

Securities and Exchange Commission Historical Society
Interview with Amy Goodman
Conducted on April 15, 2013 by Robert Colby

RC: This is an interview with Amy Goodman for the SEC Historical Society's museum and archive of the history of financial regulation. I'm Robert Colby. Today is April 15, 2013. We're talking with Amy Goodman in her office at Gibson, Dunn & Crutcher in Washington, D.C. Thank you for being with us today.

AG: Thank you.

RC: Let's start with your early life and education. Did you grow up with an interest in law?

AG: I decided when I was eight years old I was going to be the first woman Supreme Court Justice, and that's before there were any, but obviously I wasn't. I had an uncle who was a lawyer. I come from a family of accountants. I just got interested. My mother takes the credit. She says I asked her one day what a lawyer did, and I must have liked her answer.

RC: I see you went to Boston University.

AG: Right. I went to college so I could go to law school. I majored in political science, which people thought was a good major for law school at the time. BU had a program left over from World War II for the returning veterans. After three years of college, I could apply

to law school. If I got in, my first year of law school would count as my last year of college. I applied and did that. I managed to do it all in six years, which was nice.

RC: Did you have a particular focus when you started, a particular kind of law you wanted to do?

AG: I was going to be a legal aid lawyer. Then I did some legal aid work. I found that for many of the clients I had, legal issues were low down on their list of problems. I also discovered that, at least for me, it wasn't sufficiently intellectually challenging. I spent a summer between my first and second years of law school working for a small firm in New York and got exposed to securities law and then took a securities law course at BU with Professor Lieberman. I very much enjoyed that, which got me very interested in pursuing securities law. I also took a course Professor Lieberman taught called legal process that was really about administrative law, and I found that interesting as well.

RC: How did you get from there to the SEC?

AG: Back in 1975, when I graduated from law school, a woman couldn't get a job with a Boston law firm doing corporate and securities work. I could have gone to New York, but I was from New York and didn't want to go back there. I was lucky enough that my securities professor, Professor Lieberman, knew someone at the SEC, Alan Rosenblatt, then chief counsel in the Division of Investment Management.

I got an interview down at the SEC. They had a hiring freeze on at the time, but when the hiring freeze was lifted, my resume was at the top of the pile. I got a job working in the Division of Investment Management in the branch that regulated insurance products, variable annuities, and variable life insurance. I had a terrific first boss there, Burt Liebert. I was there for about eighteen months when I got invited to talk to someone in the Chairman's office about coming to work up there.

The Chairman's office consisted of, back then, an executive assistant, special counsel, and one or two legal assistants. One of the legal assistants was going away for six weeks, and they needed somebody to fill in. After talking to people in the Chairman's office and Chairman Harold Williams, who had only been on the job a short time, I got asked to come up for those six weeks. As I said to my husband at the time, my goal was not to go back at the end of six weeks. I stayed working for the Chairman for about two and a half years.

RC: Tell me a little bit about how the Chairman's office functioned.

AG: There was an executive assistant who ran the place, who when I started was Ralph Ferrara, who went onto become general counsel. Dan Goelzer was special counsel and he later became Executive Assistant. I was one of the legal assistants.

RC: Did the legal assistants have different specializations?

AG: The legal assistant's job was to read what was on the Commission calendar and brief the Chairman either in writing or orally. As the more junior person, I started out by reading the Enforcement calendar, everything that the Commissioners had to approve in terms of formal orders of investigation, which back then the Commissioners had to approve, settlements, anything like that. I then got involved in the rulemakings that came up from the various divisions, speeches, Congressional testimony and the like.

Over time, and when I became a special counsel, I tended to specialize in certain subjects, but also to then be the Chairman's liaison down to the division with respect to those subject matter areas, one of which was corporate governance, though back then we called it corporate accountability. That was the more glamorous of the topics I handled. Other topics I dealt with included oil and gas accounting , and regulation of securities clearance and settlement.

RC: It's always funny to read these old interviews and see there are people who are dealing with the oil and gas side of things. You never think of that now as something that was in the SEC's purview.

AG: It still is. They revised the accounting in that area just a couple of years ago.

RC: I didn't realize that. It was within the Chairman's office that you started focusing on corporate governance. Did you have any experience with it before going to the Chairman's office?

AG: I would say probably not, but it was a topic of utmost interest to Chairman Williams, as you probably know. It was a very major interest of his, so I got involved with rulemaking and preparation of speeches in this area. In fact, I still have some of them in a file at home. Coming out of the Watergate era and the era of foreign payments that led to the Foreign Corrupt Practices Act, the Commission had initiated a major study of the area of corporate accountability and the Commission's rules.

I got involved with that, which then led me, when I left the Chairman's office, to go down to the Division of Corporation Finance and head up the Task Force on Corporate Accountability. We produced the Staff Report on Corporate Accountability in September of 1980, which was printed by the Senate Banking Committee.

RC: That's very cool. How did you get from working in the Office of the Chairman to the task force? Did he ask you to go there or was a reassignment?

AG: I had been in the Chairman's office about two and a half years. By that point, I had been at the Commission about four years. As you know, people generally then make a decision: are they going to stay at the Commission for a while or are they going to leave? I was very much enjoying my work at the Commission. I had been married for about five years by then, thinking that at some point in the near future I'd be ready to start a family.

I made the decision to stay at the Commission and started to look around for what would be an interesting position. The person who was heading up this task force left, and it seemed like a golden opportunity because I had been doing so much work for the Chairman in the field and I found it very interesting.

RC: Can you give me a little background on the task force itself and on what it was like to transition into that as it was in mid-swing?

AG: It was in mid-swing in the sense that the hearings the Commission had held around the country on the topic were completed, but they hadn't yet started on the work on this report, which included recommendations for further rulemaking in a number of corporate governance and disclosure areas. It was a great time to come down because there was turnover. I ended up with a staff of four or five people.

We got to go through the transcripts of the hearings that had been held, as well as all the comments and prepared the report. In connection with the report, we got to make recommendations to the Commission about additional rulemaking, some of which was underway and which we got to work on as well.

RC: I understand Chairman Williams was involved to a degree in the project as it went forward. Did you have any involvement with the task force while you were in his office?

AG: I did because I was the person in his office who was working with the group within Corporation Finance that was working on these issues. I was kind of a liaison to that because a lot of his corporate governance speeches were related to what the task force was doing.

RC: You worked with people like Dick Rowe, or was it more with Richard Nesson and Barbara Lucas at that point?

AG: All of them. Barbara, Richard and Dick left, and that's when I took over the task force. So that was the timing. They left, and I came in. They were the ones who were on the staff who did the hearings, which they probably talked to you about. I was in the Chairman's office at that point. Then, when they left, I came in to do the task force report and further recommendations.

RC: What was the experience like of putting together the report? To start catching up with the hearings and all that information. How did you process that and assimilate it all?

AG: That was thirty odd years ago, so I couldn't give you specifics, but it was a terrific experience. Walking in, figuring out what the project was, what needed to be done, and how to get from here to there. I've used those skills over and over again in my practice organizing large projects. Do we have all the subject matter areas covered? Do we have enough people? What is our timeframe? Who are we going to have do what and how are we going to accomplish it? It was a great experience.

RC: It was an exciting time to be thinking through all these things because the Commission was grappling with governance in ways that it never had before.

AG: Or it hadn't in a very long, long time. Keep in mind that I'm talking about the nineteen eighties. I'm not talking about the SEC post-Sarbanes-Oxley or Dodd-Frank. It was clear in the eighties that the SEC was a disclosure agency. It did not have regulatory authority over corporate governance in the sense that corporations are incorporated in the states and the states set substantive rules. It was within the SEC's disclosure framework as well as its responsibility and authority with respect to the proxy system that we got involved.

It's also important to keep that in mind because what happened next was that a Republican Chairman was appointed. He says, the SEC is a disclosure agency, governance is for the states, No more governance. We'll talk about that transition, but keep in mind that it was within the confines of the SEC's statutory authority that the task force was working, even though there were people who accused us of going beyond our authority.

RC: That's something that was very important to Chairman Williams, working within the strict purview of what he believed the SEC was allowed to do.

AG: Yes and no. For purposes of rulemaking, yes. On the other hand, with respect to his speeches, he felt like he could push the envelope because he was an experienced business executive. He'd been a lawyer. He'd been a very successful businessman at Norton Simon. He'd been dean of a business school. He sat on corporate boards. He had a lot of experience and wisdom with respect to boards and corporate governance. He felt at liberty to share his views on governance, recognizing that it went beyond what the Commission necessarily would do as a matter of regulatory authority.

RC: You mentioned the transition. The task force was a discrete assignment. Is that correct?

AG: Right, but then once the task force ended, I became assistant chief, and then chief, of the SEC Office of Disclosure Policy in the Division of Corporation Finance, which is the equivalent of the Office of Rulemaking in Corp Fin today. The first things I worked on in that office were some of the recommendations coming out of the task force report for more disclosure about boards of directors in SEC proxy statements on the theory that that was material information for investors in deciding how to vote in the election of directors.

Then President Reagan got elected in November of '80. Chairman Williams left that spring. John Shad became chairman, and we didn't do corporate governance for a very long time.

As I mentioned, I was then in charge of the Office of Rulemaking. There was a lot of rulemaking to be done in the Division of Corporation Finance, including the integrated disclosure system.

There had been lots of articles and advisory committees and other things focusing on the disparate disclosure provided under the Securities Act of 1933 and the Securities Exchange Act of 1934. The '33 Act requires disclosure when companies raise money from the public -- capital formation -- while the '34 Act requires, among other things, reporting by public companies. People used to think that it's too bad the '34 Act report didn't come first, because when companies raise money from the public, if they're already public companies, shouldn't they be able to rely on the disclosures that are in their '34 Act filing, their 10-Ks and 10-Qs.

The integrated disclosure system was designed to integrate the '33 and '34 Act reports so that large public companies, the Exxons, General Motors of this world who had following in the market, when they chose to raise money on an ad hoc basis from the public, could provide reduced information as there was already a lot of information available to the market through the reports they filed with the Commission pursuant to the '34 Act. The amount of new disclosures that would be necessary is obviously very different for a company like them than a company doing its initial public offering where the market has no information. It was very complicated rulemaking as it included a number of additional rulemakings.

For example, we also did Regulation S-K, which included all the disclosure requirements in it. The theory was when it came to the 10-Q or the 10-K or the proxy statement or registration forms, it didn't make sense to have slightly different wording or include the same item of required disclosure in each. Instead, we'll have S-K, with specific disclosure requirements that all the forms can draw upon. We also did the shelf rule, Rule 415.

RC: Which was very controversial.

AG: Yes, it was very controversial. The theory behind the shelf rule was that there should be some mechanism for a company like a General Motors or an Exxon to be able to register securities on the shelf and when they need them, pull them down. The investment bankers went wild because they thought it would limit their role and fees. There were hearings on that rule. It was very controversial, but ultimately it was adopted.

RC: Do you mind if I step back a little bit because I think the integrated disclosure is something that's really important? It seems like it makes a lot of sense. As you said, it had been talked about for a long time. I think even Chairman Douglas discussed wanting to integrate the '33 and '34 Acts. Why did the idea of integration come about when it did?

AG: There had been a couple of advisory committees and other things. There were efforts leading up to it.

RC: Was there any resistance to the idea of integrated disclosure?

AG: Not to the concept of integrated disclosure. There were objections, as you say, or controversies surrounding pieces of it like the shelf rule, but the basic concept I think people agreed on. There were different views on the categories of registration statements and the amount of disclosures that companies of different sizes had to provide to raise money.

Specifically, there was controversy over how to define the big companies that were able to provide the minimal disclosure, the Form S-3 companies. Was it going to be by market cap? Should it be revenues? Where was the appropriate line? There was controversy over where the appropriate line was but in terms of the overall concept of integrated disclosure, that wasn't controversial.

RC: What was the decision making process about hammering out these rules?

AG: There was a great team in the division. Ed Greene was division director then. Lee Spencer was deputy director. There was terrific leadership at the top. John Huber was there as well. I headed up the nuts and bolts team that was doing the drafting. We would have back and forth with the powers that be over assorted issues. We also had input from the Commission's economists on issues like where to draw the line on which companies could use Form S-3. The rules went out for comment and we got a lot of helpful input.

I think there may have been eight releases. They went out for comment in August or September of 1981, about two weeks before I went out on maternity leave.

It worked out very well because it was a three-month comment period. When I came back from having my first child, the comments were in. I didn't do as well timing-wise with my second as with my first.

RC: The main controversy was shelf registration but other than that, integrated disclosure. It's been around since then, so it clearly was a success.

AG: It was a success, but over the years, the SEC has muddied up Regulation S-K. The whole idea was that all the disclosure requirements should be in S-K, so that in preparing various securities filings, whether a Form 10-K or registration statement, you can draw upon them. Since then, you have disclosure requirements that are contained in various other rules and forms. Interestingly, a provision in Dodd-Frank instructs the SEC to go back and take a look at S-K and some of its disclosures. I think the problem is, it was great when we did it but it's been a very long time since some of those disclosures have been looked.

RC: The initial disclosure that the larger companies have?

AG: No, I'm talking about items in S-K indicating what companies have to disclose. Some items have been reviewed and some haven't. The SEC hasn't really given a wholesale

review to determine what disclosures are needed today in various contexts. Proxy statements have gone from maybe twenty pages ten years ago to 100 pages today. Does that make sense? We also need to look at the way that we deliver disclosure today.

The mutual fund industry has summaries and then statements of additional information. I think there really is a need to do the same with corporate disclosure. As much as there was a need for integrated disclosure, there really is a need today for there to be a team of people who step back and say, “Okay, what is really important to an investor that should be disclosed and then how should we disclose it?” I know the SEC has a lot of rulemaking on their plate, but I really hope they get to this soon.

RC: I was laughing because I got the proxy ballot for one of my holdings yesterday. Just in the middle of rereading all of this. It’s just one page telling you where to go online now to read all of the information.

AG: Right, but when you go online it’s hundreds of pages. Some companies have voluntarily begun to put summaries at the front of their proxy statements, but that’s not required. That’s been a voluntary effort. At least it helps shareholders know what’s there.

RC: What are some of the things that you would think they’re taking a look at that applied in the early eighties that might or might not apply now on a proxy statement?

AG: I think there's a lot more disclosure about executive compensation. I think in a hundred-page proxy, fifty of it is probably executive compensation. While I think we all recognize that's important, I can't believe fifty pages of it is really necessary to deliver to investors. Maybe you deliver the summary compensation table, but make the supplementary tables available on a click-through basis if people want to see it. Part of the problem is with all that's on the SEC's plate with Dodd-Frank and the JOBS Act; they really need a separate group of people to look at this.

However, as I mentioned earlier, the Dodd-Frank Act mandates a Regulation S-K study. They could use that as a jumping off point to devote a group of people to sit back and look at it, much like we had a task force that did the corporate accountability report. When you've got something massive like this, you really need to peel off a bunch of people and say, "This is what you're going to work on." I know it's hard with the pressure of other work, but when you really want to think fresh about such a complex area, I think putting together a team of people to work on it would make some sense.

RC: Moving from the Office of Disclosure Policy, one of your next positions was working on EDGAR. Did you do anything between Office of Disclosure Policy and that time?

AG: No. What happened is a very funny story. I was heading the Office of Disclosure Policy. Lee Spencer became director. Remember this is 1982, '83.

RC: Director of Corp Fin?

AG: Corp Fin, right. It's 1982. He gave a speech that mentioned something about some kind of electric library. Chairman Shad found that incredibly fascinating. He asked me to work on a speech with someone on my staff that he could give that talked about this concept of creating an electric library of SEC filings. Back then, there were research bureaus that would send people down to get SEC filings. He came up with this idea, wouldn't it be nice if there was some kind of -- this is before the Internet -- an electronic database of SEC filings.

He gives this speech and he gets real excited about the concept. He decides that that's what we're going to do. We create a group of people from different divisions to work on this, somebody from the Executive Director's office, from Procurement, from Investment Management, from Corp Fin. I'm there from two different perspectives. I'm there from the perspective of public companies because Corp Fin deals with public companies and from the perspective of the Corp Fin staff who review the filings. All of the sudden, this whole idea is to require public companies to somehow get this information to the SEC electronically.

The way people transmitted electronic information back then was on tapes and disks. I'm looking at it from the standpoint of public companies, but, as I said, I'm also looking at it from the standpoint of the people in Corp Fin who are the examiners who are looking at filings. The idea is that once we get this electronic database, then the examiner in Corp Fin can be looking at the filings on their screen and be able to do other things. For

example, when an examiner looked at the SEC filing, they also wanted to be able to write a comment letter and look at other sources of information.

The SEC at that point was relying on a Compustat database for financial ratios and such. They also wanted to be able to get information about that. You have to understand nobody had a computer on their desk. Nobody knew anything about computers, me especially. My husband knew a little, which proved to be helpful because I learned the vocabulary and the lingo. Then the chairman brought in MITRE. They're not government, but they do a lot of government consulting, and he brought in a team of people from there to help us write up a request for proposal to do a pilot of this electronic system.

RC: Requesting the budget to do it?

AG: No. He was going to somehow find the money in the existing SEC budget. This then got controversial, and he got into a fight with Congressman John Dingell about it.

From the user perspective I said, "Okay. On our computer screen, we need to be able not only to see the filing, but we also need to be doing all these other things." The people from MITRE said, "No, you can't do that. You can only see one thing at a time on a computer screen." A few months later Windows came out. It's a good thing I didn't know better. I had no idea what computers could or couldn't do, so I would just ask for things.

We finally got far enough along to create an RFP for a pilot program. We went to visit different vendors that made proposals in response to the RFP. This is back when Arthur Andersen was Arthur Andersen, pre-Enron, also before they split off their consulting business. Arthur Andersen's consulting business won the RFP for the pilot program. At this point, we created an EDGAR office in Corp Fin and I became an associate director in charge of that office.

In connection with the pilot, we created a branch in the Division of Corporation Finance to review the pilot filings electronically. We invited companies to volunteer to submit their filings electronically. It was a pilot because this was a small branch in the Division of Corporation Finance and we were going to see how this worked.

RC: Now when you say review electronically, do you mean that it would be automatically reviewed?

AG: No, I meant that the examiner would be looking at the filing on their computer screen.

RC: What are the advantages to that in the early eighties? What's the advantage to a reviewer being able to see it on a computer versus –

AG: Paper? The theory was that they could have access to other things right there while they were reviewing it.

RC: So they could compare one filing to another?

AG: Yes. There wasn't a whole lot available back then. I still have a frame copy of the first EDGAR filing – the Southern Company. Then we started to work on an RFP for a bigger system that would require all companies to file electronically. The companies didn't like that because it was additional work for them. They had to "EDGAR-ize" their filings. They had to put it in a certain format. Nobody thought about the Internet and how all this was going to get disseminated and the benefits that accrue to everyone.

RC: It seems like there would be a benefit, though it would be difficult initially to "EDGAR-ize" your filings. It seems like everyone wanted access to the filings.

AG: But back then there wasn't the Internet. Back then, if you wanted access, you had to buy a subscription through an outside service bureau that the SEC had contracted with.

RC: Isn't that better than having to send someone down to the SEC library?

AG: It ended up being good for the financial printers because they did a lot of this "EDGAR-izing," but back then they didn't realize it. They thought there would be no more paper and it was not in their interest. It became very controversial. I worked on the request for the proposal for the big system. Right after that I left; I had my second child. I came

back from maternity leave, but I was kind of burnt out. That's when I left the Commission in the fall of '86.

RC: After leaving the Commission, I'm interested in how you ended up as a freelance writer and editor.

AG: While I was on the staff, as you could tell from all the rulemaking and EDGAR and other things I did, people on the outside were interested in what was going on, so I did a lot of public speaking. One seminar business was run by Lynn and Steve Glasser, and they also published *Legal Times*, which was a legal newspaper in Washington, D.C., and some newsletters for Prentice Hall or Harcourt Brace. When Lynn Glasser heard I was leaving, she asked me if I'd be interested in editing a monthly newsletter for them in the securities field, and I could do it from home.

That's what started my editing and writing career. I have been editing *Insights: The Corporate & Securities Law Advisor* for twenty-five years. While I was home, I ended up editing three newsletters and a bunch of books. Over time as my kids got older and they went to school.

RC: How did you decide what you wanted to write on?

AG: I didn't have to do all the writing. I would come up with the topics, and get other lawyers to write the articles. I would solicit the articles. I would edit them. Then I'd put the issue together each month.

RC: Was that based on what's currently at issue in the field?

AG: Yes, I solicited articles or whatever was currently interesting. I maintained my interest in what was going on in the securities world. I subscribed to things. I'd read the newspaper. I'd go to SEC meetings. I stayed involved with the ABA. I developed a sense for what was an interesting topic. Over time as people got to know *Insights*, people would call me with unsolicited article ideas.

RC: Things that they wanted to write or things that they thought you should write on?

AG: No, things they wanted to write about because remember, lawyers love to get their names out because that's how they get clients. It was good for everybody.

One of the things we did to get started was to put together an editorial advisory board of people that I knew and the Glassers knew who were leading lights in the securities field. I asked them to commit to themselves or people at their firms writing two or three articles a year for the first couple of years. That helped. Between the people I knew from my time at the SEC and the people the Glassers knew, we put together really an all-star cast, including Harvey Pitt, John Olson, Ken Bialkin, Art Mathews, Steve Norman, Frank

Bellotti, Herb Wander, Ed Greene, Jim Fogelson, Jim Freund, Bruce Mann, Al Sommer, Dick Duesenberg, Alan Levenson, Art Fleischer, Dick Troy, Don Langevoort, Milt Kroll, Hank Barnette, among others.

RC: That's quite a lineup.

AG: They gave us instant credibility. When people saw who was on our editorial board and who was writing for us, they wanted to subscribe.

RC: This backtracks a little bit. I wanted to ask if there were any other experiences you had while you were at the SEC. There's just so much going on in governments whether it's proxy issues, one share one vote. Were there other things?

AG: The beauty of my experience was I was involved in the rule-making; I was in the policy-making area. I got to go speak. This is before they changed the ethics rules. Back then if you spoke to non-profit groups, like ALI-ABA or CLE, you could accept reimbursement. I got to travel and speak at all kinds of really nice places, but also we provided a good give and take with people in the bar. I got to know a lot of people in the bar.

I was at the SEC eleven years. I really developed as a lawyer and as a professional from watching so many wonderful people so early in my career—people like Harold Williams and Dan Goelzer-- and then having the opportunity at such a young age and go out and speak.

RC: Were you mostly speaking on the things like integrated disclosure?

AG: Yes. I spoke about governance. I spoke about integrated disclosure. I spoke about whatever it was I was working on which was the rulemaking topic *du jour*. That's what people wanted to hear about.

RC: Did you find that that was helpful to get external perspectives?

AG: Yes. It was really valuable. I think the SEC has always been good about sending Commissioners and the staff out to speak. It's gotten harder over the years with ethics restrictions and travel budgets and things like that, but I think it's been a valuable two-way street. The SEC gets to get their message across. Then they get to hear on an informal basis how things are working.

RC: Sort of an audio comment letter.

AG: Right, and to pick up feelers for what the issues are out there.

RC: As you're in your writing career, are there any issues of *Insights* or any of the contemporary issues that stood out to you that provided particularly memorable experiences?

AG: What I find most interesting, and it was true when Dan Goelzer and I did our interview of Harold Williams for the SEC Historical Society, is how many of the same issues have come up periodically over the past thirty years. Auditor independence was an issue we dealt with when Harold Williams was Chairman that came up again post-Sarbanes-Oxley. Audit committees also were an issue that came up again in Sarbanes-Oxley. Disclosure of executive compensation periodically comes up. The whole issue of shareholder communication has come up again. While there are some new issues, there are an awful lot of old ones that keep rearing their head.

RC: You worked as a writer for twelve years?

AG: Eleven years, although I didn't intend it to be that long. I thought it would be two or three or four years, but no. I was working from home, which was a great opportunity. My kids started school, so I had more opportunity to do different writing and editing, but I really appreciated the flexible nature of what I was doing. After about ten years, I started to get bored. You can only start so many newsletters or edit so many books. I started to think that I missed the day-to-day practice of law.

1998, if you'll recall, was pre-IPO bust. Things were booming so much in '97, '98 that people were dragging securities lawyers off the street. I figured it was a good time to come back in because there was so much demand. I started talking with people I knew, members of the editorial advisory board of *Insights* and other lawyers I knew in town

about coming back into practice, but I really wanted to do it on a part-time basis because I wanted to keep *Insights* and my kids were still at home.

I spoke to a number of people in town including John Olson, who was a partner here at Gibson Dunn, who I knew back from when I was at the SEC. We had actually edited a book together when I was doing *Insights* because he was a regular contributor to *Insights*. I came into town to have lunch with John. Halfway through the interview, which was supposed to be an informational interview, he said, “Well, why don’t you come work for us?” I came to Gibson Dunn as a half time of counsel; next month it’ll be fifteen years. It was an experiment for the firm and an experiment for me. Thankfully, it worked out well for both of us.

RC: You were talking about it as a boom time for securities lawyers in the late nineties, but it’s also an interesting time to be coming back. You never really left the governance field, but you were coming back into it as Arthur Levitt starts to bring back to the fore auditor independence, and things like that.

AG: Right. As I said, the reason I think it was so easy for me to come back in was I had stayed on top of all the issues from editing *Insights*. In fact, I think I had a broader exposure. I may not have been practicing in the traditional sense, but I had a broader exposure because I had solicited and edited articles in every area of the securities laws from broker dealer registration to investment advisors to market structure to all the traditional Corp Fin areas.

I also had, as a result of the work I had done on the Corporate Governance Advisor and *Insights*, become knowledgeable about corporate law. That all was very helpful when I transitioned into private practice. Here I was twenty years out of law school and other than one summer, I had never worked in a law firm before. It was quite a culture shock.

RC: Tell me a little about the culture. You have the culture shock of not just going from the SEC to a law firm, which a lot of people have, but going from SEC to working for yourself or working on your own to coming into a law firm.

AG: Yes. It was also a cultural shock as a woman lawyer because it was interesting, when I left the SEC in '86, I was a woman lawyer. When I came to Gibson Dunn in 1998, I was just a lawyer. There had really been a seismic shift in women being accepted as part of the legal profession, but it really took until the early nineties for that to happen.

RC: If you don't mind me jumping back, I saw that you served on a task force or a panel on women in government in the late seventies.

AG: That was when Jimmy Carter was president. This was really funny. He wanted to show that there were a lot of women in government. He invited us all to a meeting at the White House. I can't remember what it was about, but that was only once. Then Reagan did something like that with the ICBM missiles, the missile shield thing that he was pushing. He invited all the women in government to come see that. The nice thing was, by the

nineties there were so many women in government nobody was doing that kind of stuff anymore.

RC: You said the culture at the SEC was a meritocracy.

AG: Yes. The SEC was very much a meritocracy. There weren't a huge number of women, but there were a lot more women than in private practice. In fact, there were a lot of really smart women who were there because they couldn't go into private practice, including Ruth Appleton, Mickey Beach, Anne Jones, people like that, then Roberta Karmel who was in the New York regional office as a young lawyer and eventually became a Commissioner. I always felt the SEC was wonderful that way. If you were good and could do your job, it didn't matter whether you were a man or a woman or anything else.

RC: Where do you think that culture came from?

AG: It's hard to say, but maybe it went all the way back to Douglas because when the SEC was established, it was filled with bright, young men. Prior to Madoff, the SEC always had the reputation for being the best agency in D.C. with the best lawyers. While people might have made fun occasionally of government lawyers, nobody made fun of the lawyers from the SEC.

It was part of the DNA of the agency to feel like you were part of the best and brightest. You almost felt like you weren't part of the rest of the government. You were better than they were. That was definitely the feeling at the SEC that you were part of the best and the brightest. You were protecting investors. You really had a terrific mission. You were surrounded by like-minded people. It was a very heady place to work.

RC: I'm going to jump back to you came back to Gibson Dunn. Coming from SEC and then as a writer, what was your perspective jumping back into securities law?

AG: The substantive law part wasn't hard because I hadn't really left keeping track of what was going on. I had worked in the field long enough before I started editing and writing that I had pretty good sense of the policy. It was more getting used to the law firm as an institution and how that worked. I loved dealing with clients from day one because I've always loved to solve people's problems. I could use my knowledge to help people solve their problems. I loved the give and take with clients right away. It took a while to figure out how law firms work. When I first started, I was working a lot with John Olson, who was just terrific.

RC: I'm interested to hear the difference in the perspective on governance issues from a law firm versus from the SEC.

AG: You're approaching it very differently. When you're in a law firm and you've got a governance issue, you're helping the client with it. At the SEC, you're worried about

what's the SEC's role. It's totally different, much more different than on securities regulation issues where the SEC interprets its rules, so it has more of a day-to-day role. It's the SEC's rules, and they administer the securities laws. When you're giving a client guidance with respect to complying with an SEC rule, you very much have to pay attention to the view of the SEC. On the other hand, if a client has a governance issue, you've got to take into account state corporate law—both statutory and case law--, exchange listing standards and often the SEC component is very subsidiary and may not exist at all.

RC: I'm curious to get your perspective on the governance issues that have sprung up since you returned to private practice.

AG: The big changes in governance in the past fifteen years came about post-Enron and WorldCom. First you had the Internet bust in '99, 2000. Then you had the Enron and WorldCom accounting scandals in 2001, which led to Sarbanes-Oxley in 2002. Sarbanes-Oxley is the first time that you have the SEC injected into the governance field, not with a needle but with a bazooka. That's a sea change.

Sarbanes-Oxley was a sea change in terms of the SEC world with respect to corporate governance because prior to Sarbanes-Oxley, people could say legitimately the SEC really doesn't have much of a role in governance. They worry about the proxy process and disclosure but they don't really have a role in governance – you couldn't say that anymore post Sarbanes-Oxley.

Post Sarbanes-Oxley, I'm in great demand, but I'm still a part-time of counsel. I went full-time and became a partner in 2005. Sarbanes-Oxley was very significant in terms of my professional career because it caused governance to become such a huge deal. When I came to Gibson Dunn in '98, no one practiced just governance or securities regulation. People were transactional lawyers and securities lawyers. They did governance and regulatory policy and all that, but as part of a bigger practice.

RC: Because it was mostly tangential to other things?

AG: Right. It wasn't a field by itself, but when I came in '98, twenty years out of law school, it didn't pay for me to learn how to do M&A or other transactions. People do. They come out of the SEC after three, four years and they learn. That didn't make sense in my case. I decided to concentrate on securities disclosure and governance.

It was a godsend because post Sarbanes-Oxley, there was so much work in this area and my working in this area, and, working with John and others at the firm, we created a practice group in this area, Corporate Governance and Securities Regulation. Lots of other firms have that now and they have people dedicated to this area but it took a very long time post Sarbanes-Oxley for other firms to develop what we had.

RC: What are clients coming to you needing after Sarbanes-Oxley?

AG: It wasn't just Sarbanes-Oxley. At the same time, the exchanges amended their listing standards. All of a sudden companies had to have a majority of independent directors. They had to have three standing committees: audit, nominating, and compensation. They had to have independent directors on all those committees. They had to have charters for all those committees. New York Stock Exchange companies had to have corporate governance guidelines, all this stuff that many companies didn't have. So there we were.

RC: They're having to develop it. They need guidance in how to develop those things?

AG: Right. Very often they wanted to know what other companies are doing. We've got a whole a lot of large company clients. We can tell them without giving away names or whatever else. Some of the stuff is public, but all of the sudden, we're a tremendous resource. The Exchange says you have to do board and committee evaluations. How do you do those evaluations?

The SEC passes Sarbanes-Oxley requiring heightened standards for audit committee members. How do you do independence assessments? What factors should be the board consider? Each year you have to send out D&O questionnaires to get the information to find out if directors are independent. Who's going to help draft those D&O questionnaires? The work just exploded.

RC: Your practice group is helping draft those things?

AG: Yes.

RC: Working off of SEC guidelines?

AG: No. You needed to be a little creative as there weren't guidelines other than the rules and listing standards.

RC: It sounds like it's a wide-open field.

AG: Yes. It's changing with more rules but when I first started practicing securities laws, one of the nice things about it was it wasn't like the tax code. If you had an issue under the securities laws and you weren't sure what the answer was, if you knew what the purpose was, you could pretty much feel comfortable giving a client an answer. On the tax law, you didn't do that. You had to find the exact rule. Unfortunately, the securities laws over the past thirty years have become more like the tax laws. Still in the governance field, it's somewhat more flexible. You can use your professional judgment a little bit more, which is why I like the governance field.

RC: It's a little more of an art than a science.

AG: Exactly.

RC: As you're saying the rules are developing or hardening more. Is Dodd-Frank something that's pushing that?

AG: Dodd-Frank's pushed it in the compensation field. As much as people complained about Sarbanes-Oxley, most of what was in Sarbanes-Oxley probably made sense. You can't say the same about Dodd-Frank. Dodd-Frank was a bill designed to deal with the financial crisis and problems with the banks. It was used as a Christmas tree to attach all kinds of miscellanea that doesn't belong including governance issues and conflict minerals. What we're having to help clients with and what the SEC has had to adopt rules on is areas that are not really relevant to the SEC mission, such as conflict minerals. It's pretty disheartening.

RC: One of the things I noticed is you're involved in various ABA and other outside committees. In terms of shaping governance law, how did the outside groups factor?

AG: I think they have a big impact. I'm not involved with this but for example you take the Delaware bar, the Delaware bar has a committee that works closely on developing proposed changes to Delaware corporate law that they recommend to the state legislature in Delaware. The ABA has a corporate laws committee that makes recommendations for changes to the Model Corporation Act.

Many states have adopted the Model Corporation Act in full or in part as their state corporation law. Bar groups and/or there may be issues that come up like majority voting

for directors and bar groups will come do white papers and make recommendations. I think they do have a large impact on shaping the law and the regulations and commenting on SEC rules.

RC: That pretty much does it for the questions that I have. Is there anything else that you'd like to talk about?

AG: I don't think so. I think we've pretty much covered everything. I guess I'd like to talk a little bit about the future, which we've touched on both in the securities field where I really think there needs to be a huge effort to take a look at what disclosures public companies currently provide both on a periodic basis and in connection with financings and in connection with annual meetings, proxy statements, and to decide what's really important to investors and what's not and how to deliver the information.

Also, Congress needs to understand that SEC filings shouldn't be used for social and foreign policy purposes like conflict minerals and Iran disclosure and all that. I know they use it because EDGAR's so convenient, but it really fundamentally takes away from the function of SEC filings and fundamentally I think hurts the SEC when it's asked to do rulemaking in areas like conflict minerals where it has no expertise. And it diverts resources. If you look at the staff resources that had been spent on conflict minerals and extractive industries and now Iran disclosures, that's a whole group of people that could have been spending time on the disclosure issues that we've talked about. I'm really concerned that we're creating these mammoth disclosure documents.

My mother has interest in some real estate that is involved in a transaction. I went to visit her in California; she's eighty-six years old. She got a document that was almost three inches thick. That doesn't do anybody any good. I'm very concerned about that.

From a governance standpoint, I'm concerned that we're so focused on ways of monitoring compliance for boards that we don't focus more on the processes that can enable boards to help oversee management and make good strategic business decisions.

The world is incredibly complex. Companies are facing vast technological changes and global competition and for boards to be bogged down over issues relating to independence of directors—you clearly want boards made up of a majority of people who can be effective overseers of management—but to quibble or to have twenty-five page director and officer questionnaires to get information about a transaction that somebody's brother-in-law had with the company that nobody knew about just doesn't seem to make any sense. We've got to figure out a way to rationalize what we're requiring from a compliance standpoint from the real governance role that boards should play.

RC: Bringing common sense to the boardroom, or to the process.

AG: To the process. I think post Sarbanes-Oxley and post financial crisis, directors are taking their jobs very, very seriously. I do think we need to figure out a way, whether it's term limits or otherwise, to refresh board rooms more so than is done today. I think there isn't

enough turnover among directors. You want some continuity, but you wonder about, and I'm not going to get into whether they're not independent or not, but you wonder if a board's made up of people who serve together for fifteen or twenty years and many of whom may have been retired from their previous jobs for five or ten years, does that make any sense? Boards have to figure out, and I think they will, a better way to refresh themselves.

RC: To bring in new blood and new perspectives.

AG: To bring in new blood and perspectives and, on an ongoing basis take a look at the company and say this is how the company is changing. What kind of skills and experience do we need on our board? Society's changing. We've got a much more diverse society today than we did even ten years ago. I'm not just talking about gender, but in a lot of ways. I'm not sure that boards are reflecting that, but I think that'll become more important over time. There are clearly issues that need to be focused on in the boardroom, but I don't think that they're issues that we need regulation to address.

RC: Do you think that they'll figure them out themselves given time?

AG: That and there are so many different organizations today focusing on boards and board evaluation. There's a lot more guidance out there for directors than there used to be.

RC: Anything else you'd like to talk about?

AG: No.

RC: All right. Well, great. It's been a pleasure talking to you. Thank you for agreeing to do the interview.

AG: You're welcome.

[End of Interview]