Securities and Exchange Commission Historical Society
Interview with John Liftin
Conducted on February 19, 2009, by Kenneth Durr

KD: Interview with John Liftin, February 19th, 2009, in New York City by Kenneth Durr. I want to start with some background and sort of back into your getting into the SEC. Your education, where did you go to law school?

JL: Columbia.

KD: Did you study securities law?

JL: Actually, I didn't. There weren't many courses available at the time, and the one that was available didn't fit my schedule, so I did not.

KD: Were you interested at that point?

JL: I became interested probably my third year of law school and decided that, if I could, I wanted to work for a law firm that did securities work, which is what happened.

KD: What was interesting about it?

JL: Well, I had a tough decision as to whether to go to business school or law school. I'd always had some quantitative interests, and it seemed to me that, from the little I knew about it, securities might be a way to combine the interest in numbers and quantitative concepts with the legal background I had acquired.

KD: Well, the big question for me is how Bill Casey found you.

JL: Well, my first job was at Sullivan and Cromwell out of law school. So I worked there for four years doing securities and corporate work. And as I got well into my fourth year, started to get a little bored, things started to look the same, and I was interested in doing something else, but just on an experimental basis, I wasn't sure I really wanted to cut my ties with the firm because I had really learned a lot there and liked it.

One day I was in an internal elevator with one of my colleagues, and I heard him say to a third person that he had just had a trip to Washington to interview with then-chairman Bill Casey. And when the other person got off the elevator, I said, "What was all that about?" And he said, "Oh, well, I'm interviewing to be Casey's executive assistant, but I'm not sure whether I'm going to do it or not." And I said, "Well, if you decide not to do it, could you let me know?" And the next day or two he called me and said, "You know, I don’t think I'm going to do it. My wife doesn't want to move to Washington." And I said, "Do you mind if I follow up on it?" And he said, "Not at all."

So I went to the senior partner of the firm and told him of my interest, and he said, "Well, we'd like you to stay. But if you're really dead set on doing it, we'll try to be of help," and I said I was interested. And he was, I suppose, actually, the head of the corporate group.

He went to Arthur Dean, who was the senior partner of the firm, who called Bill Casey and said that, although the other associate wasn't ready to come, they had someone else to recommend. I got a call from Casey's office to come down for an interview, within a few days, as I recall. And I went down there, met with him for an hour or so, and he started talking as though had the job, without much checking. And I seem to remember it just went very quickly after that.

KD: What kinds of things was he talking about?

JL: He wanted somebody – although the job I thought I applied for was an executive assistant's job, which was kind of a general chief of staff type of role, he wanted somebody to help with what was then going on in reforming the equity markets. There were a lot of issues swirling around about the role of the New York Stock Exchange and its competitors and what role the Commission should have in sorting out that whole process. And he wanted someone to look after those issues for him, primarily. And I told him that, you know, I didn't really have a lot of trading experience. My experience was mostly on the financing and transactional side. And, you know, Casey, in his kind of gruff way, said "Well, you'll figure it out." And he asked me to take over responsibility for that. And I came down in August of 1971, and I took over the office that had been inhabited by Max Baucus, who is now a senator from Montana, who was just on his way out. He had been executive assistant to the previous chairman, Hamer Budge.

And I had some interesting chats with Max about what it was like there, but Hamer Budge had been kind of out of his element and was sort of getting a lot of pressure from all sides. And I think Baucus was glad to be leaving too.

KD: Did he tell you some war stories about that?

JL: He told me a few. I don't remember them at this point. He told me he was going to go back to Montana and get into politics, which he did, which he certainly did. And, you know, Casey hired a fairly large staff for the chairman's office, as you probably know. He had Sandy Whitman as his executive assistant, and then he had four special counsels, ultimately, to deal with different things. In addition to myself, there was Lee Pickard, and Howard Crystal, and a guy, I think his name was Jim Lynch. But my bailiwick was, primarily the equity markets, which was, as I said, very topical.

KD: Can we pursue that a little more? What were the big issues there with the equity markets, and what was driving them?

JL: Well, there were two big issues. One of them was what were known as fixed-commission rates, whether the stock exchange should continue to set what they called maximum rates, but which really served as minimum rates that all the brokerage firms could charge. And the brokerage firms, acting through the stock exchange, which in that role was a bit of a trade association, was trying to maintain the rate structure because it was extraordinarily profitable for them as institutions had become a bigger factor in trading stocks, which has not always been the case.

Whatever discounts were built into the commission structure certainly did not take account of the huge economies of scale. In other words, it certainly didn't take a hundred times as much effort to execute a 10,000 share order as a hundred share order. So most of the firms were vying for institutional business because of the huge profitability and were offering all kinds of services for free in order to attract business from the institutional buyers, you know, the mutual funds, and insurance companies and other institutional investors. It was almost like the airlines in the days before deregulation.

And, you know, the Commission understood that that was kind of uneconomic, and there was a lot of pressure from the institutional community, and from those on the staff with an economics bent to say, "Let's remove the fixed commission rates. Let's open it up to competition." The brokerage firms at the stock exchange were fighting that bitterly, and that was a fight that had gone on for a number of years, basically from the late 60s up until 1975 when the legislation finally was enacted that eliminated fixed rates. So that was one of the big issues, and it was purely economics. There wasn't really any regulatory issue there at all.

KD: It was the SEC listening to the institutional investors?

JL: SEC was listening to everybody, but you know, to the extent that the staff was siding with anybody, it was really the institutions. It seemed to me at that time that the institutions were probably the most vocal constituency and really had the ear of the staff. And of course small investors too, I'm not excluding them, but they weren't really part of this battle. It was really between the brokerage firms and the institutions. And I think the staff was tilting towards the institutions. But, you know, on the other side, the stock exchange was saying, "If you eliminate fixed rates and you drive down the price of brokerage commissions, that will be the end of research because it will no longer make sense for brokerage firms to produce research because the institutions won't be able to pay for it. They'll be compelled to always get the lowest-possible commission rates, and no one will pay cash for research." You know, and that produced its own set of arguments, which go on to this day, by the way.

But from a kind of political point of view, the commissioners were hearing that, on the one hand, they saw the economics. The economic arguments were obvious. But, you know, they were also afraid to make such a massive change that would, at least run the risk of completely upending the whole brokerage services industry, the financial services industry at that time, because brokerage was a much bigger part of it than it is today. Investment banking was a relatively small part, as was trading. So the Commission was really afraid of changing the economics of the business. And, you know, in retrospect, it really did change the economics. That and a number of other things changed the economics drastically. And, you know, many institutional firms merged with retail firms over the next ten years, kind of as predicted, but research didn't go away.

KD: Well unfixing rates, the issue of commission rates is a big one. One of the things that you spent a long time on was the idea of a central market.

JL: Correct.

KD: Where did the impetus for that come from?

JL: I see that as a distinct issue from rates. You know, again, it was an economist's argument that the New York Stock Exchange is a monopoly, or quasi-monopoly. There's very little trading that's permitted away from the exchange in the stocks that they have listed, which is all the big stocks, the most popular stocks, the most heavily traded. They weren't stocks like Microsoft that wanted to be over-the-counter. Almost every single large-cap stock was on the stock exchange, and there were a variety of rules that prevented members of the stock exchange from trading in those stocks anywhere but on the exchange. And the exchange's argument was we are the natural monopoly, we're like a utility. And it makes the most sense for all the orders to come to us. That will maximize interaction of bids and offers, and large and small investors will all benefit by getting the best price.

And, you know, within its own logical construct, it made sense except it excluded any competition. And the Commission was always seduced by the idea that there really should be some competition because the stock exchange did so many things to enrich itself that it seemed like there just had to be some other counterweight. So the Commission encouraged the growth of the regional stock exchanges, which provided some almost, you might say, parasitic competition in that they only were able to get the crumbs that, for whatever reason, were not available to the New York Stock Exchange because of time of day, or regional brokers, or regional stocks or some other reason, almost an excuse to trade off the exchange.

So that was one counterweight, and the other one was called the third market, which was an over-the-counter market in listed stocks that a few dealers maintained. And one of the Commission's pet projects was to adopt a rule that made it possible for members of the stock exchange to take orders and listed stocks off the exchange and execute them in the third market.

KD: Did this happen while you were there?

JL: I'm pretty sure it did. I know it was very, very actively debated while I was there. I'm trying to remember the number of the rule. It was 19B –

KD: 19 (b) (3) or something like that.

JL: That sticks in my mind, but you know, I should've gone back and reviewed it, and I didn't.

KD: Well, the other thing is, you talked about all these things that were in the air, so to speak. How much of this was Bill Casey and something that he was interested in accomplishing?

JL: Well, Bill Casey understood the economic arguments. And I think he had a streak in him of wanting to do what really made sense. On the other hand, he also was a former politician and was a political guy, and was thought to have had relatively close ties to folks in the White House, I think he did. And, in fact, there were certain scandals that came close to touching the SEC during his tenure, but nothing like the Brad Cook era. So he was also sensitive to the complaints of the stock exchange and their membership because they had political connections too, and of course, they were using those. I don't know what conversations he had with people from the White House and the White House staff, but he was cautious.

So in other words, it wasn't that he was pushing for these reforms, but by no means, I would say, was he opposed to them. It was almost as though he kept going back and forth and it sort of felt like whoever talked to him last, he seemed to agree with on many controversial issues like this. You know, he'd understand the logic of the national market system, for example, and he supported. He was a bit of a visionary and he supported the idea of the national market system, and he encouraged the staff to write a blueprint. And, in fact, you know, while I was there, we put out two white papers endorsing the notion of a national market system. We called it a central market system at the time, I think it was '72 and '73.

And, you know, some of the arguments you might see in those documents have been around for decades. It's probably only the last few years that they've actually been given the force of law requiring brokers to behave as though there is just one single auction going on for stocks. It's always been controversial. But, you know, I think in the end, Bill Casey came down on the side of the reforms. He ultimately was dragged along in favor of eliminating fixed rates because it made sense.

KD: Well, you would know because he brought you into work on these issues, certainly, a central market.

JL: Yes but, you know, he talked to a lot of people. He talked to his staff. I was, you know, twenty-nine years old at the time. He wasn't going to take my word for everything. But, you know, he would talk about what he thought, and it was clear that he understood all the arguments. Very, very bright man.

KD: Well, let's wade into that a little bit. You came in, and your job is, essentially, to oversee a lot of these efforts having to do, especially, with the central market. And one of the earliest things were some hearings. Do you recall getting those hearings in place and conducting them? Was that something that you were responsible for?

JL: Yes. What he did was he set up three advisory committees. One was to create a consolidated reporting system, like a consolidated tape, it was called. One was to create a central market system, and I've forgotten for the moment what the third one was. Do you know?

KD: Disclosure?

JL: I think that was the consolidated tape.

KD: Okay, yes. Integration of the markets.

JL: Integration of the markets was the central market system. I probably have some data to fill that out. But anyway, I was the secretary of all three of these committees. The chairman of the committee on the central market system was Alan Greenspan. You probably know that, right?

KD: I noticed the name.

JL: Yes. And, you know, he approached it as an economist, of course, and thought it made a lot of sense. There were a lot of industry people on the committee. And so on all these committees was a balancing of academics, institutional representatives, people from the securities industry and regulators. Were there regulators? No, I guess there weren't really any regulators involved. So it was just industry folks and some academics. So there was kind of a tug of war over these issues. And what came out, although I think in a way they were progressive at the time, you know, were very compromised points of view.

KD: You say tug of war. Was it generally the industry versus the academics?

JL: No. It was the brokers versus the institutions. It was about money.

KD: So did you feel like the system worked well, that you were able to reach practical positions that could be implemented that way?

JL: Well, these committees did what would have had to have been done in later years through public hearings. But they preceded the Government in the Sunshine Act, so it was still possible for the Commission and other government agencies to establish these committees and let them operate in private. And I think that they were beneficial to government in many respects because people said what they really thought, and the views got on the table, and the compromises got struck. So the answer is yes they were beneficial. It was a good way of fact finding, basically, you know, so the staff and the commissioners could really understand what the issues were. All points of view could be aired in a fairly candid form.

KD: One thing I'm looking at is you mentioned that there were two white papers. The first is a thing called the *Future Structure Statement*, which is early '72.

JL: Yes.

KD: The white paper is in '73. It was after this advisory committee process. I want to get a sense of what distinguished the two. What was the difference between the *Future Structure Statement* and the white paper?

JL: Oh, boy. I'd really have to go read them, but I did write initial drafts of both of them. And I seem to remember that the first one was more about getting down the principles, and the second one was more about trying to suggest practical steps that could be taken to begin to put the system together.

KD: Which would make sense. Did these advisory committees have the *Futures Structure Statement* to sort of chew over?

JL: Yes, I believe they did.

KD: Okay. So it was sort of elaborating on that and seeing what might work and what wouldn't.

JL: Remember, only one of the committees was really focused o that particular subject.

KD: Right.

JL: It may be the third one was on commission rates. I apologize for not being able to remember that, but perhaps I can supply it.

KD: Yes. I've actually got that.

JL: Do you have the other chairmen's names, the chairs of the committees?

KD: Yes, I do, somewhere.

JL: Okay. That might help me.

KD: Alan Greenspan was memorable, I guess, working with him.

JL: Yes.

KD: Anybody else in there that you were particularly pleased to work with?

JL: Yes. There was a guy named Sandy Lewis, who you really should talk to. He's a unique individual, who was at the time a risk arbitrator. Sandy's still alive, still extremely interested in issues, and will talk with you for at least twelve hours if you give him a chance. But he did work on the staff, he worked for Rod Hills. If you have an excuse to do it, I think you'll find it very interesting. But he was on the disclosure committee, I think, and Sandy was the kind of guy who put his view of principle above everything else, above making money, and just lectured everybody about how they should be good citizens and do the right thing. I formed a life-long relationship with him as a result of that, just because he was such an interesting larger-than-life character.

Who else? I don't know that there were any others, but it was certainly a good opportunity for me to get to know a lot of the key players in the industry. And, you know, it was really an extraordinary thing at that point in one's career to get to meet all these senior players and see how they thought and just watch them behave.

KD: Must've given you a sense of perspective, I guess, that you didn't have.

JL: Indeed, it did. First of all, I learned about the equity markets, which I had experienced in my limited legal practice. And, you know, for a long time after that I became part of this fairly limited group of people who understood market regulation as it related to the equity trading markets. So it was, you know, a unique experience from that point of view. But you know, just all the people who came into the Commission to plead their case. One of them was Mike Bloomberg who at the time, worked for the institutional trading department of Salomon Brothers, and he came in with the general counsel of Salomon Brothers, Don Feuerstein, to talk about an information system he was building for Salomon Brothers to help their traders keep track of what positions the various institutions had in stock so that Salomon could trade them better. And I think they were making a pitch for us to support their efforts. I can't remember what their specific issue was. Maybe it was just, you know, a get-acquainted type of meeting, but they did talk a lot about the information system that he was working on, which he obviously continued to work on after he left Salomon Brothers.

KD: What else was on your plate while you were assistant to the chairman?

JL: I guess the '75 Act amendments started to be drafted in, I think, '73, and I'm trying to remember the name of the guy, he's the dean of the house, the guy from Michigan, John, the guy who represents the auto industry, basically.

KD: Oh, John Dingell?

JL: Yes. Dingell was the head of Interstate Commerce, I think, at the time. He was the lead on the House side. And on the Senate side, it had been Williams, but then I think Williams might've had his political problems. I'm trying to remember who the senator was who was pushing all of this. But in any event, yeah, the Hill was very interested in changing the rules of the game, and asked the Commission to try to put its blueprint for a national market system into legislative language.

And you know, they had these two principle goals of mandating at least the outline of a national market system and also eliminating fixed commission rates, which the '75 Act amendments did. And they also set up other things, like regulation of transfer agents, and regulation of, it might've been the beginning of municipal bond regulation around that time and some other things on the periphery. But, I mean, I think the centerpiece of that legislation was the two things that I've just mentioned. You know, since they were my projects, I spent a lot of time working on that legislation, along with Harvey Pitt, who was the general counsel to the Division of Market Regulation.

KD: Now were you ever formally in the Division of Market Regulation?

JL: Right. I didn't mention that, but I started as Casey's special counsel, and then he reorganized the Commission while I was there and, basically, consolidated all the enforcement arms into a new division of enforcement, and converted trading and markets to market regulation. And he had originally told me that he would make me the director of that division. He called me just the day before he did it, I think I was in Chicago at the time, and said, "You know, I think I'm going to have to make Brad Cook the director. You'll be associate director for market structure. And Cook is probably going to be the next chairman, and he's agreed to make you the director." So I said, "Fine."

So I was in the division for, I can't remember whether it was one or two years, but about roughly half the time I was there I was responsible at a staff level for pushing a lot of these things forward. I seem to remember I had something like, I don't know, thirty or forty memos of recommendation that went to the Commission. And in those days, there were no dissents. Everything that Casey wanted to go went through without dissent. The Commission was not particularly inclined to pick fights in those days, wasn't very political.

KD: Was it the kind of thing where if there was a dissent, it would've been ironed out before hand?

JL: I think so. I think there were a lot of conversations between commissioners. Today, you know, under the sunshine rules, you know, commissioners can't get together in private, so it makes it a lot harder for that to happen. But that's probably why it was.

KD: Well, when Brad Cook came in then, was his agenda just, basically, let's continue the things we've been doing under this other structure? Or did he, or Chairman Casey or you, working with him, have some other ideas as to what you wanted to see?

JL: His agenda wasn't perceptibly different from Casey's. I think that he found himself a little more beholden to the political interests, as we later found out, and so was maybe a little slower moving, less bold in pushing for the legislation and the other initiatives that were going on at the time.

KD: Market regulation was a brand new division. Was it seen that way?

JL: No. It really was the continuation of the old trading and markets division, but without the enforcement arm.

KD: And that's the way it was understood, I guess.

JL: Yes. And, you know, there were four groups that looked after different things. One looked after the net capital rule, market structure. I can't remember what the other two were but, you know, it was basically the same people doing the same things, for the most part. You know, some of Casey's staff people moved down into the main staff of the Commission.

KD: You talked earlier about unfixing commission rates, and there was some movement on that under Case and Brad Cook.

JL: Right. And, ultimately, culminating in the '75 amendments which, you know, promulgated a specific date, May 1 of, must've been, '76, I think it was. You know, after that date, fixed rates were eliminated. Part of preparing for it was drafting Section 28E of the '34 Act which attempted to provide a safe harbor so that this argument about institutions being unable to pay higher commissions for full service, including research, you know, wouldn't drive out research. And 28E has been hotly debated and interpreted for thirty years.

KD: There was something that they called the prudent gradualism. Do you remember that? Where the idea was that transactions over a certain amount would not have fixed commission rates. I've seen it described as being ad hoc.

JL: I remember the phrase, and I also remember the phenomenon. I didn't remember that they were referring to the same thing. But I think what you're saying is that the stock exchange had adopted a policy of discounting rates for the larger orders. And it may be, I don't remember for sure, that on the really large orders, they had eliminated minimums. That may be what it refers to.

KD: Who were the people that you were working with and you were relying on?

JL: Within the Commission?

KD: And without.

JL: Well, I worked closely with Harvey Pitt, particularly when he was counsel to the division. Before I went down to the division and I was in Casey's office, I worked closely with Sandy Whitman – have you talked to Sandy yet?

KD: No.

JL: Who was Casey's executive assistant. And to some extent, with Lee Pickard, who was more involved in broker-dealer regulation—capital rules, that sort of thing, I think. Seemed like he had more of a back office orientation. So that was Casey's staff. And commissioners, I don't think I worked too closely with any of the other commissioners. The other division directors, this was Alan Levinson and Alan Mostoff, general counsel was, I guess it was Cook during most of the time.

I'm not sure who it was after Cook. But I worked with them a bit. A guy named Michael Saperstein, who was in market regulation. He was very political, and he saw his role as being the representative of the White House at the Commission, and he was keeping an eye on the staff to make sure they didn't stray too far from what he perceived the White House wanted to happen. But, you know, people kind of humored him. And he's a smart guy, he wasn't a fool. But he's still around. Until recently, he was at Bear Stearns.

Let's see, outside the Commission in the industry, there were some staffers on the Hill who we spent a fair amount of time with. I remember Al Harris was on the Senate staff. Can't remember the people on the House staff.

KD: You said you weren't really looking at market structure, I guess. And you talked about Lee Pickard working in back office type issues. Was that a traditional division of labor? Is that the way market reg was set up?

JL: No. I think market structure was a new office. That was the new part. But the other stuff, I think, had already been, you know, part of the old trading and markets division. Shelly Rappaport was a key player on those issues within the division. Bob Lewis, who ultimately became director, Andy Klein, who was my senior deputy, ultimately became director. Roger Blanc.

KD: What were some of the other issues that you worked on in addition to –

JL: Well, you asked me that, and I'm trying to remember. It almost seems like everything came back to those issues in one way or another. You know, there were a lot of sub-issues, like consolidated quotation system, and the consolidated tape itself, and how are we going to protect research.

KD: You had something called the composite tape.

JL: Yes. That was one of the things I just mentioned. That's the ticker tape. So that instead of there just being one tape that showed the New York Stock Exchange's prices, we, as a product of this advisory committee I mentioned, adopted a rule, I think it was 17 (a) 15 or something like that – that may not be right – that mandated a composite tape so that the stock exchange tape had to include trade reports from the regional exchanges and the third market as well.

KD: When you get something that's going to be doing that, is it really going to be a tape? Is that the way you were envisioning it?

JL: Well, it was a tape. It was a tape, but in the sense that there still is a ticker that reports trades. And for many years, you know, there was a little symbol that showed what market it was coming from if it wasn't from New York. And that was very controversial. I'm not sure if it was then or later that the trade reports that you see in the newspapers, there used to be these long tables of stock prices. I mean they still exist. At some point, they became not just the New York Stock Exchange highs and lows and closing prices, but national market closing prices. So, you know, wherever the high was hit, wherever the close was, the last trade was, that would be reported.

So it was a kind of an expansion, you know, as a first step towards the national market system. And then trying to build a quotation system was another way of trying to develop a national market system. You know, the ultimate goal of the national market system was what people referred to as a consolidated limit order book so that all orders would flow into a single system. And there were debates about whether that was a good idea. And then even if you had such a system, whether you would require all brokers to honor the best quote in the system. You know, whether they had a seller or they have to sell to whatever market was displaying the highest bid. And that rule, which only got adopted a few years ago, was called a Hard CLOB rule, you probably heard about that, and very controversial because there are lots of arguments back and forth.

KD: That raises the issue of technology. We're talking about 1971, '72. This is pretty early on. People still have big mainframe computers, and there's not the nimbleness of information process.

JL: Right. There was really no concept of personal computers then. But still, it was obvious to everybody, I would say, that the idea of linking the markets electronically was not going to be hard. You know, we had the technology then to do it. Probably couldn't have done it as quickly as we could do it today. But the system that was envisioned in the early 70s is not that different from the system that was finally mandated, you know, in around 2004, 2005, which is interesting when you think back, that it took 35 years to get it implemented. But the technological model didn't really change that much.

KD: That really confounds the way I thought about it because I've always assumed, well, it's a great idea, but the technology had to catch up.

JL: It wasn't the technology. It was the politics and economic interest behind the politics. Absolutely. No one ever made an effective argument that the technology didn't exist.

KD: At this point, you've got some of the electronic trading tools. NASDAQ is just coming up.

JL: Yes. NASDAQ started around '72, I think.

KD: Were you looking at these things closely and then trying to figure out what you could learn from them?

JL: Yes. NASDAQ was a kind of a model. Sort of a simple model of what a national market system could look like. NASDAQ was not a Hard CLOB. NASDAQ did consolidate quotes. It didn't mandate, it had no mandatory rules about execution. There were, of course, best execution obligations that were part of the broker's duty to get the best price for the customer. So in a way, NASDAQ kind of bridged the gap. It presented its quotes in such a way that it still gave the broker some flexibility to honor relationships and other obligations that he might have. It didn't quite array it in a way that made it mandatory that you execute against the best bid or the best offer. But it was definitely a big step in the direction that we were heading.

KD: It took the trading off the floor.

JL: Well the trading that NASDAQ supported was never done on the floor. That was always over-the-counter. But it automated that, or took a big step towards automating that by making the quotes visible. It's kind of like putting them online. You know what I mean? It was the closest thing that anybody had to being able to shop on your PC as opposed to the telephone. That was the kind of step forward that NASDAQ was.

KD: When you came out with the composite tape—and this would've been the white paper in '73—you described the process of doing through with these committees and preparing this. What was the reception when you put this out? Was there a great deal of interest, was there a great deal of concern?

JL: Well, the stock exchange fought the idea of the consolidated tape for a long time. But when the rule finally came out, you know, then it became a fight over revenues from the tape. The other parties who contributed quotes to the tape wanted to share in the revenues, which were an important source. Market data has always been an important source of stock exchange income. Something like, in the old days, it was 25 percent, roughly. You know, by the time the rule was enacted, the furor over whether we should have it or not had died down, and it shifted to different arenas, like how revenue would be shared, what sort of identifiers would be put on the prices, sort of subsidiary issues. But you know, was it seen as a real breakthrough? I don't know. It seemed like one to the staff, but you know, that was probably one day's worth of newspaper stories and that was it.

KD: Did you expect something to happen maybe to move it forward?

JL: Yes. We thought it might trigger other activity and other movement towards the central market system. But it turned out that every step forward had to be mandated. Nothing seemed to be happening naturally.

KD: Were you on the Commission when Ray Garrett came in?

JL: Yes.

KD: For how long?

JL: Do you remember when he started?

KD: '73.

JL: Yes, that's sort of my recollection. I think for about another year.

KD: And still working on this national market system.

JL: Yes. Probably less than a year, in the end. And I seem to remember he came on in the Summer of '73. I think I left in April of '74. And, you know, I had been used to working directly with Casey and then directly with Cook. And because of something that we don't really need to go into, Lee Pickard became director rather than me. So when Ray came in he naturally would go to Lee to ask about market structures, and Lee would come down and ask me to brief him. You know, I got kind of tired of that quickly, and started looking around for something else to do.

KD: So market structure remained an important issue for Garrett.

JL: I think so. When I left in April of '74, the final push for the '75 amendments was going on—the political machinations were going on, and Ray was certainly supportive of it. I don't know how intimately familiar he was with all the details of it, but he certainly supported it. And that happened during his tenure, as I recall.

KD: The Commission went through three chairmen relatively quickly because of what happened with Brad Cook mostly. But could that have had anything to do with the fact that these market structure initiatives got bogged down a little bit? That there were three different people at the helm?

JL: No, I don't think so. I don't recall there being any real policy changes, other than what I mentioned to you about Cook's reluctance to stand up to the stock exchange. He later admitted to me, a while after he left the Commission, that he was getting very frequent calls from senior people at the stock exchange about things that they were worried about that were going on. You know, I think he probably slowed things down a bit, but I don't think he felt that he was in a position to really stop them. He told me that that was related to my not being appointed director. That they were afraid that I was pushing too hard on the national market system.

KD: That would make sense. Were they more willing to think about the idea of unfixing rates than they were about the national market system?

JL: No. But I think they just realized that the boat had sailed on that one and, you know, they were just going to try to get the best deal they could, which probably meant 28(e), you know, sort of a safe harbor. But that had been going on for a very long time, and they were clearly losing that battle. There was really no good economic argument. And I think the opposition just began to lose steam, I think.

KD: Okay. But they still had a lot more ground to stand on when it came to the national market system.

JL: Yes. Because orders were still going to flow to the New York Stock Exchange. There was still a tremendous amount of money to be made on small orders. You know, this is decades before decimalization, so the minimum quote was an eighth, and actually, people on the floor could make an extremely good living just trading all day back and forth for very small incremental differences. When it got down to pennies, it became a lot tougher on the floor people, the specialists and the $2 brokers. But I those days, they could still make a tremendous amount of money—it was really the upstairs brokers who had the most to lose from the end of fixed rates.

KD: Well, you had gotten this very detailed education about market structure that you never thought you were going to have, when you were thinking about going to the SEC. How did that play itself out later on? After you left the SEC, were you looking to capitalize on your expertise? Were you looking for something different?

JL: I wanted to use the expertise. I went into law practice, I joined a firm called Rogers and Wells in Washington, and you know, some of my clients came to me for that expertise. Merrill Lynch was one, Cincinnati Stock Exchange was another. Subsequently, brokerage firms began hiring more lawyers in-house from the Commission, so they had less and less of a need for outside counsel for those areas. But I was one of a handful of lawyers who was thought to know something about market structure issues.

KD: What kinds of problems or challenges would you handle?

JL: Well, for the Cincinnati Stock Exchange, for example, I seem to remember negotiating against the New York Stock Exchange when they were joining something called the – it was some sort of a consolidated reporting system that existed up until fairly recently. And it was the contractual part of combining all the different market centers into this reporting system, and I think it also covered the revenue sharing. And the stock exchange negotiated from a position of great strength, and it was very frustrating. But that's an example of representing them in their dealings to become players in the consolidated universe.

For Merrill Lynch, it was more—this fellow, Sandy Lewis, whom I mentioned to you had gone to work for Merrill Lynch, he had Don Regan's ear. Don Regan was then the CEO of Merrill. And he persuaded Regan to adopt some of the more progressive views on market structure. So advising them on policy statements and testimony and the positioning that Merrill was doing just as a firm in the industry; advising them on that. And then, you know, a lot of just trading questions about, you know, does this rule prohibit this kind of a trade, that sort of a thing. Short sale rule, the consolidated tape rules, you have to do this, you have to do that. You know, just interpreting the rules, the kind of mundane stuff that lawyers do day-in, day-out. But I was sort of answering more on the big issues that flowed from it.

And then after about eleven years of practice, I went into the industry working for a small bond trading firm. It was also what we would, today, call a private equity firm. And I think it was, in a way, the Commission role that led me to that. But after that, I went to Kidder Peabody, which was a big investment bank at the time, as general counsel. I think my SEC background was an important part of getting that job. I think every job I've had since then, the SEC background has been important.

KD: Other than just knowing the nuts and bolts, what else is there?

JL: When you come from the Commission, you come with a reputation of understanding how the regulators think, being connected, although in reality, that doesn't mean that much, but there is sort of a relationship you continue to have for decades after you leave with people who are still there. And I still know people on the staff to this day. And sort of a reputation as someone who would want to do things the right way. And so it happened that the institutions I worked for, the three after that all had had problems with the government, and they wanted to bring in someone who, you know, could help them clean up the problems, and having a commission, and SEC background in your resume seemed desirable. It was helpful from that point of view.

KD: At one point, I found reference to you serving as a chair on a committee on federal regulation and securities.

JL: Yes, American Bar Association.

KD: And is that a standing committee that's always –

JL: Yes.

KD: What was that project, in particular, that you were working on?

JL: That's a committee that has gone on as long as I've been in practice. Probably goes back fifty years. And its principle role, it's got something like 2,000 members. It's a huge membership. And it's mostly private practitioners and a few in-house lawyers from all over the country. And it comments on almost all SEC rule proposals, and its views are taken pretty seriously by the staff. The comments are extremely well thought out and written in. The committee tries to focus on the legal problems as opposed to taking a policy view. Almost never takes a policy view. It was a great experience.

The real irony in my career was that twice I served on the New York Stock Exchange Legal Advisory Committee, which I just thought was extremely ironic given the contentiousness between my role as a staffer and the stock exchange.

KD: Yes. And the fact that they were concerned about your influence at one point.

JL: Yes. I think the words they used was dangerous radical.

KD: Well, is there anything else that we should talk about that we haven't touched on?

JL: No. I have some thoughts, of course, about what's gone on recently, but I don't think that's relevant to the historical project. I think the Commission will get its reputation back, as it certainly deserves to. I continue to have immense respect for it as an agency, and the people who work there. I thought it was one of the best possible professional experiences that anybody could have. And just working for people who were so capable and so dedicated to the public interest, 95 percent of them at least thought of nothing else.

You know, the political part was such a small part of it and only a few people at the very top had a political role. It was generally a very good example of the classic independent regulatory agency at work. It took a long time to get some things done, but I think the Commission has always been a pretty well balanced agency. You never got really captured by a particular point of view by the industry, by the government, by any particular administration.

You know, its always had to trim its sails a little bit from time to time, depending on who was in the White House and who was in power on the Hill, and whether they felt like using the Commission to express their frustrations or not. But they always managed to stay above the political fray, I think, in a very professional way that not all agencies have been able to do.

KD: Yes. And with a little luck, it will continue to do so.

JL: I hope so.

KD: All right. Well, thank you very much.

[End of Interview]