

Influential Women In Securities Law: Elizabeth P. Gray

By Jody Godoy

Law360, New York (September 2, 2016, 9:52 PM ET) -- As a regulator, Elizabeth Gray brought a groundbreaking case against Bear Stearns and, more recently, negotiated the first deferred prosecution agreement for an individual in a civil bribery case, making the Willkie Farr & Gallagher LLP partner one of Law360's Influential Women in Securities Law.

Gray co-leads the firm's securities enforcement practice, where she offers clients what she calls a "triple threat": 12 years at the U.S. Securities and Exchange Commission, including as an assistant director of enforcement, experience as an executive and general counsel at two companies and a decade and a half representing clients before virtually every securities regulator in the U.S.

The Washington, D.C.-based partner says her practice occupies a continuum between preventing enforcement actions and resolving them on behalf of investment advisers and other financial firms and professionals. Clients and colleagues say Gray has distinguished herself by being creative, business-minded and highly collaborative.

After graduating from law school in the mid-1980s, Gray started her practice at BakerHostetler, where Alan Ward, a former director at the Federal Trade Commission, convinced her that a career spanning both regulatory and private practice was the way to go. Looking back, she says it was the right call.

"Having been a regulator and having developed SEC enforcement actions really helps me as a private practitioner, when I am advising my clients, to think ahead about what the SEC is going to be targeting next," Gray said.

One of the biggest cases of Gray's career at the SEC was an enforcement proceeding against Bear Stearns that put clearing brokers on notice about their responsibilities toward investors.

As assistant enforcement director, Gray was heavily involved in the case alleging Bear Stearns' clearing broker unit had not only turned a blind eye to but also enabled a massive fraud by A.R. Baron & Co. Inc. As a result of the SEC action, the clearing broker agreed in 1999 to pay \$30 million into an investor recovery fund and shell out a \$5 million penalty.

Richard Walker, then the SEC's enforcement director, announced at the time that "a firm's status as a clearing broker does not immunize it from the consequences of participating in a fraud."

That action was part of the SEC's larger battle against microcap fraud, and Gray led the charge as chair

of the SEC's microcap working group. The effort took a "tremendous amount of collaboration" among the SEC's broker-dealer regulation and enforcement units, as well as the involvement of federal and state prosecutors.

"There was a belief that by bringing different disciplines to the table and enhancing communications among the staff, it would help to deter, detect and prosecute the fraud," Gray said.

The New York County District Attorney's Office got pleas or convictions in suits against more than a dozen people affiliated with Baron. And the SEC ordered Richard Harriton, president of Bear Stearns' clearing broker unit, to pay \$1 million. The low dollar amounts at play made enforcement both more challenging and more important since boiler rooms often target small investors who stand to lose everything, according to Gray and her colleagues.

Linda Chatman Thomsen, now a Davis Polk partner and then part of what was a smaller Enforcement Division, said Gray's creativity and intensity were a good match for the challenge of pursuing microcap fraudsters.

"It requires being energetic and relentless about it because those are the kind of defendants who will wear you down," Thomsen said. "They are also the kind of defendants who can rip off the most vulnerable investors."

Joan McKown, another SEC contemporary of Gray's who went on to become the chief counsel in the Enforcement Division, remembers working closely with Gray and seeing her tackle matters that ran the enforcement gamut.

"She combines an extensive knowledge of the securities laws with an intuitive understanding of people, which allows her to effectively strategize to accomplish her goals," McKown said.

Gray also spent part of her career at the SEC as counsel to Chairman Arthur Levitt, a job she said was "a great way to learn what an executive expects from counsel."

After leaving the SEC in 1999, she made a foray into the corporate world and gained executive experience herself. She practiced as a general counsel and chief operating officer at two biotech companies, then felt the call to return to her first practice area when the Enron scandal began to unfold. Thomsen, by then the SEC's director of enforcement, was spearheading what would become a huge suite of civil charges stemming from the epic accounting debacle.

"All my friends from the SEC were doing these complex, unimaginable cases, and I became very envious," Gray said. "It sounds kind of corny, but my career is really very much about the securities laws and the enforcement and development of them, and I missed it."

Gray decided to join a group of former SEC colleagues at Foley & Lardner LLP where she practiced for five years before joining Willkie in 2008.

Since then, she has harnessed her experience as a regulator to represent broker-dealers and, as the industry and enforcement priorities have changed, an increasing number of investment advisers, as well as other executives and individuals facing enforcement actions.

In February, Gray secured the first-ever deferred prosecution agreement from the SEC for an individual

facing Foreign Corrupt Practices Act allegations. The regulator had accused Massachusetts-based software company PTC Inc. of bribing Chinese officials and ordered the company to pay some \$12 million in disgorgement.

Gray represented a former employee at one of PTC's Chinese subsidiaries and convinced the SEC to shelve its case against him for his cooperation. The SEC will drop the case after three years barring further violations.

Robert Knauss, general counsel at Warburg Pincus LLC, who has worked with Gray on nonpublic diligence inquiries and investigations, says her best quality is sound judgment and an ability to look at risks through a pragmatic lens.

"She is not afraid to give us a point of view," Knauss said. "That's valuable. There are a lot of lawyers out there who won't give a judgment."

On the broker-dealer side, Gray went to bat for London-based ICAP PLC in an SEC case alleging a subsidiary had overcharged its clients some \$18 million in hidden fees. Linkbrokers Derivatives LLC, the New York subsidiary, settled the charges for \$14 million without admitting or denying wrongdoing.

Another big part of Gray's practice at Willkie is reading enforcement signals and helping clients put practices in place that will not raise regulatory eyebrows.

"Strategic counseling is something I love to do, and at Willkie, I get to be a strategic counselor for very sophisticated clients on tough and technical issues," Gray said. "It's a great challenge."

To that end, Gray works frequently with Margery Neale and Willkie's asset management group, which Neale co-chairs. Neale says Gray is an integral part of the group and meets with them regularly to share an enforcement perspective and strategize for clients.

Gray first learned to take an interdisciplinary approach to big questions as an undergraduate at Dartmouth College. After earning her degree in policy studies, she pursued her J.D. at the University of Virginia School of Law.

UVA's law school had admitted its first female student in 1920, but the undergraduate population was gender-segregated with a separate women's campus until 1969. Gray says that while she was earning her law degree, most of her classmates were men.

"It was clearly a challenge for the women who were in the classes to become acclimated," Gray said. "There was only a handful of female professors. There were pictures of men all over the walls."

Gray worked with others to organize a symposium on issues facing women in the law, not just to discuss their experiences but also to figure out how to solve problems. The same impetus motivates Gray to stay active in promoting women in the profession today. She co-chairs her firm's women's initiative committee and was recently invited to join Harvard Kennedy School's women's leadership board.

"That concept has always been important to me, that women could pursue and succeed at their chosen profession," Gray said.

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