying to define new violations through enforcement cases. I wrote a

book called *Regulation by Prosecution*. I don't think this is an appropriate way for the government to make new law.

KD: So you bring a case to Enforcement.

RK: Yes.

KD: Something that's not necessarily illegal or against the administrative rules.

RK: Had previously not been thought to be illegal.

KD: How does it suddenly become illegal?

RK: Because if the SEC brings a number of cases that are not rejected by the courts, it becomes the new standard and often because in civil cases there are so many consents and settlements and in criminal cases there are so many plea bargains; the new interpretation is not challenged. This is why I didn't feel it was inappropriate to dissent in settlements because a settlement is between somebody under investigation who wants to settle the case and the SEC Enforcement staff, but settlements shouldn't become new law. But they do if there are enough of them.

KD: And so that's what happened in the Chiarella case; the court decided that these earlier rationales for insider trading wouldn't work?

RK: Yes. The other effect of Chiarella was a questioning of some of the cases the Commission was prosecuting—one of them being SEC against Dirks, which was an administrative proceeding. When the case was appealed from an administrative law judge to the Commission, the staff couldn't come up with an opinion that I would go along with, so this opinion did not come out until after I had left. The Supreme Court then reversed, so the staff should have listened to me.

KD: I supposed you were happy to see that at the time?

RK: I never like to see the Commission reprimanded by the Supreme Court and that's what I was always trying to prevent when I was a Commissioner.

KD: I think you talked a little bit about your reasons for stepping down. You still had some time to go in your term?

RK: Yes.

KD: Was it simply this sense that the makeup of the Commission wasn't…?

RK: No, no, no. That's not why I stepped down.

KD: What was the reason?

RK: President Carter wanted everybody to take a five-year pledge when he appointed people and my husband was not willing to move to Washington for more than two years and he said to me, "If you promise more than two years we're not going to go." So I actually wrote a letter to the White House saying I could only promise to stay for two years for family reasons. And after two years my husband and children moved back to New York and I was commuting for six months. It was very expensive and we didn't have the money for that kind of a lifestyle. It was very difficult; I had young children. It wasn't working out very well. So I left for personal reasons—family reasons.

KD: Really for personal reasons?

RK: Yes. It was really for family reasons. I mean my daughter was only in third grade. Her teacher told her, "I'm sorry your parents are getting divorced." I didn't learn this until years afterwards, but she would be very tearful every Sunday night or Monday morning when I would go back to Washington and I only found out years later that she thought that this meant that my husband I were getting divorced. But I did know she was very upset and my three boys were not so happy with my commuting either. My husband

wasn't so happy with it; it wasn't a good arrangement. I don't think commuting marriages are a very good idea.

KD: You went back to Rogers & Wells.

RK: Yes. I remember Harold Williams said, "Well you should just make an announcement that you're leaving and see what happens." I remember thinking and saying I don't know that it's appropriate for an SEC Commissioner to do that. This is very common today not only for Commissioners but for high staff members, but I wasn't comfortable advertising for a job while I was still a Commissioner. In any event, I planned on going back to Rogers & Wells; that's what I told the White House when I took the job—that was my plan. So I never tried to look for any other job at the time.

In retrospect I think that was a mistake. I'm not sure you can ever go back. I remember people asked me when I got back to Rogers & Wells, "What's it like?" I said, "I don't know; it's like coming home from college. They think I'm the same person and I'm not."

KD: How did your experience affect the way you looked at securities law for the rest of your career?

RK: It definitely changed my life and my outlook. But I think the main way in which it changed my life is that I moved into a different league in terms of the doors that were open to me and my own perspective on securities law.

KD: Can you say a little more about that perspective—how it changed?

RK: I saw the bigger picture. I had a much better understanding of how the Commission operated and how policy decisions were made. And I had learned about a lot of areas of securities law that I previously had not been involved in very much. Also many opportunities and many doors were open to me that had not been opened before.

KD: Like being the Director of the New York Stock Exchange?

RK: Like being a Director of the New York Stock Exchange, although that came about in a kind of quirky way. John Phelan was at the New York Stock Exchange when I was a Commissioner but I don't remember what his position was. He wasn't President yet, or certainly not Chairman, and he came to Washington to talk to the Commissioners about the National Market System with Mil Batten. He would come around and talk about policy and I was quite impressed with him. I thought he had a very impressive intellect.

After I got back to New York he was made President of the Stock Exchange and I did something that was somewhat uncharacteristic, but in a way this is what I meant by

saying I was in a new league. I either wrote him a letter or called him up and congratulated him on becoming President and said, let me take you to lunch. This is something I never would have done before I had been a Commissioner. And we had lunch and talked and became friendly. And I think it was because of that lunch and the fact that Sandy Weill was the Head of the Nominating Committee that year for the Exchange that I had the opportunity to go onto the Stock Exchange Board.

KD: How useful was your SEC experience on the Board?

RK: Very. That was a job I came into knowing virtually all the issues from the first day. I was a public member as opposed to a securities industry member. Many of the other public members were CEOs or retired CEOs of public companies and while they were very smart and powerful men—no women—they really didn't know too much about how the securities markets worked or about the New York Stock Exchange or about the issues. The Secretary of the Exchange told me one year when I was on the Board, "Roberta, you have gone to more committee meetings than any public member." I said, "That's because you put me on virtually every committee because I know what's going on." I said, "In addition, I'm a lawyer and this is a regulatory agency. You really need some more lawyers on this board even though businessmen don't like lawyers to be on Boards of Directors."

KD: Well just to wrap up, you talked about doors opening and in some respects it seems unusual or backwards for someone who was once in this big regulatory agency to go and become a college professor. Often it works the other way around. What did that mean to the way you teach your classes, the way you deal with students?

RK: I should say I always wanted to be a law school professor but this was a field that, when I was young and even further along in my career and even today, was much more closed to women than other parts of the legal profession. I would say government opened up first and then business and then the white shoe law firms and then teaching.

For a long time after I became a full-time professor I still was a partner in a law firm. And even today I still do some consulting, so I've never totally left off being a securities lawyer as well as being a professor. But I feel that as a professor I've been able to bring all of my experiences to bear on my teaching. It's given me a real perspective. I also should say I did teach as an Adjunct at Brooklyn Law School for four years before I became a Commissioner and when people asked me, "What was the best preparation you had for being a Commissioner," I answered, "Teaching, because it gave me the ability to get up on my feet in front of a group of people and speak and articulate an idea." I found that very useful in my job as a Commissioner.

KD: Well at this point I should ask you if there's anything we've left out that you'd like to discuss?

RK: Oh I think we've left out a lot of things, but I've had a long life and we've had a long conversation.

KD: You've certainly done well articulating your ideas this morning. So I want to thank you very much.