

THROUGH THE LEGAL LENS:
INTERVIEWS WITH LAWYERS WHO SHAPED NYC'S LANDMARKS LAW

The Reminiscences of
Virginia Waters

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PREFACE

The following oral history is the result of a recorded interview with Virginia Waters conducted by Interviewer Will Cook on December 11, 2015 and Liz H. Strong on July 11, 2016. This interview is part of the Through the Legal Lens: Interviews with Lawyers Who Shaped NYC's Landmarks Law.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose. The views expressed in this oral history interview do not necessarily reflect the views of the New York Preservation Archive Project.

Virginia Waters has had a lifelong interest in preservation. She began her professional career working for New York City, specifically in preservation law. As a young lawyer, she worked closely with Dorothy Miner, a prominent figure in the early days of preservation. Through her work with the Landmarks Preservation Commission, she helped to develop key strategies for Landmark Preservation Commission relating to demolition by neglect and the calendaring of buildings and districts. She explains the uniquely New York policy of Transferrable Development Rights (TDR) and its impact on preservation, particularly in Penn Central Transportation Co v. City of New York, as well as in the cases surrounding the Broadway Theaters landmarking process.

Inspired by her love for historic preservation and landmarking, Virginia Waters shifted from a career in employment discrimination law to preservation law. Working alongside early preservation movement figures such as Dorothy Miner, Waters collaborated with the New York City Landmarks Preservation Commission and the New York City Law Department to develop key strategies to counter demolition by neglect. Over a thirty-year span at the department, Waters was instrumental in defending city interests and the architectural fabric of the city in major landmark cases. Among others, she represented the city in the challenged designation of P.S. 64, the fight over Broadway theaters' historic designation, and the Park51 case, concerning the construction of an Islamic center near the Ground Zero site.

Transcriptionist: Jackie Thipthorpe

Session: 1

Interviewee: Virginia Waters

Location: Brooklyn, New York

Interviewer: Will Cook

Date: December 11, 2015

Q: This is Will Cook with the National Trust Historic Preservation. I am here today with Virginia Waters for a New York Preservation Archive Project oral history interview. The date is Friday, December 11, 2015, and we are here at her home on Argyle Road in Flatbush, Brooklyn.

So, Virginia, it is a pleasure to meet you. If you could, please tell me a little bit about where you were born and where you grew up.

Waters: Oh, I was born in Wheaton, Illinois, which is a suburb of Chicago.

Q: Yes. And what brought you to New York City?

Waters: My husband was born in—my first husband was born in Westchester, and we came to New York after we graduated from college. He went to the Columbia Preservation Program in Architecture while I was at Law School, and I always thought that the work he was doing was more interesting than the work that I was doing—

Q: And where did—?

Waters: —which is true actually. So that when I went to—I practiced—I did Employment Discrimination Law for ten years. But then when I went to the New York City Law—my father was in local politics in Wheaton, but he was a city planner, so I was interested in land use. And when I went to the Law Department, of the New York City Law Department, I specifically wanted to work in land use and Landmarks if possible. So I asked to work in the administrative Law Department, which is the department that does land use and landmarking.

So when I went there, I specifically asked to work on Landmarks preservation cases. Dorothy Miner, who was the council to the Landmarks Preservation Commission, she was there from 1974 to 1994. I had met her previously through my ex-husband, and she was leery of giving up jurisdiction. She was leery of giving over jurisdiction of her cases to the Law Department, but she learned to trust me because she knew that I had a history of—and a dedication to landmarking before I came to the Law Department. So she and I developed a great rapport, and she and I developed a trust, so that when cases were coming in, she and I sort of developed a relationship so that the cases sort of got—well, they came to me over the years. I had the same relationship with Mark Silberman over the years so that they both knew that I had a special interest and, you know, a concern about the cases. So that over the thirty years that I was with the Law Department, I'd say I did—I think Mark counted it out—I think I did twenty-five Landmark cases and that most of the major Landmark cases were litigated in that period. So that's how I came to do Landmark cases for the Law Department.

Q: Yes. And you mentioned that you met your husband when you were in Law School. Did you—?

Waters: No, I met him—he went to Notre Dame and I went to St. Mary’s College, which is across the street from Notre Dame in the Mid West.

Q: Oh, before Law School.

Waters: Before Law School. Yes.

Q: Before Law School. And where did you attend Law School?

Waters: St. John’s.

Q: In?

Waters: In Queens, New York.

Q: In Queens, New York. And you also mentioned that you retired recently. It’s 2015, how long have you been retired?

Waters: Just since March.

Q: Okay. What is your earliest memory about historic preservation?

Waters: Oh. It's really hard to say—

Q: [Laughs] Or I guess what—

Waters: —since it's so tied up with my—I don't—oh. I was a History major in college and I always remember going to historic homes and places on vacations, going to look at them. I don't know. I remember when I was a kid going to Lincoln's house in Illinois. I think that is the first one I ever went to. But, I mean, before my husband went to the Columbia program, we always used to go to historic homes in the Berkshire, or when we went to Greece and Italy. I went to Europe when I was in college and, you know, went to look at all the sites in Europe.

Q: Yes.

Waters: I mean, I don't know whether—was the question about history or preservation?

Q: No. Kind of both. What—

Waters: Yes.

Q: —sparked your interest in history perhaps. I know a lot of—many people first encounter historic preservation through visits to house museums so they're curious.

Waters: Yes. I guess I would say that.

Q: Yes. Yes. [Pause] You mentioned that prior to attending Law School in Queens, New York, at St. John's that you attended Law School at St.—or you were an undergraduate student at St. Mary's.

Waters: St. Mary's College in south Bend Indiana.

Q: And what was your major?

Waters: History.

Q: Oh, it was History. When did you first consider pursuing a career as an attorney?

Waters: When I would say—when I was a senior in college, a woman friend of mine, she and I attended Law at Notre Dame and I was—she and I were the—you have to remember this is 1967, so [laughs] she and I were the only two girls there. So it was not—in those days it was that I was supposed to marry a lawyer; I was not supposed to become a lawyer. It was not accepted that girls were to become lawyers. So I worked for three years when I got out of college, two years with the Quakers and one year with the Asia Society, and it became clear to me that I was never going to be anything more than much of a glorified secretary unless I got a graduate degree, and it became clear to me that I had to go back to Law School. Women's Lib. was starting. Women's Lib. was in its early days then and it was just like it suddenly became okay for women to consider becoming a lawyer, so I did. Even though when I went to St. John's the year that I went

there the graduating class had five women in it. So when I was there we started a Women's Lib. club there. I mean, it was the early days of women's liberation when I went to Law School.

Q: It wouldn't surprise me if the answer is no, but were you exposed to historic preservation law while in Law School?

Waters: Absolutely not. Not at all.

Q: Yes. Do you remember the first time that you encountered historic preservation as a type of regulation or realized that there was a set of laws governing the landmarking of properties?

Waters: I mean, I think that I got that all through—my ex-husband through his—when he—like I said, when he was at the Columbia Preservation Program, that was when I was in Law School, so that was '71. So I sort of learned as he learned. You know, he would come home and talk about stuff that he was learning. So I certainly learned about the New York City Landmarks Law when he was learning about it at Columbia. That was probably when I first learned about it.

Q: Yes. That sounds like it was a nice exchange.

Waters: Yes. Very. Yes.

Q: And I imagine it was mutually beneficial—

Waters: Right.

Q: —because being a lawyer and learning about—

Waters: Right. I know, I mean, I remember I would go to functions with him and I would meet people in the preservation community. You know, I would meet—now the names are all escaping—but I remember meeting Dorothy and a lot of other people that went on to become leaders in the preservation community with him. He went on to become the head of—he worked at South Street Seaport and then he became the head of Richmond Town Restoration and the Long Island Historical Society. So, you know, again, he was involved in it. He moved away but he was very involved in the preservation community at that time. So I did know a lot of people in the preservation community at that time, even though I was not working in it at that time.

Q: As you know, I work at the National Trust for Historic Preservation and we recently had our annual conference in Washington, D.C., and it occurred to me that—and you read about this theme a lot in writing about historic preservation today that there has been a lot of discussion about what preservation means and what is it. [Laughs] And it seems to me that there is this sort of a re-examination of the purposes behind preservation and preservation law. I was curious, what preservation means to you and what is important about it to you as a lawyer and as someone who lives in a historic neighborhood.

Waters: Well, I'm trying to get this neighborhood designated but the Commission and I disagree about how significant these houses are, because their material has been changed. But, anyway,

that's another story. Oh, what does preservation mean to me? Well, I mean, I think, for me, it is very important because like when I worked on the Broadway theaters getting them preserved, when I go to the theater, because I like the theater, I mean, I sit in the theater and I say, "This theater is here because of me." So when I drive around buildings in the city, you know, because I did land use, too, when I drive around the city and I see buildings, you know, I say, "I was active and part of saving parts of the city that will be here hopefully, well not forever, but at least for a long time." So I feel like I've had an active role in saving important architectural—the architectural fabric of the city for generations. So it's a good feeling. I feel like I've contributed to saving parts of the city.

Q: Yes.

Waters: So I don't know if that's what you mean.

Q: Yes. Yes. So it sounds to me that you attach great importance to helping preserve the physical fabric of the city perhaps.

Waters: And its history. Yes.

Q: And its history and the stories that that history tells.

Waters: Yes. I've worked on some cases where—I mean, there was a case I had involving a really old Dutch farmhouse that we calendared it on Halloween and the owner tore it down the

next day. Literally he got one of those cranes or, you know, those—got on a machine and tore it down himself the next day and there was very little we could do about it. That was very upsetting to know that the building was torn down. So, you know, when a building is gone, it's gone, and it's frustrating.

I was working on another building in Staten Island, which is one of the six oldest buildings in the city, but the owner is very adamant about not restoring it and every time we go out there, the building is more decayed. It's very frustrating that this building may just be demolished by neglect. And that there's—you know, the law moves slowly and it is very frustrating. So, you know, being a lawyer is frustrating because you have to work within the law and its work slowly and sometimes it doesn't work well, so that's frustrating. But, you know, you just do the best you can.

Q: Yes. I frequently remind myself of that [laughs]. Were you living in—? I assume you were living in New York at the time that Penn Central—

Waters: No, I wasn't. I never saw Penn Central. I feel very bad about that.

Q: Well, but rather at the time that the Grand Central debate was ongoing—

Waters: Yes. Yes.

Q: —could you tell me a little bit about—

Waters: Well, I was not—

Q: —what you observed?

Waters: I was not doing preservation work, but I remember being at a party with my husband when the decision came down and there was great joy.

Q: Yes.

Waters: There was just great joy when the decision came down. It was in '84 I think. But since then, I've been involved—but that's for later. I've been involved in the litigation involving the air rights from Grand Central. As part of that, I had to re-read the whole transcripts from the litigation. So the Penn Central litigation is very interesting and very intricate. But I can see why, you know, when I look at the whole fifty year history of the Landmarks Law, the Landmarks did very little—basically they didn't really designate any buildings without the building owner's approval before Grand Central decision because they didn't want to have any litigation because they didn't want—they were too afraid to have much litigation before Penn Central came down because they really felt that the law was too tenuous. After Penn Central came down—

[INTERRUPTION]

Waters: After Penn Central came down there was a feeling that they could start enforcing and start doing designations. But before that, the feeling was that they only could do designations with building owner's consent.

Q: What do you think tipped the scales in favor of litigating the law?

Waters: I really think that you should interview Lenny Koerner. He just retired, but he's the attorney who did it all the way through, from the New York's Supreme Court, which is the lowest court to the appellate Courts, to the federal Supreme Court. He did all the cases. He understands all the litigation techniques, all the decisions that were made. And in a very unusual decision, they let him argue it at the Supreme Court. So he really is the person you should discuss with that.

Q: I've listened to his oral argument—

Waters: Okay.

Q: —through the OEA [phonetic] website—

Waters: Right.

Q: —and it's a wonderful argument to hear.

Waters: He's a really amazing man. He's really wonderful. He's really highly respected.

Q: Yes. Well, thank you for sharing with me some of your experience with those days surrounding the Grand Central litigation and the Penn Central case. It is certainly one of my favorites. I wanted to turn now, Virginia, to some of the specific work that you have done. And you mentioned to me that you had prepared some notes about your litigation background and wanted to talk about some of those cases with me today.

Waters: Yes. I was going to say that, you know, as I mentioned earlier, there was very—well, first of all, I want to just talk about Dorothy Miner who was really—you know, she was the counsel there from, as I said, from '74 to '94, and she was really an amazing woman. Her whole life was the Landmarks Law and she was really, really wonderful. Mark Silberman, who has been there from '94 to date, is really wonderful as well. The Landmarks Law is only fifty years old, but when you think about it in terms of people's lives, you know, Dorothy really was very influential in the very early days of creating the law, because, as I said, nothing was really done in the early days until Penn Central came down. So she was very influential in helping form the law in terms of what cases were brought and how decisions were made. It was really devastating that when Giuliani was Mayor, the Real Estate Board came in and said they wanted Dorothy to be fired. It was right after her husband had died, and she was fired. It was a political decision and it was really terrible. So I just wanted to say that.

But, anyway, she and I had a very good rapport and we worked together very well. But the basic thing, as you know, the Landmarks Commission is made up of experts. So, a landscape architect,

an architect, a historian, and a city planner. But as a litigator, our burden of proof in courts was the our decisions—the determination made by the Commission was that it had to be not arbitrary and capricious, which was very easy to uphold. And because the Commission was made up of experts, the decisions were generally upheld. So it was easy in a way to get the decisions of the Commission upheld.

Q: But it sounds like you all, meaning the legal team, were very careful to create a record.

Waters: Yes. Oh, the Commission usually—even though the staff at the Commission, I think it's like fifty-five now, or maybe it's more than that, maybe it's sixty or seventy. It's a very small staff when you think about it. People always think about the Commission as being this huge body. It's really very small. There are eleven Commissioners. The staff is small, but the staff is just really very, very excellent. The people who work there, the historians and architects, they do an amazing job. So they always come out with a very, very good record, a very good report that the designations are based upon. So their decisions are easily upheld in court, because the decisions are well based. I would always put the picture of the building on the front page of the record so the judge would see it, so it was easy, generally, to get the decisions to be upheld.

But, as time went on—there were problems in the early days where there were loopholes. There were problems with the way the law was written. So, for example, there was no provision in the law for moratoriums. If you calendared a building there was no protection. So if you calendared a building, the building owner could still go and get a demolition permit the next day. So building owners would do that. Between the lawyers at the Commission and we at the Law

Department, we had to make up things as we went along. So we interpreted this provision—there's a provision in the Department of Buildings that Department of Buildings can hold up a building permit for thirty days. It doesn't say why it just says that if you apply for a demolition permit, the Department of Buildings has thirty days to consider the application. So we asked the Department of Buildings to use that provision to stay granting a demolition permit so that Landmarks then had thirty days to decide on designating a building. So we got a court to hold that we could validly use that provision so the buildings wouldn't get torn down for thirty days.

But in the beginning, this was sort of problematic before we got a court to uphold that. For example, I had this case in Queens, the one I told you about where they tore down this lovely Queens farmhouse. They tore the farmhouse down and the only violation was a thousand dollars for demolition without a permit. But the Department of Buildings Superintendent decided that he just was going to not give this guy a building permit. Just for no reason he's not going to give this guy a building permit. So he just didn't give him a permit, and he didn't give him a permit, and he didn't give him a permit. So we filed a lawsuit saying that it was a nuisance to tear down a landmarks without a permit.

Q: After the fact.

Waters: After the fact.

Q: Interesting.

Waters: There is no law saying this. Meanwhile, this guy couldn't get his permit and we settled the case for a hundred thousand dollars. And the Bowne House in Queens, which is a historic house, got a new roof, and the Queens Historical Society got a fifty thousand dollars. So this is the kind of real world stuff that was going on in terms of dealing with the fact that there was no provision in the Landmarks Law for a moratorium.

Q: But I think—I want to back to your Nuisance Law. It's something—

Waters: Yes.

Q: —I've been exploring at the National Trust. It is often surprising to people that it could be used as a tool in preservation cases. But it really comes down to protecting property owners from unreasonable uses of adjacent property, we'll say.

Waters: Right.

Q: I think it's wonderful how you turn to one of the oldest common law on the books to help fill that legislative or ordinance gap, and that you achieved a successful outcome. That's the first time I've heard about Nuisance Law being used at the local level in that way.

Waters: Well, I remember years and years ago, I worked at the Attorney General's office in the summer, and they built a tower at Gettysburg adjacent to the battlefield. It was so ugly that the Attorney General's office in New York filed an amicus brief saying that it was an esthetic

nuisance. I don't remember ever what happened with that. So the Attorney General's office in New York they use Nuisance a lot. They used Nuisance for smell and other reasons.

Q: Yes.

Waters: So I had gotten familiar with it. Also, on an environmental basis, a lot of local groups tried to get New York City to have the local environmental laws applied to Landmarks so that we would have to go through the SEQRA [State Environmental Quality Review Act] process. And we challenged that saying that the Landmarks laws were by their very nature preservation actions and that they were exempt from having to do full environmental reviews. We felt that that would certainly be a burden on Landmarks, which didn't have the staff to do environmental reviews. We were upheld in that, which was a real lifesaver for Landmarks, because there was no way that they were going to be able to do full environmental reviews, and that designating a building or getting a Certificate of Appropriateness were preservation actions and that they should have been exempt from Landmarks action.

So one of the other major things that happened as we went along was that all of the major cases were designation actions, and the designations were on architectural grounds. It was easy to get courts to see that a beautiful building should be designated because it was beautiful.

Q: Is this 1980s give or take?

Waters: Yes. Right. And then the Mathew Brady building—I think the case is *Russo v. Beckelman*, I'm not sure. But the Mathew Brady building, I forget—I don't even remember what the building looked like but it was designated on a combination of—he was a Civil War photographer. It was a building on Broadway, I think, and it was designation on a combination of cultural and architectural grounds. We got the court to recognize that the Landmarks Law wasn't just for architectural criteria but that it was also for cultural and historical grounds. That was the first time that we go the court to recognize that the law was broader than just architectural grounds.

It was fun for me, because as we went along we were getting the courts to—because, like I said, the first ten years the courts didn't do anything, and then we were just getting the courts to recognize how the law should be interpreted. So we got the courts to recognize how it should include cultural and historical grounds.

Then we did city and suburban, which you said the National Trust did on the other end, but I think we've been litigating city and suburban since 1992. There are two-block long complexes of light court tenements and they're really—I don't know if you have ever seen them.

Q: Yes.

Waters: They're really not architecturally very distinguished at all. They're really just white brick buildings. But they are the last remaining light court tenements and they were built for low-income housing.

Q: And you're talking about First Avenue Estate.

Waters: Yes, First Avenue Estate. Yes. I guess the first one was called City and Suburban. There were two separate blocks, and one was appealed and one wasn't. The history is sort of byzantine but the court—in that court that the appellate division in that situation recognized that the Landmarks Law had the ability to designate buildings, not for architectural grounds, but for cultural and historic grounds as well. It was an appellate division recognizing that, which was important. So I think up to now—the Landmarks Commission this summer designated the Stonewall Tavern, the famous place where gay rights started in New York City. So I think there are about eighty other buildings where the city has designated buildings for non-architectural reasons.

Q: Virginia, can we back up just a moment? You have been describing a number of challenges to the New York City Landmarks Law. One thing that obviously made the Penn Central case so important, when the Supreme Court decided it, was the property owner was suing to have the Landmarks Law overturned [laughs].

Waters: Right.

Q: And attacking the constitutionality of the City's application of that law. In your experience, how often did you—or do you recall challenges to the overall Landmarks Law itself?

Waters: Well, I think the—what I was just talking about there were mostly challenges to designations. The cases where there have been challenges based on takings, I think, have been in the theater district and 383 Madison that I'm going to talk about. I think those are the two major takings cases where people have alleged that maybe—I don't know if they did it maybe in St. Vincent's, which was a non-profit hardship taking. Those have been, I think, the major—where there have been challenges on constitutional—and there was one that was filed this summer, which I'll talk about when I talk about Penn Central.

Q: Okay.

Waters: So the theater cases, which was brought by the major three theater owners, the Jujamcyn, the Nederlanders and the Shuberts. It was in '82 the Helen Hayes and the Moroscos theaters were brought down, and it sort of had the same feeling in the city that it had when the Penn Central was brought down. There was just really an uproar.

Q: That's where those two theaters were demolished to make way for the Marriott Marquis Hotel on Broadway, the site for it?

Waters: Yes. I think so, yes. But there was the same sort of feeling like, How could we let this happen. So in response, the City Planning Commission passed this this provision that there could be no demolitions of 44 theaters. They had to get a special demolition permit. But at the same time, the Landmarks calendared twenty-eight Broadway theaters and they had this long public hearing process.

New York has the largest concentration of legitimate theaters in the world, and tourism is the largest non-manufacturing industry in New York City. For tourists, seeing Broadway shows is the most cited reason for tourists coming to New York City. Landmarks went ahead and calendared the twenty-eight Broadway theaters, and a combination of interior and exteriors. They did this huge—it was a huge record. It was thirty-two volumes, seven thousand pages for all these theaters.

The theater owners said that we designated an industry not individual buildings. They were really unhappy with designating the interiors because they said that they weren't going to be able to put on Broadway shows. Although, as I said during the oral argument, they continued to be able to put helicopters on the stage for Miss Saigon. We had regulations though that if they wanted to change the interiors they could go to Landmarks and get permission to do it.

So what the Broadway theater owners really wanted was, [sighs] they wanted a sub district to be able to transfer their air rights because they weren't able to transfer their air rights to adjacent buildings because they were all packed so closely together. There was nowhere for them to transfer the air rights to because they were so close to each other. So they wanted a sub district where they were going to be able to transfer their air rights to within a several block area.

Because in New York City—I don't know if you know—the way the Landmarks Law is you can only transfer your air rights to the adjacent building or across the street or catty-corner across the street. That's what the theater owners really wanted, and at that time the City Planning said no. the owners also said it was an unconditionally taking, designating all these theaters.

Q: It's a little bit like the Penn Central case when the attorneys for Penn Central were asked, "You are still operating Grand Central as a railroad terminal, correct?"

Waters: Right.

Q: This sounds like theater owners will operate theaters.

Waters: But they still will operate the theaters, right. These guys wanted every air right to be transferred. They wanted full value for the air rights. At this stage, they had sold a third of their air rights but they wanted to be able to transfer a hundred percent of their air rights. We won at the lower court and at the appellate division and they said that we were designating an industry and the court said no. It upheld us. The designation was not just on architectural grounds but on cultural grounds as well. They said that this was important, that we weren't designating the use, that some of the theaters had been used for discos and for churches, and so we weren't designating the use, the theaters could be used as other things.

That was an important win because the theaters are very important to the City. Obviously, it was a win for Landmarks but it also was a big win for the City.

Q: What was the gist of the theater owner's argument, that they could not alter the use of their property?

Waters: Well, they felt that we were designating an industry. So it was tied in. But they also were challenging the City Planning's Special Demolition Permit, which said that the theater owners couldn't demolish without a special permit. There was a special provision in the zoning resolution. So that was actually—it is sort of tied to use. But the Landmarks part of it isn't. The Landmarks did allow theaters to be used for other purposes.

Q: Right. Yes, some of the—Yes.

Waters: Like the Beacon Theater is used for music. Now it's not used—I mean, Landmarks has given permission for theaters to be used for other things besides just theater use.

Q: Right.

Waters: So one of the other things that have been litigated is what is “open to the public” within the Landmarks Law. What was litigated in the theaters case is what is customarily open to the public. In the Four Seasons restaurant, which is *TIAA [Teachers Insurance and Annuity Association] v. the City of New York*, what was litigated was what is customarily open to the public. It is basically someone who can go in with a ticket and that went up to the Court of Appeals. That's like in the theaters and in the Four Seasons restaurant if someone pays to go in it's still customarily open to the public.

Q: But this issue bubbled up because there was a dispute about public access to interior landmarks. Is that how this came about?

Waters: Well, I mean, it was, “What is an interior landmark?” What an interior landmark was had never been decided before. This was the first case—the issue came up in the theaters. The interior landmarks was in the Four Seasons as well. I think, and I’m trying to remember, in the theaters the court ruled that an interior landmark was one that was customarily open to the public. But in the Four Seasons it went to the Court of Appeals. The Court of Appeals said that an interior landmark was one that was customarily open to the public.

I know right now Landmarks is considering the Alvar Alto interior, which is in the CIE [Council of International Education] building. It’s a beautiful interior but it’s inside of an office building of CIE. Now CIE, it’s a privately owned non-profit group and the question is: “Is that open to the public?” So up until now, you know, customarily open to the public has been defined by the theaters and by TIAA as one which is one where if a person can pay money to get inside it.

Q: I mean, you’re referring to TIAA, you’re referring to the litigation captioned TIAA—

Waters: The Four Seasons. Yes.

Q: —yes, v. the City of New York and that was the Four Seasons.

Waters: Yes, I’m sorry it’s the Four Seasons. Yes. So when we did the Four Seasons it was interesting because the architectural details inside there—the Four Seasons was interesting because it was the Philip Johnson interior of the Four Seasons. So that was unlike the usual

baroque or rococo inside of a theater. It's easy to sell the interior of a highly ornate theater. It's less easy to sell a 1960s modern, Philip Johnson interior to a judge. So when we were there doing it, the interior details we were describing to the judge were these beaded drapes and a bar and a staircase. But they were very Philip Johnson very modern. And the judge said to me, "Are you going to designate my levolor blinds next?" And I'm like, "No, Judge. What we have to do is defer to the expertise of the Commission and if they find these architecturally significant then we have to defer to their expertise." But, you know, it wasn't such an easy sell.

Q: And it's true that—you can help me here—but everything in the interior of that restaurant was purpose built—

Waters: Yes.

Q: —or intended by the architect to serve a purpose. This is one of these interesting cases where architectural intent was crystal clear.

Waters: Yes. But you have a State Supreme Court Justice [laughter] who doesn't necessarily look at that space and see it with the same eyes as Philip Johnson.

Q: It was also wrapped up into another preservation issue in terms of the landmarking of the overall building, correct, the Seagram's?

Waters: No.

Q: Oh, no. Okay.

Waters: No. This was actually a fight between the lessee and the building owner.

Q: Right. But the building itself—

Waters: The building itself, that was not litigated.

Q: Okay. But that was separately designated.

Waters: Yes.

Q: And the owner was very positive about the designation of the building overall.

Waters: Right. Yes.

Q: So just the owner was fighting the designation of the interior of the building.

Waters: Yes. It was the fight between the restaurant owner and the building owner. But it was a harder sell because it was very modern. So it was harder to get the court to buy it, but they ultimately did. I'd like to talk about Penn Central a little bit and the litigation that's resulted from it.

Q: I would love for you to do that. But just to close the loop on the Four Seasons, which I think is such a fascinating case, you were able to achieve a five to zero victory, correct?

Waters: Yes.

Q: In the New York Court of Appeals.

Waters: Yes. Yes. Right.

Q: Which is a pretty resounding [laughs] victory.

Waters: Yes, it was. And I think the—actually, what that case is generally cited for now is that they [Court of Appeals] did not have to defer to—customarily open to the public is a term that they don't have to defer to Commission on their interpretations that the court can decide on their own because those are terms of common usage. They did not have to defer to the Commission on those terms because they are just words that generally people use. But, yes, and I think it's—I think that I get jaded in my career. That's why I wanted to start out with what the standard is on the burden of proof, in terms of arbitrary and capricious, because my career at the Law Department I say that I won ninety percent of my cases because the standard is arbitrary and capricious and it is such an easy standard for me to win on. If the agency does a good job in building a record, it is very easy to win. Usually when you work with a city agency, if you know a city agency is really screwing up, then you tell them to back off and not go ahead. In my

experience the Commission really doesn't screw up, and if you think that they are doing something that is going to be wrong, that their lawyer would give them advice along the way that they wouldn't do it, so that's why we would generally win.

Q: It still must have been gratifying—

Waters: Always. Always. Sure.

Q: —to achieve a five-oh victory [laughs].

Waters: It's always gratifying, yes. But, I mean, you know, the Landmarks was my favorite client. It is always gratifying to have a good win with them.

Q: Yes. If I could go back, before we get to Grand Central, and this is just to fill a gap for people who might be listening to your interview at a future point who don't understand how the calendaring process works.

Waters: Oh, sure. Okay.

Q: Could you explain a little bit about that? Because I know it is often a hotly debated issue in New York City landmark circles or real estate development circles. But what is calendaring, why is it significant, how does it work?

Waters: [Pause] Oh, I mean, we had litigation on this. Yes.

Q: It's unique as far as I know to New York City's Landmarks Law.

Waters: Oh, yes, we've had cases on this where people have enlisted us to—I didn't look at those cases or remember. People have mandamus'd us to try and make us calendar a building.

Q: What does calendaring mean—

Waters: Calendaring means—

Q: —to a layperson?

Waters: —calendaring means that the—I can't remember the exact—whether it's—there's a committee. I'm trying to remember these cases now. There is a committee, the chair, and forgive me if I'm not exactly right, I think it's—oh, see I'm not—there's exact verbiage on this.

Q: Yes. No. I guess I'm just looking for a general explanation of what it is.

Waters: Yes, there's—because I'm saying because we were mandamus'd on this, and there was litigation on this and I did the litigation, and I don't remember exactly. There is a group of people who get together, I think it's a chair and some staff, and they decide that a building is going to be calendared.

Q: And is this done after—is it called a Request for Nomination?

Waters: Yes, it's an RFE. It's a Request for Evaluation.

Q: Evaluation. Okay. So a Request for Evaluation is filed.

Waters: That's right. So either someone within the Landmarks itself, or someone from the outside, suggests that a building should be calendared.

Q: That means that it is put on an agenda.

Waters: That means that it's put on a public agenda.

Q: Okay. For potential consideration as a landmark.

Waters: Yes, as potential consideration.

Q: What is the effect of calendaring in terms of historic preservation?

Waters: I think—I'm going to say I forgot. I'm sorry. I think there is a timeframe. And I'm sorry because it has been a long time.

Q: No, no.

Waters: I think there's a timeframe within which then they have to vote.

Q: But holding that aside—

Waters: The legalities. What it means is that then—well, as I said, yes, what I told you earlier, then during that period, once it is calendared no demolition permit can be issued for forty days. So that means that this building is protected. But what it means is that, once it is calendared, then the Commission staff would look into, seriously, whether the building should be designated. They would look into historical research. They would seriously consider—I don't know whether—I guess they would send notice to the building owner. They would seriously put time and effort into whether the building should be designated.

Q: But a key component of it is this disallowance of demolition—

Waters: Yes.

Q: —for a certain period of time.

Waters: Right.

Q: Okay.

Waters: So I know one of the things that is going on at the Commission right now is there was a backlog of buildings that had been calendared, that had been on there for a number of years. Right now there have been two meetings a week. Yes, they're having an extra meeting a week to consider the backlog of calendared buildings, buildings that have been on the calendar for a number of years. So they are having public—once a building is calendared and the staff looks into it, they have public meetings to consider whether the building should be designated. At the public meetings, people from the public can come forward and testify and talk about the merits of the building or not.

Q: It's such an important concept. I appreciate it.

Waters: See, the trouble is I don't know what your reader knows and what they don't know.

Q: I think your explanation is very helpful.

Waters: Yes. No. But like I said, the problem is that we have been mandamus'd regarding this because—and I wish I could remember more about the lawsuit—there are so many public groups that feel that their building, or their neighborhood, is worthy of consideration. The Landmarks staff is so small that everybody wants to be calendared. The Landmarks has to have the discretion to decide what to calendar.

So, for example, just on a personal basis, I live in Flatbush and it has eleven neighborhoods and five of them are designated as landmarks but the other six aren't. I am working with the other six for us to be considered. We want to be calendared, and Landmarks is looking into it but there are dozens and dozens of other—maybe, I don't know how many other neighborhoods in the city want to be calendared and be considered as historic districts, and calendaring a historic district is a huge undertaking. They have to take photographs and do research on every single building in the historic district. It takes years after calendaring a historic district for it to get fully heard and come up for a vote. So they don't calendar a historic district lightly. They would only do it after they have got a certain amount of initial research on it to determine whether it is going to float.

They would not, for example, calendar a historic district unless they had enough initial research to determine that they felt that it was worth going forward on. The same with an individual landmark, they wouldn't want to calendar it unless they felt that it was significant and that it was likely to proceed. They have so many buildings that people feel are significant and should be considered. Sometimes they do research and they feel that the building is not significant. But that doesn't mean that the neighbors or the people who like a building disagree with them, and it is up to the Commission to decide whether the building should or shouldn't be calendared. It's completely within their discretion. I think I have a case that says that actually, that says that it is completely up to them. It's within their discretion whether they should calendar a building or not.

Q: Thank you for explaining that.

Waters: Okay.

Q: I appreciate it.

Waters: Okay.

Q: Now, you mentioned that you wanted to talk a little bit about my favorite case.

Waters: Grand Central. Yes. Well, I was just going to talk about TDRs before we get into Grand Central. Should I talk about the Transferrable Development Rights next?

Q: Yes, please do.

Waters: Okay. So I don't know what other jurisdictions have. So transferrable development rights or air rights are for an area that is available to be developed over a property, over a landmark, that can't be developed because a landmark is there. In New York City, as I said before, they are only available to be transferred to an adjacent lot catty-corner or across the street. In New York City, they are important because they are a constitutional safety valve. If your building is landmarked you should be able to transfer your development rights.

Q: Do you have any insight on why the transfer of development rights zone was drawn so tightly in New York City?

Waters: Well, see, this is what I was going to talk about a little bit. Originally, we only had—the only sub district we had with free flowing air rights was South Street Seaport, and that was the only place where air rights could go within a sub district. It has to do with City Planning and what City Planning wanted. As I said, when we did the theater litigation, City Planning did not want to give the theater owners the ability to transfer their air rights to a greater area. But after we won the case, and they didn't have to do it, the City Planning decided to let the theater owners transfer their development rights and gave the theater owners a theater sub district, where they could transfer their air rights. So now, there is a sub district for theater air rights where they can transfer them to a greater area. It really comes down to what City Planning is willing to do.

Also, in response to Penn Central, which was an important case, what they did was—so there was \$1.7 million square feet of transferrable developments that were Penn Central. In response to that, the City has always been concerned about Penn Central. So originally they came up with a provision where the air rights from Grand Central—when Grand Central was first built they owned twenty-four adjacent lots north of the terminal. So City Planning said, “We'll let the air rights from Grand Central to the twenty-four adjacent lots north of the terminal.” It was called the Humpty Dumpty Zoning Provision. So they said you can transfer the air rights to those twenty-four lots, which were all adjacent. So they sort of fit the twenty-four adjacent lots, because they were adjacent lots in common ownership.

But by the time the Penn Central case was litigated, Grand Central was in bankruptcy and the the provision of them being adjacent lots in common ownership had been broken. The chain of common ownership had been broken. So when the Penn Central court talks about that there was

no unconstitutional taking in Penn Central, because there were eight adjacent lots to which the air rights could be sent to, it was wrong. We had told the courts during the litigation that there were eight adjacent lots during the state court litigation. But by the time it got to the Supreme Court there weren't eight adjacent lots.

Q: Because the—

Waters: The lots had been sold off in bankruptcy.

Q: And there was a break in the chain of ownership.

Waters: Yes. Right. But, anyway, as—so after the Penn Central litigation, there was this other case, that I want to talk about, this 383 Madison litigation. As a result of that litigation, we created a Grand Central sub district in which the air rights from Grand Central could go to a greater area. It's called the Grand Central sub district, in which the air rights from Grand Central can go to that. Now we have created something called the Grand—what did we call it now? The Vanderbilt Corridor Zoning. We have allowed the Grand Central air rights to go to five sites west of the terminal.

So we have always gone way overboard to allow the Grand Central Terminal air rights to go someplace, because there are so many of them and because of the Grand Central litigation, because we are cognizant of the fact that there are so many of the air rights and that they should go somewhere.

When you were talking about the fact about why is the city—City Planning had been historically not favorable to allowing TDRs sub districts generally. City Planning felt that the burden of TDRs, should be close to the benefits of them, so that a neighborhood shouldn't be burdened by having a lot of tall buildings if it wasn't going to have the benefit of the low rise Landmark building, and that it wasn't fair to have it blocks away. It was a basic zoning concept that it felt.

Q: So if you had the benefit you also had to bear the burden.

Waters: Right. Of the tall building. The low building should be close to the tall building. So that's why generally, City Planning was not in favor of them. So it had to have an overriding zoning, an important zoning concept. So it felt that the importance of Grand Central and the theater district that it was important to allow a subdistrict.

So, anyway, in Grand Central the basic reason that they found no unconstitutional taking was because the terminal could continue to be used as a terminal, and because the terminal air rights could be transferred to eight sites.

So in 1991, there was this litigation involving 383 Madison, which was a building that wanted to become seventy-four stories, which would have been the fourth tallest building in the city. They wanted to take eight hundred thousand TDRs from the terminal, and wanted it to be thirty-three FAR, when fifteen FAR was permitted. Even though, as I said, the adjacency had been broken by

the bankruptcy, they said that they were going to have the air rights go underground through the railroad tracks. I'm not kidding. [Laughter] I'm not kidding.

Q: It sort of defies logic to have air rights going underground.

Water: Well, this was a major case. I'm not kidding. They were going to have the air rights go subsurface.

Q: That's fascinating. I didn't know about this.

Water: Yes, it was fascinating. I don't know if it was reported. It was a really big case. It was in 1991. It was because it involved eight hundred square feet of TDRS from the terminal. It was a major constitutional challenge. People were concerned about it. But it was in '91, so it was a while ago.

Anyway, the court said that it did not find this a viable way for TDRs to be transferred, and did not find that this was a valid way for the air rights to go. But, anyway, 383 Madison wound up being built using air rights with a sub district, which was created as a result of this litigation.

So now, there is a new litigation that came this summer, called Midtown TDR Ventures v. the City of New York. In this case, what happened—I don't know if you know about this case.

Q: Yes, I'm aware of it. But, please, share what you know.

Waters: The air rights from the terminal have now been completely segregated. They are not owned by the person who—I'm not positive. I think there's like a hundred year lease on the terminal, or maybe a two hundred year lease on the terminal, but the air rights are completely segregated and they're owned by an entity. I guess it's Midtown TDR Ventures, that's the name of it. And it owns 1.2 million TDRs. They have a lease on the terminal and they own the TDRs. But as part of their lease they can't build over the terminal. They're suing the City because there's a new rezoning provision. Oh, what is it called? Oh, it's the Vanderbilt Sub District, and it allows building on five sites west of the terminal. The Vanderbilt Corridor Sub District, it allows buildings to be built on five sites west of the terminal at a much greater density than they have allowed under the Grand Central sub district. But it doesn't only allow using terminal TDRs. You can build without using terminal TDRs if you build transportation benefits.

So the owners of the building that is going up, negotiated with the owner of the terminal TDRs and they said that the owners of the terminal TDRs wanted to charge too much for them and that the owners of the terminal TDRs were negotiating in bad faith. For example, I know that the last time that the air rights were sold for the terminal they were sold for like sixty dollars a square foot. In this lawsuit the plaintiffs are saying that the air rights are worth eight hundred and eighty dollars a square foot. So this raises the question of, does the owner of the air rights have to negotiate in good faith.

Q: But it also sounds like an owner wouldn't even need to purchase TDRs provided, that it provides the transportation benefits—

Waters: Yes.

Q: —that the zoning law has created as an enticement to allow for extra height.

Waters: Right. So they're saying that the City, by creating a vehicle to allow builders to build next to the terminal in a mechanism not by utilizing terminal TDRs, is an unconstitutional taking of their ability to sell their terminal TDRs.

Q: Even though there is no guarantee anywhere that one can sell TDRs, apart from the program that allows for it. There is no requirement that someone buy them.

Waters: They're saying that this is an unconstitutional taking of their ability to sell terminal TDRs, and they want \$1.3 billion. And this is a failure of their ability to transfer their 1.2 million TDRs. David Boies is their lawyer. And so—

Q: Aren't they also alleging that the property owner, who plans to build a tower on Vanderbilt Avenue, was the only potential buyer of the TDRs, or something to that effect?

Waters: Well, I think they're saying that of the five sites this is the only that it is the only current soft site.

Q: Okay.

Waters: Five hundred thousand of the terminals, 1.7 TDRs, have already been transferred. So does the constitution mandate that the terminal owners have a right to have every one of their TDRs be transferred. I would say, no. And the Court of Appeals in Penn Central in the state court said that—when they were talking about the constitutionality they talked about the ability to transfer some of the air rights. So I'm not litigating this case, which I feel really bad about, because I'm not there anymore. But I would argue, and I would presume that the City would argue, that there is no right to transfer all of the terminal's 1.7 million TDRs. The fact that they have transferred five hundred thousand already is probably constitutionally sufficient. The fact that they have segregated their ability—the terminal can continue to be a terminal, which was the main point of Penn Central. So the terminal can continue to be used as a terminal, so there is no taking.

Q: Just like it's always been.

Waters: Yes, that it always has. They have negated their ability to apply to the Commission to build over the terminal because they've given that away in their lease.

Q: In the lease. And presumably that loss of development rights would be reflected in the price they negotiated freely in the lease.

Waters: Yes. And they can still use the sub district. They are not prohibited from using the sub district and potentially there are four other sites in this Vanderbilt sub district, and there are

potentially other sites in the sub district. So there is no unconstitutional taking. The five hundred thousand that had been transferred, have been transferred over—I don't know when the sub district was put in, I can't remember right now—but it's been over twenty years. So in the next twenty or thirty years there will be other soft sites for them to transfer their TDRs to. So I would argue that there is no unconstitutional taking.

Q: Grand Central is a little bit like the gift that keeps on giving the preservation law.

Waters: Yes. Yes. Yes.

Q: Grand Central the case. Yes.

Waters: Yes. I mean, it's like—right, it keeps on giving. It's like City and Suburban. So I mean I presume that they will argue that they are entitled to every one of their TDRs. So do we have time for me to talk about the affirmative cases that we brought?

Q: Absolutely. I would love to hear about those.

Waters: Okay. Oh, wait, just before we go I just want to talk about two cases where we've turned down designating buildings and people have brought lawsuits. So these are cases where people have challenged us. So the Planetarium, we—I don't know, you're not from New York City—we allowed the old Planetarium to be torn down and people brought a lawsuit against that. The new Planetarium, which is a very modern—

Q: The Rose Planetarium.

Waters: Yes, the Rose Planetarium. People weren't happy about that but that the Commission felt that the old Planetarium was not distinguished, was not architecturally significant, so we allowed that to be torn down. That was challenged and it was upheld.

And then the mosque at Ground Zero, which was a building which—I don't remember what year it was built. It was sort of a cast iron building. Actually, it looked very much like another building, which was on the next block, which could have been—I think under similar circumstances maybe the Commission might have not allowed it to be torn down. But I think that very few people in New York City knew that the mosque at Ground Zero was a landmarks case.

Q: But just a clarification, I've reviewed some *New York Times* articles about the debate following 9/11, and I know that there was a proposal to build a mosque at the site that was, what, two blocks from the Ground Zero location. What was the building being used for prior to the proposal to develop the mosque or to build the mosque?

Waters: Well, I mean, it was next to a Burlington Coat Factory and it was sort of empty for a long time after September eleventh. It was actually next to my office building. It was empty for a long time, so it was actually sort of being used for a mosque—

Q: Okay.

Waters: —when I was there. But before that, it was probably—I don't know.

Q: So there was an existing use as a mosque at the time the proposal came forward.

Waters: It was a mosque for the last couple of years I'd say. I don't remember what it was before then. I don't think that actually it is going to be a mosque. I mean, it's being torn down in conjunction with like half the block. I think it is going to be maybe an office building or a condo building now with maybe a Muslim community center in it. So I think it was always sort of over sold as being a mosque.

Q: This case was litigated by a firefighter, correct?

Waters: Yes. So it was dismissed on the grounds of standing. The Landmarks merits, as whether it was an architecturally significant building, was never reached by the court because it was found that he had no particular standing to bring the case. So there was just this huge rhetoric in the city about First Amendment and religious freedom and everything. So nobody ever really understood that it was a Landmarks case. We had a really good judge, he really understood. I kept saying and he kept saying this is a Landmarks case, and I had a number of other Landmarks cases in front of him, so he really understood that it was a Landmarks case. His decision is really a standing decision so he really understood that.

Q: I'm also unclear, just in my research into the issue, why the plaintiff brought the lawsuit.

Were local advocacy groups backing him, supporting him?

Waters: Yes. Yes.

Q: Okay.

Waters: It was sort of a publicity stunt. It was really—yes.

Q: And what was the argument in favor of historic designation, if you recall? The reports I read about it don't elaborate on the reason for—

Waters: I'm going to say, just personally, there was a building half a block away that looked just like it that had been designated.

Q: Was this kind of a turn of century office building or?

Waters: No. It was—it looked like a typical building in TriBeCa. It was a cast iron, four story, with a—like you'd see maybe in SoHo, 1890s maybe.

Q: Okay.

Waters: You don't know the city, I was going to say but if you—

Q: I do. I lived here for a number of years.

Waters: Oh. I was going to say it's where there is a sporting goods store in Lower Manhattan. I forget what it is called. It looked exactly like that building. So I think, without all the rhetoric, the Commission might have gone a different way. The mayor was very, very adamant that the building be—that the mosque go ahead.

Q: With its development plans.

Waters: Yes.

Q: Yes.

Waters: I think sometimes, that gets through to the chair and that gets through to the Commission.

Q: Yes. You mentioned Mayor Bloomberg's involvement in this particular issue. During your time as an attorney working on these issues, is there a mayor who stands out to you as being a preservation advocate?

Waters: Well, I think yes. Well, Giuliani, nothing happened under Giuliani. He just said, nothing was going to happen without the building owner's permission. I don't think I litigated one case

under the Giuliani administration, except The Wall, which I mentioned. That was the only case in four years. I think that Dinkins just let things be. During that time, there was, I think, a lot of real estate development. So when there is a lot of real estate development there is always a lot of Landmark litigation because people want to save buildings. There are a lot of people who want buildings to be saved, to save their views. There are a lot of people who push the Commission just to save buildings for non-architectural reasons, for purely personal reasons. It's usually to save views in New York City or to save their—yes, it's usually to save their views.

So Dinkins was pretty much, Let things be. Bloomberg was a good mayor. I really liked him. I liked him the best of all the mayors I've served under. He appointed people and let them be. He let them do what they wanted to do. But all of them—I'd say everybody—it's the real world. People respond to politics and respond to City Hall when it's time. It's just the way it is. So what I'm saying is, on a pure architectural basis, I think the building the mosque was in could have gone the other way if things were different. But that's the way it was.

Q: Yes, that's a complicated—

Waters: It was a complicated—

Q: —time.

Waters: Yes. Right. Right.

Q: Yes.

Waters: It is a complicated time, as we know, right.

Q: Yes and still is.

Waters: Yes. Right.

Q: Well, thank you for your perspective on how mayors have shaped preservation here. I appreciate that.

Waters: So one of the things that happened somewhere along the line, I don't remember when, the Landmarks Law got jurisdiction to bring—well, I guess it's always been the building owner's duty to maintain the Landmark building. There was a provision put in the Landmarks Laws that the Law Department had the ability to bring affirmative cases to sue building owners for their failure to maintain. As part of that, we could sue building owners for civil penalty of five thousand dollars a day. So that was a big incentive to get people to try and get them to maintain.

I think the first one I was involved with was a restaurant called Sushisamba, which was in the Village. They had this rooftop restaurant and they put plastic over it but it looked like a tennis bubble. It was bizarre. It was really ugly, really, really ugly. So we brought affirmative action against them to try to get them to take it down. They had this really sleazy lawyer.

But anyway, we finally got half a million dollars from them. I don't know how we did it, but one of the things that we did over the years was to use other laws to get people to help Landmarks. We've used other laws like the building law, like I said parts of the provisions of the City Planning code, or the Department of Building law. Here we used the Department of Consumer Affairs. They wanted a sidewalk permit for a café and we weren't going to give them a sidewalk permit unless they got rid of the bubble on top of the roof. So they did and we got half a million in civil penalties, which was really a lot.

And then—

Q: What's the name of that case?

Waters: Sushi samba. I can't remember what it's really called [O'Porto]. That's what the restaurant was called. I don't think there are any reported decisions on that. Then there's The Wall, which there was a recorded decision on. It's a sculpture. It's in SoHo. It's on Houston and West Broadway. Maybe you've seen it.

Q: I've been by that corner many times.

Waters: I don't know if I brought pictures down. It's a wall and it's got prongs sticking out of it.

Q: Yes, I've seen it.

Waters: Yes. It's called Gateway to SoHo, and it was in bad shape when we brought a civil action to get them to maintain it. They wanted to put art on it or they wanted to put advertising on it. It wound up in federal court and it was put up by Creative Times, which was this non-profit group. They put up sculptures and murals on walls in the city in the '60s. Anyway, we had this whole big discussion about who owned the sculpture. It was bizarre. It turned out that this judge we had in federal court—thank god I can't think of her name—she ruled that City Walls, which was a non-existent non-profit group, owned it. And therefore it would be a taking if we ordered them to maintain it, because it wasn't owned by them even though it was on the side of their building. But they had earlier admitted that they owned it. So, anyway, we settled it. They wound up putting an ad on the bottom, but they agreed to keep the sculpture and moved it up and put the ads underneath.

Q: Was there a free exercise claim there?

Waters: Yes. Yes. I'm trying to remember now. They said that—that's right. That was what made it interesting. They said that it was compelled speech. That we were compelling them to speak.

Q: Interesting.

Waters: That this was not speech that they wanted or liked. They did not like the speech, the artist Forrest Myers. I've never worked with an artist before. He was very interesting, trust me.

Q: There's a case out of Charleston, South Carolina, called—it was decided in federal court, called *Burke v. the City of Charleston*. It's often cited as an artist's rights case. Burke, an artist who wanted to paint a mural on the side of a historic building, was told by the city's preservation commission that he could not do that. The artist brought a lawsuit arguing that the local preservation law was unconstitutionally infringing on his right to—

Waters: Speech.

Q: —speech. Ultimately, the federal court rejected the claim and upheld the city's law for regulating time, place and manner. But it sounds very similar.

Waters: Yes. I wish I had known about it. Yes.

Q: It sounds very similar.

Waters: Yes. The judge ultimately—I don't think she ruled on compelled speech, or if she did I would have remembered it. Oh, I'm trying to remember now. It's all so hard.

Q: Thank you for telling me about that.

Waters: I don't think she—it was in federal court, too. I'm trying to remember. I'm trying to remember what the case was called because it's not called *The Wall*. Oh, Mark would remember what it was called.

Q: We can go back and look that up.

Waters: Yes. But it was important to us that the sculpture was permanent, that it got to stay permanently. That was the important thing for us, was that the sculpture got to stay.

Then we did the Windermere, which is this big building. It was an old woman's hotel. It is on 57th and 9th and was this huge half-long-block building, which had old tenants in it. It was an SRO [Single Room Occupancy], but was owned by this absentee landlord in Japan, and the building was really in bad shape. We wanted them to maintain it.

In most of these cases, in New York City real estate is so expensive, that if we bring a Failure to Maintain usually the building owners are either crazy or are, like, I don't know, dead, or there has got to be some reason that they are not maintaining this building. So in this case, it was an absentee. Mr. Yamagato, he was in Japan and he was just completely ignoring this building, which was just worth millions and millions of dollars. So ultimately, he sold the building to someone else who turned out to be slightly off, too.

We had a hearing on whether the building should be torn down and the judge had a—we had experts, they had experts, and we finally got them to agree that the building could be shored and braced. I've since learned that if you hire anybody they can say any building can be saved as long as you pay enough money. Anybody will say that as long as you pay enough money a building can be saved. But we got \$1.1 million in penalties, which was a huge amount of money.

We got an agreement for them to restore the building, and they're still working on it. They're going to make it a boutique hotel. But you get these agreements where they're going to restore the building and it goes on and on and on. You get these compliance agreements, which go on.

Then we had Staten Island City Hall in which the building was so bad that by the time we got to it, it had to be torn down. The Department of Buildings tore it down, but we got the deed to the property. We can get the fair market value of a property as part of the settlement. As part of the Landmarks Law, we can get the fair market value of the property. So it's an incentive for the building owner not to let the building be demolished by neglect.

So we got the deed to the property and a hundred thousand dollars. The property went to the City for senior citizen housing, which was we thought a good result.

Q: That's very creative.

Waters: Yes. I was happy with that. The last one that we are doing is the Manee-Seguine House, which is in Staten Island. It's the fourth oldest house in the city. It's like, I don't know, in the 1680s or something. It's a wood frame house and it's just really in bad shape, and the building owner is just doing nothing to it. What's interesting about this is that we've made these affirmative cases up. There was no guidance at all. The Law Department has just really worked with the Landmarks in terms of how to do it. We had to—you know, the building has to be in good repair but what is good repair. So we tell the judge we want the building to be in good repair. So the judge says, "What's in good repair?" So we figured out that we had the Landmarks

staff come up with a report. We had an architect at Landmarks go through the building and come up with a detailed report on what needs to be fixed and is good repair. So then we get the judge to order them to do what's in the Landmarks' report.

So then we got a judge to—we only had one decision about these cases at all but we got the judge to order that—it was the Landmarks report. So we got the judge to order that everything in the Landmarks report be done. So that's now our precedent, that we can get a building owner to repair—that Landmarks do that. The judge said that the report should be held to the arbitrary and capricious standard. So now that's great, because now we have the court saying that Landmarks determines that what has to be done is done.

But then we get to—

Q: Just for context, the Segeen or Segine?

Waters: Seguine, S-E-G-U-I-N-E.

Q: And this was a house.

Waters: Is a house.

Q: Is a house. Sorry.

Waters: In Staten Island.

Q: In Staten Island where it was part of an oyster farming operation.

Waters: Oh, you know that. Yes, you know that?

Q: A little bit about that. I was trying to help set the context for listeners.

Waters: Oh, yes, Yes. We got one of the commissioners actually to go through the house with us on a tour. It's really amazing. He says that the techniques of building this house are just—he said it should be used as a model of building techniques. It's got some of the oldest woodcraft in the city. He said he hasn't seen anything like it anywhere in New York State.

Q: Yes. It's my understanding it's one of the oldest buildings in the city if not state.

Waters: Yes. Right. Right. I think we figured out it's like the fourth oldest building in the city.

Q: Where do things stand in all with that project, or the issue?

Waters: Well, that's what I was going to talk about was that the judge was—we supposedly were going to have a trial. We were in discovery and the building owner says that he's not responsible. So they were doing discovery on it.

Q: And he blamed Hurricane Sandy at some point.

Waters: Yes, but that was ridiculous.

Q: Right.

Waters: We showed that that wasn't true. But then he said he's not—they were doing litigation on the piercing the corporate veil. That he is the corporation. That there is no difference between he and the corporation owner. But he says that the building should be torn down, and we say the building shouldn't be torn down. So he wants to have the judge have a hearing on whether the building should be torn down. We say that the issue of whether the building should be torn down is defense that he—he has to go to Landmarks and have a hearing at Landmarks on—he has to make a hardship application at Landmarks and apply for a Certificate of Appropriateness there for a demolition permit. If he applies for a demolition permit at Landmarks, and Landmarks turns him down, then he has to go to the judge and have a hearing and ask the court to determine whether Landmarks' determination was arbitrary and capricious. And he says, no, he gets to have a hearing and have the Staten Island judge determine ab initio whether the building should be torn down. We say, No, that's not the way it should go.

First of all, we have determined never, ever to bring one of these Failure to Maintain cases again in any borough but Manhattan, because the judges in the outer boroughs are terrible. We do not want a judge out there to have a hearing between their experts and our experts on whether the building should be torn down, because it will be a nightmare. Then we'll have some state

Supreme Court judge decide whether the building should be torn down when that is ultimately a question only for Landmarks.

This case is going to be very important because we really strongly believe only Landmarks can determine whether the building should be torn down. We have told the judge that, and I don't know what they are going to do procedurally. When I last left them, I said, "You have to somehow get the judge to rule on that," How do we procedurally get it to the appellate division if he denies that motion, so that we make sure that Landmarks is the person who decides who tears the building down and not leave it up to State Supreme Court judges? Because if we leave it up to them we're in terrible shape. So this case can be important for that legal precedent in the long run.

Q: Yes. I think you bring up an important point that the Commission, or attorneys, have to be strategic—

Waters: Yes.

Q: —about which cases to pick. Frankly I have never really considered how outcomes could change or vary from borough to borough until you mentioned this, which raises, I think, an important question.

Waters: Yes. Well, I mean, it's very—Staten Island is the worst. I mean, they're absolutely the worst. It's unfortunate some of these older houses are in Staten Island or Queens. These old

wood frame houses are in those boroughs. They are the boroughs that are the least sympathetic to preservation. As I said, especially with these Failure to Maintain, we have invented how to do these cases in the last I'd say twenty years. We are making it up as we go along. I mean literally making it up as we go along. I mean all the time we are trying to figure out strategically how do we do this, what do we do. This Seguire house is going to be very important and, I don't know, that's where I left it.

Q: Yes. I mean, you see—

Waters: So I feel bad. I'm happy to be retired. When I left I said—you know, I promised Mark that I would finish the City and Suburban case, because it was the first but not—I had done St. Vincent's, which we didn't even talk about but it was a non-profit hardship case.

Q: Yes. About the hospital.

Waters: But that's—yes, it was a hospital, but that got settled.

Q: Right.

Waters: But the City and Suburban was a profit hardship case, and I promised Mark I would do that, so I did that. But, I mean, I really miss not doing the new air rights case involving Penn Central and I miss not finishing the Manee-Seguire case. But you've got to retire sometime.

Q: A lawyer's work is never done.

Waters: Yes, I know.

Q: These preservation cases have such long tails don't they.

Waters: Yes. Yes, they really do. This Windermere case that I'm talking about, there was an attorney from HPD [Housing Preservation and Development] who was working with tenancy issues. She worked on that case for thirty years. But, I mean, these are great cases. That was a great life. I really enjoyed doing them.

Q: Yes. I appreciate you telling me about these cases. I've learned a lot from you in hearing about them. If you could make any change to the Landmarks Law, what would it be?

Waters: Oh, gee.

Q: That would make an attorney's life easier.

Waters: Oh, I don't know. I guess I'd have to think about it. Oh, I think I would have to give it a lot more thought.

Q: Yes. That's fair. [Laughs] Fair enough. Do you think that preservation in New York is heading in the right direction as we sit here today?

Waters: I don't think this administration particularly is pro preservation. I mean, I wish—I mean, I've always wished that the Commission staff was double.

Q: Yes, I don't think people—I think there is often a misperception that the Commission has a gigantic staff relative to the workload that it has.

Waters: Right.

Q: I've certainly learned from Mark Silberman what a workhorse the Commission is.

Waters: I mean considering—you know, people don't understand that the workload is divided between doing preservation and issuing violations. They have two attorneys. One who does the violations, and Mark supposedly does everything else, plus the staff. The staff is so wonderful. The commissioners don't get paid. I wish they got paid. I wish there were more staff.

Q: I think that would improve any Landmarks Law [laughs].

Waters: Yes. When you think about it, the BSA, the Board of Standards and Appeal, which does variances, they're full-time people, they get paid. I don't know why or how the Commission got to be second-class that they don't get paid. It's always been a problem in terms of hiring people because they get conflicted out of their work from their office in terms of them being able to do work at the Commission, which is problematic.

Q: Yes. You know, I'm not sure if this has been your experience, but I've been thinking a lot lately about how preservation is often accused of being a movement of, no, which I don't agree with.

Waters: No, what? Means of—?

Q: Means of being negative and being a field of laws just designed to tell people no, that you cannot do X or Y or Z with your property and ignoring all of the public benefit that flows from historic resource protection. But my point I was trying to make, not very artfully, is that many times zoning commissions or planning commissions make decisions that affect property rights that the public often attribute to preservation commissions. They fail to make this distinction between land use regulation at a zoning commission level and what a preservation commission might decide.

Waters: See I always tell people—people are always unhappy if they can't change windows and stuff like that. I always tell people that it's proven, especially in New York City, that if you are in the historic district your land values go up considerably. I think people understand that, although when they are in the historic district they are unhappy that they have to go through the procedures. Being in a neighborhood that wants to become a historic district, I think that people in New York City do understand that there are benefits to being in historic districts.

Maybe I'm prejudice because I don't see it as a thing where people view it as a no. Maybe I'm too close to it to view it that way. I know that people here have wanted it to be a historic district. We want to be a historic district. There are some people that don't. But maybe I'm too close to it because I've been involved with it for so long.

Q: Yes. No, I share your opinion. But we were talking, before the interview, about how hard this work can be. I just often encounter accusations.

Waters: Oh, sure, intelligent—yes.

Q: Preservationists are trying to stop progress.

Waters: Sure. Yes, certainly, within the real estate community. When I talked about the Real Estate Board wanting to get rid of Dorothy Miner because she was too pro preservation. Well, what do they expect the Landmarks Preservation Commission to be, other than a group who are going to want to preserve buildings? I mean, what was her sin that she wanted to preserve buildings? She should get fired for that?

Q: That was her job.

Waters: Yes, that was her job [laughs]. I mean what do they want the Commission to do?

Q: Right [laughs].

Waters: I know that over the years certain people have wanted the chair of the Commission not to be pro preservation, so.

Q: Yes. I have a couple of final questions, Virginia. One relates to where you think new battles in preservation might lie. You've shared some really interesting accounts of the TD—transfer of development rights work that you have done, which is very particular to New York City. Do you think that there is another area of law or policy to be developed in the preservation world or where do you see maybe the next wave of litigation coming from?

Waters: I haven't been in touch with City Planning for a while.

Q: You mentioned that the current Mayor, de Blasio, has taken a different tact from Mayor Bloomberg just based on your experience.

Waters: No, I mean, everyone knows that he is not really for preservation. He's generally not pro preservation, so what the Commission will do is generally—it depends upon their staff and it depends upon development. Preservation generally responds to development. So if there is going to be a lot of development, then people respond by saying, "Well, let's landmark it so we don't get it developed." So I don't know whether the mayor's new push towards development, which includes affordable housing, is going to result in a preservation push. Because I think why he isn't pro preservation, because I think he thinks it's anti development, which I don't necessarily think that's true.

Q: Yes. Yes, that's why I wanted to ask the question, because I know when he came into office there was a lot of talk about affordable housing policy and in my mind—I mean I don't live in New York anymore—the question arose. Will there be this sort of wave of challenges that arise involving affordable housing projects? It just raised a question in my mind and I wasn't sure how that was playing out here. Maybe it's too early to tell.

Waters: Yes, I think he's having a very hard time getting affordable housing through. I was on the Law Department's committee about affordable housing but he's having a hard time with his affordable housing plan. I don't know if he's even going to get it through. But I think it is going to create a lot of density. I don't know if it's going to affect preservation, whether it's going to impact on neighborhoods for pushes for preservation.

Q: The last question is whether—I was asked to ask you this—is whether you have maintained a file or archives or papers over time during your work that relate to preservation and preservation law.

Waters: Oh, I had a drawer [laughs].

Q: Do you still have your archives?

Waters: Do I have my drawer?

Q: [Laughs]

Waters: [Laughs] Mark came and looked in my drawer and then—my drawer consisted of the memo and the answer from every case that I worked on. Then I don't know whether a woman in my office still has it. I don't know.

Q: Yes. Yes. Well, are there any things you would like to add to the conversation?

Waters: I think that's pretty much it. I think that—I was given a great opportunity to get to work on the laws that developed and I hope that—I think that, no matter who is mayor, things will progress. I think that there is a future for the city. I was talking to Frank Moralee, who writes history books about New York City, and he said there are so many people graduating from the preservation program at Columbia but they can't afford to live in Brooklyn anymore, so they live in Queens. There is a big preservation community in Queens now, whereas nobody was interested in preservation in Queens in the past. Queens has the fewest number of historic districts and designated buildings, because the borough presidents in Queens never were in favor of designations. But he says now there is a growing preservation group in Queens because that's where people graduating from the program are living.

Q: From Pratt [Institute]?

Waters: No. From the preservation program, the one you teach at.

Q: Oh, at GSAPP [Graduate School of Architecture, Planning and Preservation] at Columbia.

Waters: Yes.

Q: Oh, sorry. Okay.

Waters: Yes. So I was like, “Oh my god, there is a new preservation group in Queens. This is wonderful.” So, I think that over the years I have just seen that, from the early days with my husband, I remember when he took me to SoHo in the 1970s and he’s like, “Oh, look at these buildings, these cast iron buildings. Some day this neighborhood is really going to be great.” I’m like, “Yeah, right,” you know [laughs]. I think New York is a great place and I think it recognizes its history and it is smart enough now to preserve its history and I think that more and more neighborhoods are recognizing their history and have been doing their best to try to save it. From what I hear, so many groups are trying to get the Commission to designate them as historic districts, if the Commission had the time, the staff or the money. I mean I know that people are complaining that half the city wants to become a historic district. That’s what they say is the problem, that too much of the city wants to become a historic district and the developers are unhappy about that, because then where is the development going to go. But that’s the yin and yang of what’s going on now.

Q: Yes. Well, we’ve certainly ended our interview on a positive note, which is great news to me, especially as New York—and you’re certainly a part of this—celebrate the Fiftieth Anniversary of the Landmarks Law.

Waters: Well, thank you for coming. I've enjoyed this.

Q: Thank you. You'll be hearing from me again.

Waters: Okay.

[END OF SESSION]

Transcriptionist: Jackie Thipthorpe

Session: 2

Interviewee: Virginia Waters

Location: New York, NY

Interviewer: Liz H. Strong (Q1), Anthony Bellov (Q2)

Date: July 11, 2016

Q1: July 11, 2016 [laughs]. We're here interviewing Virginia Waters for the Legal Lens Oral History Project for the New York Preservation Archive Project.

Q2: You are?

Q1: Oh, Liz [H.] Strong.

Q2: I am Anthony Bellov and [claps].

Q1: Great. So our tape is marked. Let's begin at the beginning. During your last interview with Will Cook, you talked about how women were not expected to become lawyers. You could marry a lawyer but you could not become a lawyer.

Waters: That's right.

Q1: At some point during your education that all changed. So tell me a little bit about that what that was like.

Waters: Well, I went to St. Mary's in 1964, which was across the street from Notre Dame, which had not gone co-ed, and I went to Law Day at Notre Dame, myself and another woman, and there were two of us, and probably, I don't know, maybe five hundred guys. The guy who was giving the program he was really flustered. He kept saying gentlemen, and girls I think he called us. I think it was the first time in the history of Notre Dame there had ever been girls at Law Day.

That was the first time I'd ever really seriously thought about going to Law School, but it still wasn't really, really real. Then I worked for two years with the Quakers with the American Friends Service Committee, and we did a protest against Gulf Oil. A lawyer got us proxies to protest at a stockholder's meeting, and that's when I decided to go to Law School. When I went to Law School, I went to St. John's, which was not a very friendly place for women to go. The graduating class when I was there—I think there were five women in the graduating class, and in my class there were ten women, so there were more. But the first day of Law School some guy came up to me and said, "You shouldn't be here, you're taking the place of a guy who should be earning salary for his family." When Hillary Clinton said that the same thing happened to her when she took the LSATs in one of her speeches the other day, and some guy said, "Oh, that never happened." I said to myself, "Yeah that really happened back then."

When I went to Law School, my then husband was going to the Preservation Program at Columbia. St. John's had this really terrible program where everything was mandatory. You had to take torts, and uniform commercial code, and tax. They would never let you take any electives. You just had to take the mandatory classes so that you could pass the bar, and they had

a really high bar ratio. So my husband would come home with his drawings and his—oh, all of the pictures of buildings and all these really interesting things, and I had to do all this really boring Law School stuff. I thought, Why am I studying all this really awful stuff that I hate and he's getting to do all this really interesting stuff? I mean I had always been interested in history—I was a History major—but I had been particularly interested over the years in preservation. When he was in the Preservation Program, we had driven around the city and looked at old buildings and he would talk about neighborhoods that were burgeoning. He would say—we went to SoHo and he'd say, "Look at these cast iron buildings. Some day this is going to be a great neighborhood," and in those days it was terrible. I'd say, "No, that's never going to happen." Or Park Slope, which was nothing in those days. What he was doing was much more interesting to me than a lot of the dry and boring things that I was doing in Law School.

But it was not easy being a woman lawyer in those days. I was practicing in federal district court then, and when I would go to federal district court, I would be the only woman there, especially if I practiced in New Jersey or in Upstate New York, and I would largely be the only woman there. It wasn't easy days, but it was what I wanted to do, so I just did it.

Q1: There are a couple of things I'd like to go back and hear about again. One thing that really struck me was you were talking about—describing driving around these neighborhoods and seeing their potential because of these cast iron buildings. Could you go through that one more time and just say it in full sentences, slowly, that way we will be able to get a good clip out of it.

Waters: Okay. Well, my ex-husband went to preservation school. He had great vision. He could see things that I couldn't see. So he could go to a neighborhood like SoHo—and this in, say 1970, and in those days SoHo was just derelict. The buildings were just in terrible shape. Margot Gayle was just starting to—I don't think she published her book on cast iron architecture yet all. So there would just be these buildings that were in terrible shape. He would look at these buildings and he would say, "Someday this is going to be a great neighborhood." I'd say, "Oh, you've got to be kidding." But indeed, of course, it's become a great neighborhood and he was justified.

So I learned to look at the city through his eyes and to realize that indeed these neighborhoods could be preserved. I started to see that, you know—I hadn't realized yet the legal parts of the preservation, but I started to realize the architectural parts that these buildings were beautiful and could be preserved.

Q1: Okay. Great. Let's move ahead a little bit into your career. You saw in my notes I have some things about demolition by neglect cases, the Penn Central Transportation Company versus New York. Let's talk a little bit about the Penn Central case, because you saw it from two different perspectives that I'd like to compare. One is when you first heard about it at that party, and then the next was when you were doing all the background research for the air rights case. So just tell me a little bit about your perspective on what that case was and why it was important.

Waters: Well, when I was at the party, I was just at the party as a visitor, [I was doing employment discrimination law then], and so people were just very happy, and they were—it

was just a concept that preservation had been upheld by the Supreme Court, which of course I knew as a lawyer was really important. But I don't think I had read the case. I don't think I knew what it really meant. But when I read the transcripts of the decisions, what I really realized was how much work everybody at the Law Department had put into the case, and how hard it was, because in those days the city was—I think you've interviewed Len Koerner and I think he's probably talked about it in greater detail—but the city was on the verge of bankruptcy. Part of what was litigated in that case was the financial wherewithal of the railroad to continue, and so the—I'm sorry, can we start again?

Q1: Sure. Absolutely.

Waters: Okay.

Q1: What part would you like to start at? You pick.

Waters: When I read through the volumes, I think there were four volumes of the transcripts from the litigation, I realized how hard it had been for the city to win, because the city had lost I think at least at the lower court. It was a very heavy burden that the city had to overcome, because the railroad was in bankruptcy, and there was a feeling within the city at that time that the city might not win. When I saw all the hard work that the lawyers had gone into to win the case, it was a feeling—it was different. It was a lawyerly feeling like these people really, really did a great job. It wasn't just a feeling like oh this is a great thing for preservation. It was a feeling like the city has done a really great job.

At that time, the Municipal Arts Society—and maybe not just the Municipal Arts Society, but other people—had tried to step in and say that the Law Department wasn't competent to handle the case, and that some white-shoe firm should come in and take over the case. The corporation counsel at that time said no, the Law Department should handle it. Usually when the case is before the Supreme Court, the corporation counsel himself argues the case. But the corporation counsel felt that Len Koerner could argue the case. He let Len Koerner argue the case, which was a really good decision because Len Koerner is a really great lawyer.

It was also a victory for the city, corporation counsel that we got to argue the case. The case wasn't taken over by a white-shoe firm. It was also a victory for Len Koerner that he got to argue the case that he had done the brief on. I also learned all of that when I went through the volumes.

Q1: When you say the city had a higher burden, do you mean, like, a higher burden of proof—?

Waters: No. I mean it was just that the—it was just very difficult at that time I think for—preservation law was not—first of all, this was the first Supreme Court case on preservation, and Penn Central was indeed in economic trouble. It might have been much easier for a court to decide well, “Penn Central is having a hard time. Let's not let the Landmarks Law overcome Penn Central's economic problems.” We could have seen them weighing that there. They could have said, “Well, let's give Penn Central a break. Let's not let an esthetic cultural law overcome a national railroad's financial trouble.” That's what I mean.

Q1: Yeah. Landmarks in general in case law hadn't really been established.

Waters: No, it hadn't been established at all.

Q1: So tell me about the impact of this case on the field.

Waters: Well, this was it. This was in '84, so this allowed other jurisdictions throughout the country to be able to, if they did not have a Landmarks Law, to write their own Landmarks Law, or if they had their own Landmarks Law, to go ahead and start enforcing it. Up until this stage, up until then, Landmarks had really not designated any buildings if the building owner had not given his permission for. So there really is not very much—Landmarks had not litigated very many cases before Penn Central.

So for the first ten years, there's just really no Landmarks litigation reported at all, because if a building owner did not want to designate his building Landmarks didn't designate it. But after Penn Central was won, then Landmarks felt free to go ahead and start designating buildings without the building owner's permission, because they knew since the law had been upheld by the Supreme Court that they could go ahead and start designating buildings that they felt were important even if the building owner did not want to designate it. It was important for New York City but it was also important for jurisdictions throughout the country, because it established the principle that landmarks laws could be upheld throughout the country. It was a landmark landmark case.

Q1: Yeah [laughs].

Q2: May I interject? We're discussing Grand Central aren't we?

Q1: Yes.

Waters: It's the Grand Central case but the case is called Penn Central, because Penn Central was the owner of the railroad.

Q1: Yeah, it's confusing sometimes.

Q2: Got it. It's okay.

Q1: Yeah. To wrap up that portion of this conversation, I'd love to take you back into the room of that party where you're there with preservationist and you can sort of see their perspective on it first. Could you just paint that scene briefly for us, why you were there, who was in the room?

Waters: Well, I was there with my ex-husband. I think he was either at South Street Seaport or Richmond Town Restoration; he had a number of jobs. Frank Sanchez was there I remember. I don't remember whether he was with the National Trust there. All the people from Landmarks were there. Dorothy Miner was there. I remember Dorothy was there, vividly. She had on this Chinese jacket. It was very vivid. I remember when I first met her she didn't remember meeting me. But I remember telling her that she had on this Chinese jacket and then she—I suddenly

became okay with her and she let me into her realm of friendship once I had that conversation with her.

Everybody in the preservation community—actually, it was a party for something else. I don't know it was just a preservation party. But at that party—I guess it must have been probably at the end of June I think, because that's when most of the Supreme Court cases come down, the major ones. It was just a party for something else. But at the party, the word came down that the case had come down. So then, there was just this major feeling of just massive jubilation.

Q1: Yeah. Let's segue from that and talking about Dorothy Miner, since you brought her up. I'd love to get some thoughts about her on video, because everybody says the most wonderful things about her influence and her personality. Tell me about who she was, what it was like working with her, anything that comes to mind.

Waters: Well, Dorothy was a character. I mean you said people say wonderful things about Dorothy's personality. If people are being honest, I'm sure some people have said some not so wonderful things about her personality, too. Dorothy could be very difficult to work with, too. But she loved preservation more than anything else. She was with the Commission from the very beginning, and she was the only attorney there, and she fought tooth and nail for the Commission. She would do anything for the Landmarks Law.

I don't know if other people have told you that when Rudy Giuliani came in the Real Estate Board said that Dorothy had to be fired, so Dorothy was fired, which was heartbreaking because

her husband had just died. It was just, I mean—I'm going to start tearing up. It was really, really terrible. But she was with the Commission for the first twenty years, so she really was very influential in making sure that the law developed appropriately, that the Commission developed a good record when a case was going to litigation, that the Commissioners were on the right track. She was very, very jealous about cases going to litigation that they be done in the right way. She had the worst handwriting in the Western world, and she would send you over these notes that you could hardly read. If you tell her a brief was due on Friday, she would give you the notes on seven o'clock on Friday, so you had to lie and tell her the brief was due two days before.

Some people found her difficult to work with. I didn't find her difficult to work with, because she did get along with me once she realized that I really loved Landmarks Law and that I was dedicated to it. Once she realized that I had that commitment, she worked with me.

I said earlier in my oral speech that when I came to—I did equal pay for equal [work] litigation for ten years and then I came to the Law Department. Then when I went there, I wanted to do Landmarks litigation. I spoke to Gabe Taussig, my boss, and told him that when Landmarks Law cases came in that I wanted to do them. He said he would do his best, because he tried to pass things around equally. But I sort of like became friends with Dorothy so when cases were sort of coming in I would work with her, and then when they came in I had already worked with them for a while, so then it was already too late. They would come to me so that over the years I would get more and more of them. I would have already gone to the Commission meeting on them. I would say that over the thirty years that I worked there, I handled the majority of the

major Landmarks litigation. That was largely because Dorothy had developed a rapport with me and I worked with her.

I mean I've worked with Mark Silberman, the current Counsel for the last twenty years, and he's really wonderful. But Dorothy just really had a real devotion to the Landmarks Law. It was just almost monomaniacal. It was her life. This was what she did. She was on various committees, and she would go to weekend conferences. This was what she did. She was also very funny and very kind. She knew about my son. She was just a really caring person. But she could be tough. She could be tough. When she had a legal position that she wanted you to argue, and if you disagreed with her, it could be problematic. But she and I had a great relationship and I really missed her when she was gone.

Q1: Moving from there, I mean you're one of the, as you say, you handled the majority of these cases. You're probably one of the only people who asked specifically to work on them. What did it mean to you to be involved in Landmarks cases and how did you see your affect on the city around you?

Waters: Well, I mean, I just really—first of all, I enjoyed working on them because I viewed them as a great way to learn about the city, because whenever you worked on a Landmark case you learned about the history. You learned about the building that you were working on and the history of the building you were working on. So it was always fun for me to get a new case, because it was—unlike the boring stuff that I had to learn in Law School, it was always exciting and interesting to work on one, because you would learn about a particular building.

When I worked on the Broadway theaters, for example, I learned all about the Broadway theaters. Now, whenever I go to the Broadway theater, I sit there and say this Broadway Theater is still here because of the work that I did on it. That's very important for me to know that even after I'm gone the theater will still be there because of the work that I did working for New York City.

I never wanted to work in the for profit world. I always wanted to work in the not-for-profit world. But I think that working in preservation—by its definition you're preserving. So I feel like I've had a role—you know, I'm not an architect, and I'm not a bricks and mortar person. But I've done what I could in terms of making sure that these buildings are here for future generations, which is important to me. It's like an honor I think to have been able to do that.

Q1: Yeah. I'm thinking about driving around with your ex-husband and seeing these buildings, in comparison to what you've just said. Tell me how you've seen neighborhoods change over the years and what your thoughts are on that. The potential of buildings versus seeing the way they are now.

Waters: Well, I obviously think it's great. I mean when I—like there is this sculpture called The Wall on Broadway, West Broadway and Houston. It's The Gateway to SoHo. Oh, I have a picture of it.

Q1: Oh, you did, you brought pictures!

Waters: Anyway. Yeah, I brought a few pictures.

Q2: Which I'll want to shoot before you leave separately.

Q1: Yes.

Waters: Okay. Anyway. Yeah, here it is. I think everyone has seen it. Anyway, I used to pass this building all the time before I knew anything about it, and I'd say, "What is that?" Then I worked on the case, it was an affirmative case, where the building owner wanted to take this sculpture down. We litigated it and we settled it ultimately and got them to leave the sculpture up. But I got to meet the artist, who was Frosty [Forrest] Myers, who was really a hoot, which was really a lot of fun. I also learned about the sculpture and how it was related to the street widening, and relating to the conceptual art of the '60s, and his vision of art, and how it relates to the city.

Obviously when I pass that sculpture I feel like this sculpture is going to be there for all time. It's called The Gateway to SoHo. It's part of SoHo forever, even though SoHo has now changed. It's not necessarily the vision of '60s artists anymore, but at least that sculpture is there. People who drive by even though they might not understand Frosty's conceptual artistic vision, it will always represent that period of New York City art that this was what New York City was in the '60s.

That it was a period of avant-garde artists.

That's just one example of what I feel like when I drive around the city that this one thing that I worked on that reflects how the city has changed and how I've had a part in it.

Q1: Yeah. I'm going to ask just a couple of more questions before we move into shooting some of the photos.

Waters: I don't have that many.

Q1: Oh, that's fine. Let's see, what do you think the future of historic preservation is? How do you think it will change from now on?

Waters: I think that more and more neighborhoods are—I think there are plenty of historic districts. But I think more and more neighborhoods are going to be wanting to be designated. I think that there will be more and more cultural designations. I think Stonewall's recent designation is a reflection of that. I think that that's where it is going. Obviously, the Real Estate Board is very unhappy with more and more neighborhoods getting designated. I know that they're afraid that all of Manhattan will be designated, and I know there is always a yin and yang with where is development going to go if more and more neighborhoods get designated but I think that's where it is going.

Q1: I do want to ask just quickly about the demolition by neglect cases. You said at some point that was also an area of invention that didn't have a lot of grounds.

Waters: Right.

Q1: So talk to me a little bit about inventing things as you went along and solving those kinds of problems.

Waters: Well, yeah, we—demolition by neglect cases pretty much happened under Mark Silberman. It was a provision that was added to the Landmarks Law. I don't remember when, but it was I would say relatively recently within I guess like the last twenty-five years. That's recent.

We didn't know how to exactly prove them. The building had to be maintained in a proper standard. We didn't know what that proper standard was and we didn't know how to get—

Q1: Yes, of course.

Waters: I just want to get the statutory term. Oh, it was duty to maintain. Hold on. You can tell I've been retired for eighteen months.

Q1: You're so organized.

Q2: Funny how fast it goes away.

Waters: Oh. [Pause] Oh, in good repair. Okay.

Q1: Okay. Great. So just start at the top saying demolition by neglect cases were, and then go from there.

Waters: Okay. Demolition by neglect cases—the building owner has the duty to keep the building in good repair. The question of what is good repair—we just couldn't go to a court and say we want the building owner to keep the building in good repair, because a judge doesn't know what good repair is. We came up with a concept of having Landmarks' staff member come up with a report on what good repair is. We had a Landmarks' staff member come up with a detailed report. He would go through a building, go through it floor by floor, brick by brick, and come up with a report saying this is what good repair is. Then it was easy for the judge to say, "Oh, this is what good repair is." He would then issue—we got him then to say, "Okay, building owner, you have to keep this building in good repair according to this report." Then if the building owner didn't follow that report then he would be in contempt.

One of the things we're litigating now, which is very controversial, is this building in Staten Island—the Manee-Seguine House, which is the fourth oldest building in the city—the building owner wants the judge to say whether the building should be torn down or not. Whether the building is in such bad shape whether it has to be torn down or not. We say no, it's not up to the court to decide, it's up to the Landmarks Commission to decide. If the building owner wants to tear it down, he has to go to the Commission and apply to the Commission under the hardship provision, and then the Commission should decide whether the building should be torn down. If the building owner then objects to what the Landmarks Commission decides, he then has to go to the court to decide, and then the court will decide, and that would be determined under an

arbitrary and capricious standard. It's a little convoluted, but we don't want judges deciding whether the building should be torn down. That's not up to the court to decide. We believe it's up to the Landmarks Commission to decide.

Even though the Landmarks Law is fifty years old now, we're still in the process of getting the law developed. Even though we've only been bringing cases, I guess for twenty-five years, but the law is still developing. I think we've probably only brought a dozen of these cases. So we're still in the process of developing these failure to maintain cases.

Q1: Great. I guess, final thing, is there anything that preservation advocates need to understand about the legal perspective, or vice versa, that you hope the legal perspective can come to understand about the advocacy side?

Waters: Well, I think the one thing that the advocates should understand is that everybody wants their building to be designated and wants their neighborhood to be designated, and cases have been brought trying to mandate the Commission to make the Commission designate their buildings. It's really up to the Commission to do that. The Commission has staff to bring it forward to the Commission and it's up to the Commission to decide that. I know—I live in a neighborhood and I want my neighborhood to be designated, and the Commissioners so far are not looking at it favorably. But it's up to the Commission.

I know it's hard because everybody believes that their neighborhood and their building is important, and I know that advocates find it hard when the Commission disagrees with them. But

it's up to the Commission to decide. That's what advocates have to understand. The Commission does its best. It's really a lot of work and they're not paid—the commissioners aren't paid. That's the one thing that I would change is I would ask that the commissioners get paid.

Q1: Yeah. Anything else you want to say before we turn it off?

Waters: No. It's just been a good thirty years.

Q1: Well, thank you very much.

[INTERRUPTION]

Waters: I only have a few pictures.

Q2: That's okay. What I'm going to ask you—I'm not even stopping, I'm just making this all on a single file—I'm going to ask you to hold the photos up and I'll just zoom in on them. I'll show a little bit of your Red—

Waters: I don't have my Landmarks files anymore. I used to have great photos, but.

Q2: Oh, that one is terrific.

Waters: Yeah, this one is great.

Q1: They all look great.

Q2: So hold the city or whatever, you know, whatever works it doesn't matter.

Q1: Whatever you like.

Q2: Just hold it up.

Waters: Yeah, this is The Wall. It's on Houston and Broadway. It was done by Forrest Myers in 1973. It's a sculpture that was an affirmative case that we brought to make sure the sculpture stays.

Q2: Okay. Great.

Waters: Oh, this is the interior of the Four Season, which—

Q2: Ah, that shot is just—

Waters: —which case went to the Court of Appeals of the State of New York, which upheld the interior designation. It was the first case that the Court of Appeals upheld interior designations. It was an important case.

This is a pretty bad picture, but this is the Manee-Seguine House. The case I'm talking about, this is the affirmative case we're bringing. It's the fourth oldest building in the city. It's on Staten Island. It's little known but we're really trying to save it, although the building owner is very adamant about doing nothing, and it's really in bad shape.

Q2: What a wonderful building.

Waters: It doesn't look like this anymore.

Q2: Yeah, I was going to ask. Is that it? Stop?

Q1: That's it.

Waters: Okay.

Q2: Is there anything you want to add before I stop rolling?

Waters: No.

Q2: Okay.

[END OF INTERVIEW]