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Interview with

Brooksley E. Born

Conducted by Alan Houseman

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I N T E R V I E W

ALAN HOUSEMAN: This is an oral history of Brooksley Born, who is a retired partner at Arnold & Porter and, as we will see, a leader in the American Bar Association and in a number of other arenas. The interviewer is Alan Houseman for the National Equal Justice Library.

Brooksley, let's start with a little bit of your background, and then we'll quickly do a sort of brief resume, and then we'll come back and focus on those areas that directly relate or indirectly relate to legal aid and indigent criminal defense.

So what is your background? Where did you grow up? Where did you go to college and law school?

BROOKSLEY BORN: Well, I was born and grew up in San Francisco, went to public high school there, and then went to Stanford as an undergraduate and Stanford Law School. When I graduated from Stanford Law School, I came to Washington to clerk for Henry W. Edgerton, who was a judge on the D.C. Circuit.

And after a year's clerkship, I came to work for Arnold & Porter, where I have spent most of my career since that time, with a three-year break in the mid '90s to chair the Commodity Futures Trading Commission, which is a

federal independent regulatory agency governing derivatives.

ALAN HOUSEMAN: And how did you begin to have any interest in civil legal aid or women's rights issues that you've been, you know, very, very involved in?

BROOKSLEY BORN: Well, I think I was interested in public service from my childhood on. Actually, both of my parents were civil servants. They both worked for the City and County of San Francisco. Public service was held in very high regard in the family, and I think I went to law school with the hopes of being engaged in using my law degree for public service and the betterment of the community, in one way or another.

I decided I should go to Arnold & Porter for a few years to get training so that I would be more effective in the public sphere but ended up staying and doing pro bono work and public service, using the firm as my base.

ALAN HOUSEMAN: Before we turn to the American Bar Association, let's talk about some of your work directly in the legal aid/women's rights world, and then we'll come back to the American Bar Association and SCLAID and a number of things there.

BROOKSLEY BORN: Fine.

ALAN HOUSEMAN: For a number of years, you were involved with the National Legal Aid & Defender Association. Describe that involvement.

BROOKSLEY BORN: Well, I had gotten to know Clint Bamberger. I don't remember how I met him, but I first met him when he was in the Office of Economic Opportunity and the Johnson Administration starting legal services, neighborhood legal services. And when he went to Catholic University School of Law, he invited me and another woman lawyer here in town to teach Women and the Law at Catholic as a seminar.

He was really a wonderful, forward-thinking person, one of my true heroes, and when he had gone to the law school, he had abolished the quota that it had on women's admissions. Virtually all law schools then had quotas. It wasn't until Title IX of the 1972 Education Amendments Act that sex discrimination in education was forbidden, and it took a while even after 1972 for most law schools to abolish their quotas.

But as soon as Clint lifted the quota at Catholic, he had a surge of women in the first-year class, and maybe as many as 20 percent. And when they got into their second year, they asked for a Women and the Law course, which had really never been taught anyplace in the country before.

Marna Tucker and I, thinking Clint was quite wonderful and being willing to do anything for him, argued to teach the course and would go out into the Arnold & Porter library at night after work and do research on women and the law -- there were no casebooks or treatises -- and compile materials for the course. And that was a real consciousness-raising event for me certainly, but I think for Marna as well.

Because I hadn't realized, since it was never taught in law school or discussed, how institutionalized in our legal system sex discrimination was. It was pervasive and throughout our statutes, throughout common law, and that was what we needed to overcome.

That was why the Equal Rights Amendment would have been a good idea and why, when the Equal Rights Amendment wasn't adopted, we needed to systematically go through federal and state laws to eliminate discrimination, which has pretty well been done by now, but it's taken a lot of years.

ALAN HOUSEMAN: And that led you to involvement with the National Women's Law Center, the Center for Law and Social Policy, and the National Legal Aid & Defender Association; am I correct?

BROOKSLEY BORN: Well, yes and no.

ALAN HOUSEMAN: Okay.

BROOKSLEY BORN: Simultaneously with our teaching we had been involved in the formation of what was then called the Women's Legal Defense Fund, which started a few months earlier and which was designed to be a volunteer lawyer organization where the lawyers would represent, on a pro bono basis, women in sex discrimination cases and other cases affecting women's interests. That later became the National Partnership for Women and Their Families, and it's still a great advocacy organization.

As far as the Center for Law and Social Policy is concerned, Charlie Halpern was one of my contemporaries here at Arnold & Porter and got the idea of starting a public interest law firm. And the law firm was very supportive of his efforts and helped to fund it and also to give him legal advice and assistance. And I was, in a minor degree, involved with Charlie and helping him to start it and had proposed, in about 1970, that it should add a women's rights project, something that Charlie was not in favor of.

But two years later, when the support staff, which was all female, of the Center had rebelled and made demands on the Center lawyers -- one of the demands was not to have to serve coffee anymore, but another demand was to hire a woman to do women's rights. And at that point, the Center hired Marcia Greenberger, one of my dear, dear friends, to

be the first woman in Washington to work full time on women's rights issues. Her first assignment was to do a memo on whether there really was enough substance in the women's rights area to keep a lawyer busy full time. She soon proved that there was.

And the Ford Foundation, which funded the project, noted that the Center for Law and Social Policy had no women on its board and was concerned about that and suggested that the Center either appoint women to its board or have an advisory committee that included women for the Women's Rights Project. And I was asked if I would chair the advisory committee, which was set up. Within two or three years, I and Marna Tucker, who was also on the advisory committee, became members of the Center for Law and Social Policy Board.

And the Women's Rights Project, just to follow through on this part of the story, in 1981 had grown very large, had significant funding, and a number of staff. And a decision was made, in cooperation with the Center -- and everybody was agreeable to this -- that the Women's Rights Project would be spun off to be an independent organization, the National Women's Law Center, whose board I am still on, I'm proud to say, and which is a wonderful advocacy organization with more than 60 staff people.

ALAN HOUSEMAN: And you chaired that board, if I'm not mistaken.

BROOKSLEY BORN: I chaired it from the beginning until I went into the government in 1996, whereupon I stepped down as chair because I couldn't do fundraising as a government employee. But I told the White House Counsel's Office, Chuck Ruff, I think, at the time, that I wouldn't take the federal appointment if I had to go off the board, which was usually the demand that they made.

And so they let me stay on the board, and a few years after I left public service, I was again the appointed chair. I stepped down a year ago, thinking 40 some odd years was probably enough, but I'm still on its board and very proud to have Jane Sherburne as my successor as chair. She's doing a great job.

ALAN HOUSEMAN: You were also involved with the National Legal Aid & Defender Association and on its board.

BROOKSLEY BORN: Yes. Clint Bamberger was president of -- or was he chair of the board? He was president of NLADA and invited me and Marna to be public members of the board. The board of NLADA was divided into three segments: legal services lawyers, public defenders, and public members, most of whom had a role in the ABA.

And at that point, Marna was perhaps still working for the ABA -- she was working for the Individual Rights

Section on a project to promote pro bono legal services in law firms around the country, and I was working as a volunteer on the Rights of Women Committee in the Individual Rights Section as well.

ALAN HOUSEMAN: You also, just for the record, have been on a number of other important boards that relate to equal justice, the Lawyers' Committee and --

BROOKSLEY BORN: Yes.

ALAN HOUSEMAN: Why don't you talk a little bit about that.

BROOKSLEY BORN: The Lawyer's Committee for Civil Rights Under Law; the Washington Lawyers' Committee as well, which is the local D.C. effort; the Washington Legal Clinic for the Homeless. And in the early days, there was a project, the American Indian Legal Services Project or something close to that -- and let me check -- which was a support project for lawyers, tribal lawyers, on reservations. We were supporting the American Indian Lawyer Training Program.

ALAN HOUSEMAN: Right.

BROOKSLEY BORN: And, of course, the ABA Individual Rights Section was very supportive of pro bono as well, as was Arnold & Porter. One of the reasons, major reasons, I came to this firm was because they were famous for their pro bono work both in the criminal defense

area -- after all, Abe Fortas had argued and won *Gideon vs. Wainwright*, which really opened up the public defender possibilities in this country and the legal services for indigent criminal defendants.

And, also, the firm was famous for having the courage and the integrity to represent public employees in loyalty security proceedings during the 1950s and early 1960s, when people were being persecuted in the name of keeping the country safe but no due process was being afforded them, and it was very courageous.

I don't know of another firm who was willing to represent those people pro bono, and we were, and we were committed to it. And that meant a lot to me. I was well aware of those things when I was still in law school and thought this firm was a wonderful place for those reasons.

ALAN HOUSEMAN: Well, your firm has also produced one other leader, the current president of the Legal Services Corporation.

BROOKSLEY BORN: Yes. Jim Sandman. We're very proud of him and a lot of other pro bono leaders as well.

ALAN HOUSEMAN: Right.

BROOKSLEY BORN: Jim Joseph, the head of our tax department, is becoming the co-chair of the Lawyers' Committee For Civil Rights Under Law, as we speak, I think he's just entering into his term.

ALAN HOUSEMAN: You have been very active in a number of things, but you've been very active in the American Bar Association.

BROOKSLEY BORN: Yes.

ALAN HOUSEMAN: And I want to continue to talk a little bit about that, but let's start with the Standing Committee on Legal Aid and Indigent Defendants on which you were a member.

And I don't know if you can recall that, but why don't we talk a little bit about the role of the Standing Committee in the American Bar Association and, more generally, some of the issues that you recall that we were dealing with during your tenure on that committee.

BROOKSLEY BORN: I might start a little bit earlier than that, Alan, with the Consortium on Legal Services and the Public, which was an umbrella organization in the ABA that included, as part of the consortium, the chairs of each of the committees that were devoted to legal services, indigent defense, and pro bono work.

So SCLAID, the chair of SCLAID, was on that; the chair of the Standing Committee on Pro Bono was on that; the chair of the Commission on Legal Services for the Elderly. These were the names, I think, of the ABA entities in that day and age. I'm not sure. And I chaired the Consortium,

which was an effort to coordinate their activities. Also the Commission on IOLTA was represented on that.

Any and all organizations devoted to legal services for the public were represented, and I chaired that for a number of years. Reece Smith had been my predecessor as chair of that, and that organization had played a significant role, along with SCLAID, in trying to rally the American Bar Association to campaign for and lobby for adequate funding for the Legal Services Corporation.

Reece Smith had done a wonderful job in doing that before me, and also we held conferences -- as I did, I think, at the end of my term -- on what legal needs were being met and what legal needs were not being met and possible solutions for that.

So my first introduction to the legal services and public defender support groups in the ABA was really on the consortium, although the Individual Rights Section had been, as I said, very supportive. It started, in essence, the efforts to recruit private firms to commit to pro bono, but then, when I was on the Board of Governors, each member of the ABA Board of Governors -- and this was in 1990, from 1990 to '93 -- each member of the Board of Governors was asked to be a liaison between the Board and three or four committees, and two of the committees that I chose to be liaison to were SCLAID, the Standing Committee on Legal Aid

and Indigent Defendants, and the Commission on Legal Services for the Elderly.

So I had, in effect, served three years, gone to all the meetings for three years of SCLAID, before I was appointed officially to be a member of SCLAID in 1993, and I think I was a member from '93 to '96. So I really had six years there.

And SCLAID was making tremendous efforts to rally the ABA membership and the private bar in support of funding for legal services, and also opposing various limitations on the ability of legal services lawyers to represent their clients effectively and, I think, did a very good job. Bill McCalpin, I think, was chair, during at least some of the years I was there and did a wonderful job.

ALAN HOUSEMAN: And talk a bit more about -- SCLAID is the standing committee that focuses on legal aid and indigent defendants --

BROOKSLEY BORN: Yes.

ALAN HOUSEMAN: -- within the ABA, obviously a consortium that you headed --

BROOKSLEY BORN: Well, the consortium was --

ALAN HOUSEMAN: -- and namely SCLAID and the pro bono committee.

BROOKSLEY BORN: It did, but the consortium was ended soon after I left. It was decided it wasn't really

necessary, that SCLAID was carrying the ball well enough. And, yes, they were -- they have the responsibility and then had the responsibility in the ABA to advocate in favor of and protect legal services for the poor and indigent criminal defense.

ALAN HOUSEMAN: All right. Do you remember any -- when you were there, both as a representative on the Board of Governors and on SCLAID, do you remember some of the issues you were dealing with at the time?

BROOKSLEY BORN: Certainly Legal Services Corporation funding was always a very big issue. I think also there were concerns about the survival of the Legal Services Corporation and attempts in Congress to discontinue it or end its operations and to impose limitations on the ability of federally-funded or grant-funded lawyers to represent their clients effectively. For example, not being able to bring class actions and not being able to bring actions against the government in various respects were a major concern as well.

SCLAID argued in favor of broad-based ability to represent clients by legal services lawyers. For some reason, I don't remember as much concern and effort by SCLAID going into the public defender side, although obviously we always felt that was significantly underfunded by the States as well.

ALAN HOUSEMAN: We covered some of this, but you were on the Board of Governors of the ABA. You've been in a number of other capacities in the ABA, while we're on the ABA. So what other commissions have you held in the profession? And I don't know if you want to talk about some of your other work in the ABA that was meaningful to you.

BROOKSLEY BORN: Well, probably, in addition, other than the Individual Rights Section --

ALAN HOUSEMAN: Right.

BROOKSLEY BORN: -- and the efforts on the consortium and SCLAID, I think the other really most significant thing to me was the Standing Committee on Federal Judiciary, which is the entity that evaluates federal judicial nominees and reports to the White House and the Justice Department and the Senate Judiciary Committee the Bar's evaluation of the professional competence, integrity, and judicial temperament of nominees.

I was the first woman on that committee, and it happened at a good time, because it was at the beginning of Jimmy Carter's administration. And Jimmy Carter was the first president to make a significant effort to appoint women and lawyers of color to the federal bench and, indeed, to the executive branch in policymaking positions as well.

And it soon became clear that the Standing Committee on Federal Judiciary standards for evaluation, which were in a public document and had been of long standing, did not really fit the background and experience of 99.9 percent of the women lawyers and lawyers of color who were available for appointment, primarily because it required a number of years, 15 years, of significant trial work in complex cases. Because there had been so few women in the Bar, because there were so few opportunities for lawyers of color, most of the best-qualified women and lawyers of color didn't meet those standards.

So one of the wonderful assignments I had soon after I got onto the standing committee was to rewrite the guidelines, and I wrote them in such a way that it stated explicitly that the committee would take into consideration, in evaluating professional experience, the fact that women and lawyers of color had come into the Bar in significant numbers only in recent years, and, therefore, had not had the same opportunities to be involved in significant litigation.

And we approved a lot of women nominees and a lot of African American nominees as well. I don't remember numbers in terms of Hispanics or Asian Americans or American Indians in Jimmy Carter's administration. But then, after three years and just as the Reagan

administration was about to come in, I was appointed chair of the committee and served for another three years as chair during the Reagan administration.

ALAN HOUSEMAN: Well, you've also won, working on --

BROOKSLEY BORN: Let me just add one more thing.

ALAN HOUSEMAN: Yes, fine. Add whatever.

BROOKSLEY BORN: We also added our considerations of judicial temperament a requirement that any potential nominee have demonstrated a commitment to equal justice, which was meant to make sure that there was sensitivity to poverty issues, to gender issues, to racial issues, to disability issues, and that it was demonstrated that there was no bias with respect to those issues, and I think that made a big difference as well.

ALAN HOUSEMAN: If you could -- I'm not sure if you want to sum up or add anything else, but obviously you've spent a lot of time in American Bar Association activities. And I guess my question is very open-ended, but do you see that role as important for lawyers who care about social justice?

BROOKSLEY BORN: It certainly was during my era. I think I'm kind of past it. I'm not doing very much with the ABA anymore. I'm retired.

I'm doing an oral history project called "Women Trailblazers in the Law," taking oral histories of

senior women leaders in the law for the ABA. But the ABA was seen, when I first became active in the early '70s, as a very conservative organization. It had not taken positions on many significant issues of constitutional law, civil liberties, civil rights, and poverty issues, and I became active -- along with Marna Tucker and several other women, Sally Determan, to name another colleague -- active in the Individual Rights Section because we very much wanted the ABA to recognize gender discrimination issues and the importance of eliminating them both in the profession and in society as a whole.

And the first issue we raised in the Individual Rights Section was a resolution that went to the floor of the ABA House of Delegates in the early '70s, either 1972 or 1973, which put the ABA on record as recognizing the constitutional equality of women. The ABA had an office here in Washington that was a government relations office, and we talked the ABA into taking that policy position up to the Hill and advocating in favor of the Equal Rights Amendment, which was passed and sent out to the states for ratification.

Unfortunately it never got ratified, but the senators who were approached by the ABA officials in this regard were quite impressed that the ABA, such a conservative body, was taking this position. And I think it swayed a

lot of votes, and I think we found that that effort of adopting policies in the ABA, for example, on full funding for legal services, the Legal Services Corporation, and other important issues, meant a lot. I mean, we changed things in Washington, in terms of the debate.

And so essentially a group of us, during the 1970s and 1980s primarily, used the ABA as a tool to change public policy, primarily in Washington, but also in the States. Throughout the '70s we got the ABA to adopt at least 10 or 15 resolutions on women's rights issues, for example.

Eventually we got the ABA to take positions in favor of reproductive rights, in favor of gay rights, and, of course, a lot of civil rights, and the rights of racial minorities as well. And an extension of those efforts or another phase of those efforts were the efforts within the ABA of a bunch of us activists who became ABA politicians -- not because we sought that as a primary goal but as a result of trying to get policies adopted -- the efforts of a lot of us to further legal services for the poor and public defender services.

ALAN HOUSEMAN: Before I turn to this, I want to switch back a second to your professional career. For several years you were chairperson of the U.S. Commodities Futures Trading Commission, and so I have two questions: What kind of background did you have that led you to that

position, and what were some of the issues you faced on that commission that you chaired?

BROOKSLEY BORN: I was the head of Arnold & Porter's derivative practice. I had practiced in the area for about 20 years. In the mid 1970s, the Commodity Futures Trading Commission had been established by Congress, and almost immediately I started to practice in front of the CFTC, as we call it, on behalf primarily of foreign financial interests.

The London commodity exchanges and their clearinghouse came to the firm in the mid '70s with the establishment of the CFTC, because for the first time, the United States was going to be regulating derivatives in international products. Prior to 1975, the only derivatives that were regulated federally in the U.S. were domestic agricultural futures and options, but now metals and energy and cocoa and sugar and other international commodities, coffee, were being regulated.

And the London exchanges, which had long dealt with derivatives in those products, were concerned about educating the CFTC about the international markets for those products and making sure that the narrow focus that the United States had been coming from of wheat and pork bellies was broadened so that the CFTC could understand the implications of those markets.

So for 20 years or so, I had a very active practice before the CFTC and had also been involved in some very significant litigation. For example, the Hunt brothers in 1980 were accused of trying to corner the world market in silver using our commodity exchanges, and that resulted in investigations and cases before the CFTC, the SEC, investigations by several committees in Congress, and about 19 federal court cases, including some class actions that I was involved in on behalf of a very large Swiss bank which had had customers who had been trading in silver in the United States in its name. And that was a very interesting set of litigation. It took us about a decade to work through it and get the cases completed.

ALAN HOUSEMAN: And then you ultimately, in the Clinton administration, became chair of the --

BROOKSLEY BORN: Yes. I had, at first, said that I wasn't interested in doing this. I had been interviewed by the president elect for the attorney general position at the beginning of the administration and had not gotten the nod from him. Zoë Baird was the lucky person who was nominated instead.

The administration had also asked me if I were interested in being on the D.C. Circuit, which I said I was interested in, but then after several years I was told that the Senate Judiciary Committee, which was then chaired by a

republican, thought I was too liberal for the D.C. Circuit, particularly with respect to reproductive rights.

So at that point, which was the mid '90s, I thought, "All right. I've always wanted to do public service and to be in the government, but obviously the time has passed, and I will just happily continue to practice law."

Well, then I got a call from the Treasury Department asking me if I would replace Mary Schapiro, who was the CFTC chair and who had only been in office for one year of her five-year term, and I was eventually persuaded that I should do that. And I thought, "Fine," it wasn't something I was terribly excited about doing, but I thought that it was a way that I could do public service and pay back a little bit to the country for all my good luck and fortune.

ALAN HOUSEMAN: And during that tenure, if I remember right -- you know, correct me obviously -- there were some controversial issues that later became big issues during our huge Great Recession, so --

BROOKSLEY BORN: Yes.

ALAN HOUSEMAN: And I think you clashed with some of the more prominent --

BROOKSLEY BORN: Powers that be, yes.

ALAN HOUSEMAN: -- powers that be. So just describe that a little bit --

BROOKSLEY BORN: Well, I'd be --

ALAN HOUSEMAN: -- and then we'll end up with some of your awards and stuff.

BROOKSLEY BORN: After I went to the CFTC, it became clear to me, from reports by the staff and investigations they had been doing, that there were some real dangers in what was called the over-the-counters derivatives market or swaps market.

Derivatives by law, starting in 1975, had been required to be traded on exchange, and the CFTC oversaw the exchanges. However, in 1992, Congress amended the statute to allow the CFTC to exempt some derivatives from the exchange trading requirement. And one of my predecessors as chair of the CFTC, Wendy Gramm, as her last act in office before going onto the Board of Enron and onto its audit committee -- had passed a rule change allowing certain over-the-counter derivatives between sophisticated parties as long as they were customized and designed to meet a particular hedging need.

By the time I got into office three years later, that market had grown from virtually nothing to \$26 trillion in notional amount. There had been some enormous scandals involving it. For example, the Orange County, California, bankruptcy was caused because Orange County had been speculating with taxpayer money on interest rate swaps over the counter, without anybody really focusing on it, and it

had made the wrong bets. This was pure gambling with taxpayer money.

Also, it had become clear that some of the large banks who were over-the-counter derivatives dealers were engaging in fraud. And the CFTC had retained authority to enforce fraud prohibitions. For example, Bankers Trust, which was one of the 15 or 20 biggest over-the-counter derivatives dealers in the world, had defrauded a number of its very large customers, Procter & Gamble, Gibson Greeting Cards, and others.

And the CFTC, I realized as chair, had no way of policing the markets for fraud or manipulation, another prohibition we had retained, because we had not retained any record keeping requirements, we had not retained any reporting requirements or any other investigative tools to oversee the market.

It also became clear that the market was no longer restricted to customized transactions, which were legitimately off exchange because they were incapable of being traded on an exchange. You have to have fungible instruments to trade them on an exchange. But, in fact, it had gotten to the point where they were calling swaps "plain vanilla swaps," because all their economic terms had been standardized and they were not customized.

And so it was also clear that the 14 largest banks in the country were likely violating the statute by trading off-exchange derivatives that didn't really qualify for the exemption. So I was very concerned about this. I thought that there were unseen dangers here.

There were clearly enormous interconnections among the derivatives dealers and some very large corporations. There was tremendous leverage in the system, and it was totally opaque, meaning there could be enormous losses without any notice. So I suggested to the other federal financial regulators in the country that there should be an investigation of the market, and we should consider whether or not there was adequate regulation.

And the reaction from both the large over-the-counter derivatives dealers, our big bank holding companies, and the Secretary of the Treasury, Bob Rubin, Alan Greenspan, who chaired the Federal Reserve Board, and Arthur Levitt, who was chair of the SEC, was adamantly and violently opposed.

In fact, I was told by Larry Summers, who was Deputy Secretary of the Treasury, that I would cause "the greatest financial crisis since World War II" if I published a document that I had given all the other federal financial regulators to review which pointed out the difficulties in the market and asked questions about the market and asked

questions about whether regulations were needed. It didn't even propose regulations yet, because I thought we didn't have the information to prepare regulations in a meaningful way.

So the result was that there was a tremendous effort in Congress by the other federal financial regulators and the industry to stop the CFTC, which was the independent regulatory agency in charge of this area. In fact, Lloyd Bentsen, three or four years earlier -- or earlier, when he was Secretary of the Treasury, had written to Congress saying that the other federal regulators would not get involved in this area; that it was solely within the CFTC's jurisdiction, and that if there was any need for additional regulation of over-the-counter derivatives, the CFTC would be responsible for that.

While this debate was going on, in September of 1998 Long-Term Capital Management, the biggest hedge fund in the world, almost went down, almost collapsed, over a weekend in September in a way that would have potentially brought down a number of the big bank holding companies and damaged the financial system in a significant way. It had managed, on \$4 billion of capital, to amass \$1.25 trillion in derivatives and was going to default on its obligations on those derivatives to the 14 largest bank holding companies and investment banks in the country.

The Feds had to step in over the weekend and negotiate a bailout that did not involve public funds, essentially using the funds of the 14 counter parties, the over-the-counter derivatives dealers, and that was exactly what I was worried about. It showed the market was so opaque nobody, no regulator, knew what was happening until the last minute; that the leverage was so great and the speculation was so great that there could be tremendous losses, and that the interconnections that the contracts created were such that losses by one entity could have a domino effect and bring down other really important financial institutions.

Nonetheless, within a month, Congress passed, as part of the CFTC appropriations bill, a prohibition on the CFTC taking any action in the area for the remainder of Brooksley Born's term, six months. And so Congress had spoken. I felt as though I had done my duty -- I testified 17 times before Congress on this issue.

I had made clear what the risks were to Congress and to the other federal financial regulators, and a policy decision was made by the Administration and Congress that nothing should be done to address this. And we then went for another ten years, and then this market, which had gotten to be over \$670 trillion in notional amount at that

point, almost brought the world economy and the financial system to a halt. It would have, had the Fed and Treasury not stepped in to bail out AIG and others.

ALAN HOUSEMAN: Well, I had you tell that story, in part, to talk about your professional role, and yet you were very involved in women's rights and legal aid on your -- I wouldn't say pro bono work, but your other work in life --

BROOKSLEY BORN: Yes.

ALAN HOUSEMAN: -- but also because you've been viewed subsequently by many as a hero that talked about this issue long before it surfaced in a way that now it's clear what the -- well, maybe not so clear, but clear what the real implications were to the world economy and, you know, won a lot of awards and honors because of your early notice and understanding and advocacy of this that Congress didn't buy and the administration didn't buy; which they should have, but --

BROOKSLEY BORN: Well, yes, this was my professional life, when I'd gone on to the CFTC. To me always, my most important work and commitment was to women's interests and to legal services, and my professional career was how I made money. I enjoyed it. It was very challenging and fun, but my heart was committed to the other areas.

When I accepted the nomination as chair of the CFTC, one of my predecessors in the office said to me, "Brooksley, you're always going to be remembered as chair of the CFTC." And I thought, "Oh, gosh. I really want to be remembered for other things," and I couldn't imagine that I would be remembered as chair of the CFTC, but he was prescient, I'm afraid.

ALAN HOUSEMAN: Right.

BROOKSLEY BORN: I wish it hadn't been true. I wish there had been nothing important for me to do in that role and that derivatives had not posed the kind of danger and caused the kind of harm they did.

ALAN HOUSEMAN: Let me end up with just -- you have been honored by a number of public interest groups in your life. I don't know if you want to talk about them.

You've been honored by the National Legal Aid & Defender Association; by the National Woman's Law Center at least twice; by the National Association for Public Interest Law; a number of -- there's probably others that I'm not noticing right this second, but a number of groups have honored you for your work in these areas of legal aid and women's rights.

BROOKSLEY BORN: Yes.

ALAN HOUSEMAN: And you've also been honored because of your work, I think, at the -- the public service work you did.

BROOKSLEY BORN: My CFTC work.

ALAN HOUSEMAN: Yes. And I'm just -- and there's a number of those honors as well.

In thinking back about this, I guess my last question is, how would you view -- and you answered this a bit a minute ago, but how would you view your overall career, both professionally and pro bono, if you want to look at it that way, now, in hindsight? And maybe there's not much to add to what we just said, but I wanted to leave you an opportunity to add, if you wish.

BROOKSLEY BORN: Well, I certainly, as a retiree, have never regretted any of the time that I spent in public service, both through my ABA work, through my pro bono work, through my public interest organization work, and in the government.

It seems to me that what was important to me was always trying to look clearly at a situation and see the dangers for people who were not represented or spoken for, and I think I was doing the same thing at the CFTC as I was doing on SCLAID or at the National Women's Law Center. It was the American public that was endangered by the

over-the-counter derivatives, and I felt that I should voice their interests and try to represent them.

I didn't do good enough job in that case -- I didn't prevail, but I would hate to look back and think that I had been silent, and I think the lesson that I've learned throughout my life is you can't be silent about the needs of others that you see. If you're a witness to them, you have to speak out, particularly if people can't speak out for themselves.

ALAN HOUSEMAN: Thank you.

BROOKSLEY BORN: You're welcome.

ALAN HOUSEMAN: Thank you for a very wonderful interview.

BROOKSLEY BORN: Well, I'm delighted to participate.

One thing we didn't mention was I was on the Consortium, on the National Equal Justice Library Board.

ALAN HOUSEMAN: Oh, that's right. I'm sorry. I should have asked you about that.

BROOKSLEY BORN: Well, that was great. I mean, it was wonderful to establish the National Equal Justice Library. It was a cooperative effort of the ABA and NLADA, and I think these were important records to preserve for the same reason that I'm taking the oral histories.

We're taking the oral histories of the senior women lawyers in the country who were involved in the women's

movement and who were the trailblazers, pioneers opening up opportunities for women. I think it's very important to memorialize the history of efforts for legal services for the poor and the indigent defendants, and I was proud to be on that board and proud that my firm donated the Gideon files to the library.

ALAN HOUSEMAN: Thank you.