Securities and Exchange Commission Historical Society
Interview with John Huber
Conducted on June 2, 2009, by Kenneth Durr

KD: Interview with John Huber, June 2, 2009, in Washington, DC, by Kenneth Durr. All right; well take me back. Let's cover your background—education, law school, and those sorts of things.

JH: Okay.

KD: Where did you do your undergraduate work?

JH: Undergraduate was the University of Wisconsin. I graduated in three years instead of four. I wanted to get a Masters Degree before going to law school and I got drafted instead. And so from March of 1969 to May of 1972 I was in the United States Army, after which I went back to the University of Wisconsin and started law school in the summer of 1972 and graduated in December 1974.

While I was at the Commission something that a lot of staff people did was to take courses at the Georgetown University Law Center and since I still had GI Bill money I was able to get a Masters degree in tax from Georgetown. The reason why I did that was not to become a tax lawyer. When you're an examiner in the Division of Corporation Finance one of the things that you're doing is asking people about structure of mergers and reorganizations and complicated transactions and the answer that always came back from counsel to the company was tax. And you didn't want to seem like an idiot, so quite frankly I went and started taking tax courses at Georgetown. It was a lot of fun. At that time the Commission was on North Capitol Street and Georgetown was a block away. So a whole bunch of us would take courses at Georgetown at night. And I got a Masters in tax from there.

KD: Did the Commission—?

JH: No; the Commission did not pay. The fact of the matter is it was a bone of large contention amongst all of us. I was a veteran. I had the GI Bill pay for the tuition. It also wasn't that big at that time; in other words, the bill wasn't that big. But the fact is—and it's a huge fact—you had young attorneys doing this on their own ticket and one of the things that I did when I got to be a supervisor was I taught at Georgetown. I taught at Georgetown and at AU at night and at Georgetown I—let's put it this way—made sure that any SEC person who wanted to audit my course could do so for free. And so at the very end, when I left the Commission in 1986, the last semester that I was teaching it was a seminar on corporate reorganization: tender offers, mergers, and proxy contests—that sort of thing. There were almost 80 people in the course and a good chunk of them were SEC people.

And I kept telling the Commission—and at that time the Commission's budget was much smaller than it is today—that if you want to have lawyers who compete with private practitioners, make sure that they can go and take these courses if they want to take them because Georgetown's graduate program was top flight. For example, when I took the ERISA course it was taught by the person that drafted ERISA.

KD: Yes; location has got a lot to do with that.

JH: And so when I started teaching at Georgetown and at AU to supplement my income at the Securities and Exchange Commission it was the kind of thing where I not only encouraged SEC people to take these courses, but I hired people from these courses. It was *the best* way of interviewing that you could possibly imagine—to have students take your course and then give them an offer to come to Corp Fin after the course.

KD: Tell me a little bit about your decision to come to the SEC. Had you developed an interest in securities law previous to that?

JH: The quick overview was that my brother allowed me to run his portfolio when I was 12 in the early 1960s and I drove it into the ground. I just loved stocks and bonds. I knew I couldn't become a broker, so I decided to become a securities lawyer. And when I was in the Army I was stationed here in Washington, DC and I got to know the SEC by doing interviews—I was in military intelligence, which is to intelligence as military music is to music—and for a while I was doing background investigations for security clearances and I would interview people at the SEC. And there was a distinct and material difference between the quality of the people at the SEC and other federal agencies.

KD: What was the difference?

JH: First of all they were there; in other words, they showed up for work. They were there early, stayed late; there was a vim and a vigor. They had a cause; they were there to protect investors. Their enthusiasm was infectious and you wanted to join them, so when I went to law school at the University of Wisconsin, I was the summer clerk to the Wisconsin Blue Sky Commissioner and it worked so that I was able to do it during the school year as well. Jeff Bartell was the Commissioner. He was a wonderful guy; he still is a wonderful person—I got a job offer from him and went to the Commission instead. And so it was the idea of seeing the Commission from a completely different position, coming in as an Army investigator and doing interviews that convinced me that the SEC was not just *the* place; it was the only place I wanted to go.

KD: Tell me about coming down and interviewing. What job did you interview for?

JH: That's an interesting question. My whole thought, because we didn't have any money, was to just go from Madison, Wisconsin to Chicago which was the Regional Office. And my wife looked at me and said if we're going to do this you're going to do this. And so I came to Washington and interviewed with Market Reg, Enforcement, General Counsel's Office, and Corp Fin. And we did this in a two and a half day period, also SIPC because SIPC was—I didn't understand SIPC at the time and didn't know what SIPC did so I interviewed there too. The amazing thing was that each one of these Divisions had at that time a different kind of interview. The General Counsel's Office you actually had to take a written test, which I found fascinating because I don't know whether I passed it or not but I did get an offer. The biggest point of the interview process was: I was interviewed by Dick Rowe and at that time the Division was on North Capitol Street and Dick Rowe's office was right next to Alan Levenson, who was the Director of the Division. Dick Rowe was a Marine; I was an Army person. I didn't quite know that I would shall we say be liked by a Marine **[*Laughs*]**. But the fact of the matter is we started talking about history and he was a history major, I was a history major; he looked at me and he said just hold it for a second. And he went through a door and I didn't know where that door led but it led to Alan Levenson, who is probably one of the greatest Division Directors you'll ever see. Bless his soul. And he came back and he said well; we just got our budget today and I'm in the position to offer you a job as an Examiner in the Division of Corporation Finance.

Now there is a thing in life called luck; and on that day—unlike the day I was drafted into the United States Army—on that day I was really lucky. I was lucky at a number of different levels, not the least of which was a Marine was hiring an Army person.

KD: **[*Laughs*]** So you interviewed at all these other places too. Did you get the choice and basically say well I want to go with Corp Fin or—?

JH: I loved all the other divisions. I'm not going to say anything about the other divisions for whom and with whom I have a great deal of respect, but given the experience that I had at Wisconsin for the Wisconsin Securities Commission, the Blue Sky Commission, Corp Fin was number one on the list for me.

KD: Okay; so disclosure was the kind of thing you were going to get into?

JH: It was where I wanted to be.

KD: Okay; tell me a little bit about that office and moving in, meeting the people, and sort of getting your bearings and figuring how you were going to work.

JH: It's fascinating. I'm one of the few people that you're probably going to interview who started out at the lowest level in the Division of Corporation Finance and left at the highest level. I started out as an examiner in Branch Number Two of the Division of Corporation Finance on January 20, 1975. We had no training. You were given a pile of paper about two-feet tall and told to read this. At that time there were three books for Accounting Principles Board, APB Announcements. You had to buy them yourself if you wanted to learn about accounting. They were about $17.50 but who's counting. The fact of the matter is that was what was available, as an examiner—and I was in an office and one of the major things about Corp Fin at that time was that there was no space. Now that's a disadvantage. The advantage was you were put together with another person, which was sometimes not a good thing if you were giving comments on one particular matter and the other person was giving comments. I mean you could in essence have material non-public **[*Laughs*]** information going back and forth. But the person that I was the roommate with was a financial analyst by the name of Steve Wall.

KD: How do you spell the last name?

JH: W-a-l-l.

KD: Okay; sure.

JH: Steve Wall had been in the Army as well. He was a Vietnam veteran and he taught me everything I knew about financial analysis. At that time the division was in three different professions—analyst, lawyer, and accountant. And at that time there was no training. The training was really by osmosis; the training was what you picked up and I again got lucky with Steve Wall.

We had a branch chief by the name of Vassar Simmons and in the branch were two people, Ed Coulson and myself. Ed Coulson was an accountant; I was a lawyer. Let's put it this way, well Simmons didn't give either one of us an outstanding rating because he had to write us up if he was going to give us an outstanding rating. In other words, if you got **[*Laughs*]** the second best rating all he had to do was check a box; if you got an outstanding rating **[*Laughs*]** he had to write you up. I became the Director of the Division of Corporation Finance and Ed Coulson became the Chief Accountant of the

Commission. In his office, he had these two people; neither one of us ever got an outstanding rating.

I was an examiner for 11 months and quite frankly at that time—and this was something when I became a Division Director—there were lots of things that I had learned as an examiner. One of the things that was done was you started you review on things that were not reviewed right now. In other words, I reviewed a Form 4 which is not reviewed by the Division right now. The first Registration Statement I reviewed was an S-8. The first real Registration Statement I reviewed was an S-9, which doesn't exist anymore, which really is on investment grade debt. And one of the most important points about this was that while you were given a little bit of lead time in terms of crawling before you could walk, the responsibility was pushed down to you very quickly—very quickly. And I was—I was a 1st Lieutenant; I was a Platoon Commander during Vietnam and I can tell you that this was the kind of responsibility that young people loved to get. I mean you either swam or you sunk with respect to this.

KD: Did you ever see anybody sink?

JH: Yes; oh yes there were—

KD: Okay; because I just talk to the people who swam. I never get to the people who sunk. **[*Laughs*]**

JH: But you have to understand, I as a division director tried to make sure that everybody survived. What's really important given my background before coming to the staff was that the division is a family; it's a team. You're only as good as the people who are not as swift as everybody else, not as capable as everybody else, but you're not going to win unless they all go over the finish line. And I as an examiner saw a different performance rate and that sort of thing among and between people but the idea of collegiality, the idea of just everybody is in this together, okay and you're going to help each other was something that really made me a better supervisor once I got to be a supervisor, not to mention given the fact that operations was the heart of the division and it still is the heart of the division. I was very lean on supervisory staff when I got to be a supervisor. I spent the money on more people in operations giving them more money because money was not something that was shall we say prevalent at the time, and made sure that operations was—I used to say you had to feed operations in order for the Division to be okay. And so I didn't have a deputy director. It's fascinating now. There are two deputy directors. Everybody has got a Special Counsel at the head of the Division. I didn't have any of that nor did I want any of that.

KD: It goes along with giving people the power to do their work.

JH: It really does, okay; pushing responsibility down, okay and trusting—and this is a really important thing. People were trusted. And that actually is another important lesson when I became a supervisor because there were appeals of decisions and this is not a blind trust. I mean you have to know the people that you're working with. And while I was just in operations for less than a year as an examiner before I went to Disclosure Policy, you knew who the people were and you knew what kind of people they were.

I'll give you an example. There was a money center bank in my branch. This was before industry specialization. I mean I did an insurance company; I did a money center bank; I did a company like Procter & Gamble. There was no rhyme or reason—

KD: No specialization.

JH: —to any of this. One of the things I helped do when I got to be a supervisor was industry specialization. But after industry specialization occurred there was an AD. His name was Dick Towle and when I was in the branch, this particular money center bank—their answer to every comment was *it's not material*, okay. So you know is this a problem? *No; it's not material*. I was sitting in my office. I had an open-door policy and it's a very important point to have an open-door policy as a supervisor and that doesn't mean the door is necessarily open. It means that you're always welcome to come in. And Dick Towle came into my office along about oh 6:30 or 7 o'clock and one of the biggest things I learned was to be there early for the accountants and to be there late for the lawyers and the analysts. And Dick said we've got this problem with this money center bank. And I said, what's the comment? And he said well we asked them about their exposure to Mexico, Brazil, and Argentina—and Mexico, Brazil, and Argentina was the biggest issue at the time; it was huge all right for money center banks—and the reviews for banks were focused on these things. The reviews for savings and loans focused on other things—and

I looked at Dick and I said well, they used to be in my branch when I was an examiner. Obviously they gave you the answer *it's not material*. And Dick looked at me and he said no; they didn't say it's not material. They started talking about X, Y, and Z okay which are not germane to my point here. I knew **[*Finger Snaps*]** the moment that Dick said that the answer was different than what was there that there was an issue there. It turned out that this particular money center bank had a huge exposure to Brazil and quite frankly, Mexico, Brazil, and Argentina inundated the staff with issues for a long time because I got to know the Federal Reserve Board, Michael C. Bradfield, the General Counsel of the Federal Reserve Board; Earl Sprinkle, who was the head of the Council of Economic Advisors. The SEC had been at the forefront of things like Guide 3 becoming a disclosure for banks.

KD: Guide 3?

JH: Guide 3 was a guide in the preparation of registration statements and periodic reports and it did—it's disclosure for banks, specialized disclosure for banks. That was Charlie Ogilvie, but that's a different story. This story was that once the Commission got involved in Mexico, Brazil, and Argentina, I was sort of the point person for the staff as both deputy director—when I got in charge of operations and as director to coordinate with these other agencies. And what was fascinating about this was that the Federal Reserve was interested in safety and soundness; the SEC was interested in investor protection, and you know you used to have these wonderful civilized debates about what was more important—safety and soundness or investor protection. And you're having the same sort of debate today. And whether it's Mexico, Brazil, and Argentina that put a whole in money center banks' balance sheets or sub-prime mortgages, the same concept, the same issue is there today, so like Yogi Berra, *it's déjà vu all over again*.

The same sorts of issues were there with respect to savings and loans because savings and loans at that time were big. They still were there and this was in the early 1980s. There was one particular savings and loan that the Commission had been focused on both in terms of enforcement and in terms of Corp Fin. There used to be very close coordination between Corp Fin and Enforcement. When I was a Director I was the biggest client of the Division of Enforcement. It's a very little known fact but you have to actually convince Enforcement to take a case. So going in and talking to them about Section 5, going in and talking to them about a technical matter, that's not the only thing they want to hear. They want to hear fraud; they want to hear stuff that they can actually make hay about.

The Financial Corporation of America was under a person by the name of Charlie Knapp who was taking it to a huge level. It was a $33 billion savings and loan in the early 1980s; he was acquiring companies. He was doing things with respect to accounting that people found problematic.

KD: He was one of these pioneers in savings and loans moving them out—

JH: Yes; pioneers, yes the image that I would give you is that we had a Commission meeting once on savings and loans and FCA in particular and the image that I would give you was from John Shad, who gave—and this is for the sexist image, but it was very poignant. He said *savings and loans are like a chorus line of old ladies trying to kick up their legs.* The fact of the matter is, Charlie Knapp was not just a pioneer; he was at the forefront of doing things in a too-aggressive fashion. And the point that I have for you is that when the Division reviewed FCA, Financial Corporation of America's periodic reports, there was a thing that came up with respect to Charlie Knapp and it was something that dealt with an early form of derivative called a dollar reverse repurchase—a dollar roll. I'm not going to get into the technics of it but the basic point about this was that it allowed Charlie Knapp to bet on interest rates. And he bet on interest rates every quarter; he was wrong every quarter and he would double up on his bet. Now this is not unheard of in terms of traders and that sort of thing, but you've got to understand Charlie Knapp was a government-insured entity. FSLIC was still in existence at the time and the United States Congress had just increased the insurance for savings and loans from $50,000 to $100,000 and they allowed in essence a person to have multiple accounts instead of just one account. So my name is John Huber; I could have it as J. Huber, John Huber, John James Huber—that's three accounts, okay. And that doesn't even include my wife and my children, my family or if I wanted to include Ken Durr. The fact of that matter is this was known as *hot money* and hot money was moving very fast through the system and FCA had a lot of hot money. And he had to perform.

So dollar rolls were not something that anybody knew about and I love accounting. I practiced more accounting than my license allows and I learned to love accounting in the Division Corporation Finance and the fact is nobody knew anything about dollar rolls.

KD: Nobody in the SEC?

JH: Nobody in the SEC had a handle on it. There was very close coordination between Corp Fin and the Office of the Chief Accountant of the Commission and I got to know a PAF, Professional Accounting Fellow, by the name of Michael McLaughlin. Michael is dead, but he had come from KPMG and he had an idea of what these were and how they worked. He and I went to talk to the S&L Committee of the AICPA and they had heard about these things but it would take them six months to figure out and have a position. I looked at them and I said I have less than six weeks.

So the fact of the matter was and is, and this is my real point with respect to this—the Commission decided to—because this was a huge kind of thing. Charlie Knapp was betting one-third of his balance sheet on these things and he was losing. And he was going to have a cataclysmic kind of event. I talked to the people at the Federal Home Loan Bank Board and FSLIC, for a $33 billion company you had $7 billion worth of FSLIC insurance, so you had a small shortfall from a depositor’s standpoint. That, from an MD&A standpoint, is a known uncertainty for the United States government. And so we had a number of meetings with FCA; they did not agree that their accounting needed to be corrected. I had to send them to Enforcement. And the biggest point about this story with respect to coordination between Corp Fin and Enforcement was John Fedders was the Director at the time. I called him and I said I'm going to need you on FCA. That same day he had a group of over a dozen lawyers call FCA; a dozen enforcement lawyers on a call is something that is shock and awe of the first order. And so the fact of the matter is as it turned out, I mean FCA was no more and it was because of this particular point.

KD: What did they do; what did it—how did FCA respond to this—12 lawyers?

JH: Eventually they acknowledged that they were taking a loss. I had to go and testify in front of Congress. I testified almost two dozen times but on this one I was trying to explain to them what a dollar reverse repurchase was and the only way that I could do it was to tell Congressmen and women that a rolling loan gathers no loss. And the fact of the matter is that's what was happening. He was rolling these loans and never incurring a loss even though he had a huge overhang that jeopardized his solvency but also jeopardized FSLIC, and so eventually Charlie Knapp lost his job. But there were over 1,000,000 shares—and this is in the early 1980s. So 1,000,000 shares of FCA every day were being traded and just like with respect to Mexico, Brazil, and Argentina for money center banks and there used to be 12,000 banks when I was on staff—this was a huge issue in terms of investor protection and a large debate in terms of, does the Commission know what it's doing with respect to the accounting for these things when you're taking out a savings and loan in this regard? My answer back to regulators from other agencies was a very simple answer, which is the SEC is supposed to protect investors. We don't protect deposits.

After FCA there were 56—if memory serves me correctly—56 savings and loan holding companies. The SEC didn't regulate the savings and loan; they regulated the savings and loan— the holding company—that was publicly traded—just like for bank holding companies. The SEC regulates holding companies. And so and this was something I did of my own initiative. The Commission used to support initiative; in other words if you were a bright person, you were (a) trusted by the Commission, and (b) you thought—the term today is *thinking outside the box*—but you had a mission and the mission was to protect investors and you were going to protect investors. And the fact of the matter is I ordered—and I had the ability to do it, I was the Director—I ordered all of the other savings and loan holding companies to be reviewed for the same kinds of things. In other words, Wall Street was selling these early forms of derivatives as interest rate hedges what would now be called hedges to these financial institutions and they really didn't understand what they were buying. They didn't understand how they worked. But the fact of the matter is a lot of them were doing it.

KD: What were the derivatives we're talking about now?

JH: Dollar rolls.

KD: Okay; all right.

JH: And there were different forms of those. But the review of all of the savings and loan holding companies resulted in five or six being identified as having these problems, so the Commission, in essence, had an early warning system with respect to changing these sorts of practices. At that time, that was sufficient to cause other people like the AICPA and other people to start to accelerate to think—what was going on?

Ironically, I had left the Commission in 1986 and Linda Quinn became my successor. I was in California one time—I was out working for a client and Linda tracked me down in my hotel room in California in the late 1980s and she said when you did that review after FCA did you review Lincoln Savings and Loan? I said well if it was a savings and loan it would have been reviewed because I ordered all of them to be reviewed. And this is when the entire thing about what the Commission was doing with Lincoln Savings and Loan was coming up and Linda checked, and Lincoln Savings and Loan wasn't in the Financial Branch; it was in the Real Estate Branch and they found it and it had been reviewed for these things and they had found issues with respect to it. So those were two of the biggest issues—Mexico, Brazil, and Argentina and savings and loan and they permeated the 1980s in terms of issues. And they're very relevant today—the same basic questions with respect to accounting and same basic questions with respect to new products, same basic questions with respect to the debate between safety and soundness in terms of one side and investor protection with respect to the other and I can tell you that that SEC protects investors.

The other things with respect to operations really were things like IPOs, initial public offerings.

KD: One of the things that seems like it must bracket your time there is the IPOs and the tender offers, especially the tender offers. I know that gets ginned up early; the Williams Act is back there and people start taking advantage of it in the mid-‘70s. Tell me a little bit about how that rose over the horizon while you were in Corp Fin.

JH: The Williams Act was enacted by Congress in 1968 and amended in 1970. I came to the Commission in 1975. The Division—the SEC had essentially written the Williams Act for Congress. That was at a time when there was great coordination between Congress and the SEC and a great respect incidentally for the SEC from Congress. So the SEC was viewed as the expert agency so if you had an issue, the issue was one in which the SEC was consulted and deferred to. So you’ve got lots of people like this, but the people like Jimmy Ling in the late 1960s were taking over lots of companies, things like dirty pooling with respect to stock for stock acquisitions; acquisitions became hot in the late 1960s. This really follows the market going down and real values being there. To get back to my point about driving my brother’s portfolio into the ground: the fact is that there were temporary rules adopted by the Commission and when I was in operations for about a year and a special project came up for Disclosure Policy. And Disclosure Policy was an office headed up by Mickey Beach, the Associate Director, and Roland Cook was the Chief of the Office of Disclosure Policy, and the special project was going private transactions, which Al Sommer has as a Commissioner—had given a big speech about it—I think at Notre Dame. So this project was really strange from a Division standpoint because Enforcement was looking at over two dozen going private transactions. In the late 1970s, a lot of companies that had gone public in the period of time in the early 1970s were going private afterward. They're doing the same thing again because market prices have gone down. Enforcement took all the really hot cases and gave them to Corp Fin because the Commission wanted all of these cases to be looked at a number of them and I became a hearing officer for one of these in 1976.

KD: What was involved in being a hearing officer?

JH: It was just like being an enforcement lawyer; the fact of the matter was this was ATO for American Le France. American Le France makes fire engines. ATO had in essence had done an IPO of American Le France, 10-percent, and within 18 months took it private.

KD: Who is ATO?

JH: ATO was a company that was run from Ohio run by a guy named Harry Figgie and I did the investigation. The lawyer for ATO for the IPO was Al Sommer who was then sitting as a Commissioner at the SEC and he had just given this speech about going private. So it's a very small world.

The fact of the matter was I had this case and I asked Mr. Figgie to come in and I deposed Mr. Figgie. I had a court reporter there and myself; Mr. Figgie came in with eight lawyers—eight. This is lean and mean is the Commission staff. I was right out of law school. He had almost an entire law firm okay with him and I'm asking him questions and he would—after my name is Harry Figgie and his address, he literally looked at another lawyer for an answer on each one of the questions. Now I was in the Army and I did background investigations for security clearances. I know how to ask questions and I know how questions are supposed to be answered. But the idea of a man looking to his counsel for each one of these okay, I looked at Mr. Figgie and I said we're not going to go any further. You're going to go out into the hallway and you're going to talk to these lawyers and then you're going to come in and you're going to answer these questions. Or else this is over.

He did that; I didn't consult with anybody. The fact of the matter was I was convinced even before Harry Figgie came into the room that there was no case here because the disclosure in the S-1, the IPO prospectus had said we're selling 10 percent of American Le France and we may at any time take it back and the disclosure had been written by Al Sommer. And the disclosure was a beautiful disclosure and there was no case. Mr. Figgie didn't have anything to worry about. All he had to do was talk about the disclosure. Ironically neither Mr. Figgie nor eight of his lawyers focused my attention on that; that was something I did. And so the impartiality of the staff—in other words, the staff may see that there's a problem with respect to something but the beauty of the staff of the Commission is that they actually do look at something in an impartial fashion and they are not hell-bent on trying to get something that isn't right.

KD: So there weren't people in Enforcement who were predisposed to try to find something wrong with some of these going private transactions.

JH: I have no idea about Enforcement. I can only say that the people that I was dealing with okay were not predisposed to do any of that. And the fact of the matter is—it went to the idea of not being afraid to try new things and also not being afraid to say there is no case here, okay.

Now during the course of that I got involved in going-private transactions. And I read—there was a man by the name of Mr. Silver and I'll never forget the correspondence from Mr. Silver to the SEC. And he said "I bought two dozen companies in the early 1970s; they've all gone private. They've all done extremely well after they went private **[*Laughs*]** and I lost the opportunity to have this." And at the same time there was a case going up to the Supreme Court, *Santa Fe v. Green* where the Supreme Court was asked whether in essence it was a 10(b)-5 problem to go private and the Supreme Court said I think in Footnote 14, well guess what? If there's disclosure there is not a problem under 10(b)-5 and there's not substantive regulation under 10(b)-5, and that was a huge debate in the case law as to whether or not 10(b)-5 had substantive disclosure. If you looked at 13(e) of the '34 Act you would see that there is an argument that there is a thing called substantive fraud as opposed to disclosure based fraud. And when I got to write rules—and I wrote rules for six, seven years—I actually proposed a rule **[*Laughs*]** on substantive fraud which actually would have in essence turned *Santa Fe v. Green* on its head. The Commission did not adopt the rule. What it did adopt was a very big disclosure based rule called 13(e)-3. And 13(e)-3 did some remarkable things—go back to taking tax courses; I was taking tax courses at the time of 13(e)-3 and it was at the time when I was writing rules like a tax person would write rules. If you look at the exemptions, they're all based on tax. You have a like kind of exchange exemption; you have—I mean all sorts of exemptions—the entire rule is like the Internal Revenue code in terms of its complexity, in terms of its disclosure but the critical point was that it covered all sorts of going private transactions. And it's not been amended since 1979.

One of the things that really got me about all the rules that I wrote was that you know I didn't expect any of these things to last more than five years. 14(e)-3 which is insider trading in the context of a tender offering and 13(e)-3 have not been amended at all. The other ones were. The first rule that I wrote was Schedule 14(d)-1 which is the predecessor to Schedule TO and that was about tender offers. In other words, after this little sojourn on going private transactions I was asked to join the Office of Disclosure Policy and the biggest project at that time for Disclosure Policy was not independent directors, although that was a huge project, and it was not projections, although that was a big project; those projects were in the office. I got the tender offerings. Again, luck in life is actually important but you've got to be prepared for luck. I didn't know about tender offers—nothing, not to mention that once I started looking at this they're contract based.

KD: Are we looking at the real early '80s here?

JH: We're looking at the late '70s.

KD: Late '70s okay; yes.

JH: Tender offers are contract driven believe it or not. A tender offer is not an offer; it's a solicitation of tenders to the bidder, which, if you tender your securities, the bidder under certain terms will accept. I didn't get a good grade in contracts so I had to become a specialist in contracts as well as in tender offers and for three years I did tender offers. And one of the major things about this was that once you developed a specialty in something and I became the specialist in the Williams Act. John Granda was one of the people that went to Georgetown at night and we used to drive. He and his wife lived close to our house and we used to go back and forth to work after class and we talked about the Williams Act. And we coordinated, and there was a great deal of overlap between things like Instruction C of 13(d) and what Instruction C is now under Schedule TO and that's not through a fluke. We worked together hand-in-glove and we trusted each other and we worked in a way that was seamless in terms of getting something done.

The fact of that matter is I became a specialist in tender offers. It was well known in the Commission that I was and so there was an enforcement case that came up and that enforcement case was the Sun Oil Company buying over a third of a company called Becton Dickinson. The case was a huge case because at that time there was no definition of the term *tender offer*, the case law was not defined, the fact of the matter was that you looked at what happened and in one afternoon Sun bought controlling interest in Becton

Dickenson; was that a tender offer? I was asked to help Ted Sonde on the case; I was a young attorney. Ted Sonde was an associate director in Enforcement. I was in essence put to Enforcement to help them because Enforcement, with all due respect to the people, Enforcement was not familiar with the area. That's not say they weren't smart; that's not to say they didn't know what they were doing; it's to say that this was a very technical area and they needed technical help. That was me; not to mention I had read everything there was.

And there was a *Law Review*; Irv Einhorn was a prolific writer. He actually specialized in proxy contests and proxy contests were the thing of the 1960s; tender offers were the thing of the 1970s and '80s; we can talk about the difference between them. But the fact of the matter was Marty Lipton and Wachtell Lipton was counsel to Sun—had written a *Law Review* article about Irv Einhorn's first book and Marty is a great writer; I read everything that Marty Lipton wrote. And in this *Law Review* article—it was just a book review—Marty Lipton described the fact pattern that was Becton Dickenson and at the very end of this he put *if ever there was a tender offer this is it*. Well that was the first footnote in the Complaint that the SEC filed against Sun citing Marty Lipton against Marty Lipton.

KD: That book review?

JH: That book review, and for that find I, as what you would call a third year—if you were in private practice I was a third year—I was invited actually by Enforcement to sign the complaint. Now there's competition among divisions at the SEC. Let's be very realistic; I'm a Corp Fin person. The fact of the matter is that competition is one in which it is a—at that time it was a very healthy kind of competition. Enforcement always thought that Corp Fin would give away the store. I was in essence the biggest client of the Division of Enforcement. I didn't give away the store. The question was balancing investor protection with capital formation and Enforcement being prosecutors are much more prone to investor protection than capital formation. For what it's worth I haven't changed my philosophy since I've left the Commission. I'm still the same person that I was in 1986. But to be asked to sign a complaint—in the premier unconventional tender offer case was the greatest compliment that Enforcement ever gave me and quite frankly, the Commission won the case and the acquisition company was LHIW. Nobody could ever figure out whether it meant "let's hope it works" or "Lipton hopes it works" but the fact of the matter is being creative on the name of an acquisition company is a pretty good indicator that you are being too cute by half.

Now unconventional tender offers were something that permeated this area and it wasn't until 1980 that the Commission proposed a definition of the term *tender offer*. I wrote that release; there were two people working on unconventional tender offers at the time, a fellow by the name of Stephen P. Lamb, who is a Vice Chancellor right now and myself; he did legislation and I did rules. He wrote what I call the Lamb Act which went up to Congress and never was acted on and I wrote the proposed definition of the term *tender offer* and it was going to be up on the Commission calendar for adoption in November 1980. There was an election if you'll recall. I went up to the Chairman's office and talked to Harold Williams about getting it calendared because we still had problems with respect to tender offers and Harold Williams said John there was an election; we're not going to do it.

That rule is still proposed for comment; it's been proposed for comment for almost 30 years—never been withdrawn. But the rest of the rules on tender offers got adopted—all of them, and that's Regulation 14(d), Regulation 14(e). The fact of the matter is go back to the trust point; the Commission trusted the staff. I wrote in one release an inquiry about shouldn't you have a recommendation by the target company, the subject company—it's the technical term for target company? And the reason for that was I found a 10(b)-5 case where a person had asked a company is this a good time to sell the stock and the company didn't say anything—silence. And the person didn't sell. Within short order there was a merger which had been talked about at the time and the holding of the court case with respect to a merger was there was no 10(b)-5 violation because under Blue Chip Stamps, the person had not sold. And therefore, there was no 10(b)-5 problem.

Well the investment decision in a tender offer is not like the investment decision in 10(b)-5. The investment decision in a tender offer is the tender to this or another bidder, to sell into the marketplace, or hold, and so 14(e)-2 and Schedule 14(d)-9 were written in response to that case. And they were written in a very simple way on a specific inquiry asking people what do you think about having a recommendation rule? After that the entire thing came in and 14(d)-9 has never been changed since it was adopted in the early 1980s.

KD: Now there was a committee on tender offers early ‘80s?

JH: That was after all of my tender offer work, okay and that was when Linda was the Associate Director Legal and I was the Director and that was the Committee that was formed that gave you the offer to all rule and unlimited pro-ration throughout. I can get to that in a minute, but there's one rule I want to give you before that.

KD: Sure.

JH: And that is 14(e)-3; there was a case that was going to the Supreme Court about a printer. He had called his broker 50 times and he was literally reading tender offer materials at the printer and buying the stock. He was front-running the stock.

KD: *Chiarella*?

JH: Yes, Vincent T. Chiarella. I went to the hearing to see Mr. Chiarella. His lawyer said he was very poor but he was very well dressed and he was going to the Supreme Court, okay. He won. The fact of the matter was, 14(e)-3 was in the works before Mr. Chiarella—we even went to the District Court and that was a rule that Dick Rowe—whenever I went to a meeting with Dick Rowe, usually I was the person who came out of the room and had the assignment. Dick Rowe was reading *Forbes* and there was a big article in *Forbes* about how stock prices were going up before a tender offer commenced. He looked at me and he said, write a rule. Go back to the point that he was a Marine and I was from the Army; I didn't really question **[*Laughs*]** anything other than okay; when do you want it? The rule that he got was 14(e)-3 which was Insider Trading in the Context of a Tender Offer. The rule got adopted. Again the Commission was trusting the staff. The rule went up to the Supreme Court twice on validity, and the most important thing about it—I wrote rules for a long time. I'm one of the few people you know who actually has read the Administrative Procedures Act. If you can't win on the merits, you test a rule by its validity. Go back to the point about Charles Cox did all of these economic studies on my tender offer rules, okay. Well you're going to have a Brandeisean laboratory kind of basis for every rule and you're going to adopt every rule under every section you possibly can because if it's invalidated under that section, well we've got that section. The fact of that matter is 14(e)-3 nailed people real good in terms of insider trading in the context of a tender offer. Enforcement loved the rule, and the fact is it went up a couple of times and the issue was validity. And each time the courts validated the rule and each time I worked with the General Counsel's Office to make sure that the General Counsel's Office were cognizant of the fact **[*Laughs*]** that they had to defend the faith with respect to these rules.

Now in other words, it was their job to go to court to defend the rule but I worked with them to make sure that my Rule 14(e)-3 didn't get invalidated. It's important if it was one of my rules, I took a personal interest. As a rule writer that's what you do.

KD: Felt a proprietary interest on these things?

JH: Definitely. The tender offer study that Warren Buffett was on was one where you had problems with pro-rationed pools. The way the statute worked was that if you were devious and this wasn't something that was there in the late '70s or early '80s but by the mid-'80s people were doing pro-rationed pools in which in essence you could pay people different consideration. And so the upshot of the study was in essence to have a predicate for the Commission to take action against pro-rationed pools and the concept of excuse me, 14(d)-7 of the statute had always been the best price offered to all kind of concept but it would—became a Rule 14(d)-10 and it was a rule that actually was needed at the time in order to respond and once unlimited pro-ration came through okay you never had another pro-rationed pool problem again. So it was a question really of timing okay; the Commission used to have the time to study something and get something that was an answer to something. Today the Commission doesn't have very much time at all. In other words, instantaneous responses are what is necessary. The rule making that I worked on for over three years—integration—was one in which I used to have what I called train schedules. After tender offers I went to the General Counsel's office to get a promotion really, to get a—from a GS-14 to a GS-15 but also there was a Supreme Court decision on the first generation state takeover statutes that were coming in and it was the *Hunt Brothers* case that was going up to the Supreme Court. I wanted to be on that case and so I went to Ralph Ferrara who was the General Counsel and I got into the Counseling Group—I was the special counsel to the Associate General Counsel

Counseling Group. I was on that brief and the fact of the matter was I got to meet the Hunt brothers; the Hunt brothers were going after the State of Idaho which had in essence asserted their statute against the Hunt brothers with respect to a tender offer that the Hunt brothers had done. It was ironic that the SEC was on the side of the Hunt brothers, but the SEC wanted to get these statutes invalidated because they were in essence stopping tender offers.

The fact is again we had a Supreme Court hearing that I went to and there was a lady from the New York Attorney General's Office who was apoplectic that she had been called down to Texas for this case; she didn't think that was right. All of us from the SEC **[*Laughs*]** kept saying, why doesn't the Court just get to the real action here; the real case is a constitutional case with respect to preemption? The Supreme Court was looking for a procedural case to make the point that people like the person from New York should not have to go down to Texas. The Supreme Court never got to the merits, and the fact of the matter was all that preparation was for naught but after that case, a rule called 14(d)-2(b) was adopted by the Commission at my recommendation. And if you look at the release that adopted 14(d)-2(b) it had the tangential effect of preempting 38 state takeover statutes. So there is a relationship between case law and rulemaking and the Commission at that time was very savvy about watching how cases developed, watching how tender offer practice developed, watching how all that developed.

KD: How did you divide up the work on this rule making? I mean you must have had people that you were working with to create these things.

JH: I was in the General Counsel's office. It was I think a Friday afternoon and Mike Connell and Ed Greene came to my office. Now when you're a special counsel and an associate director and a director from different divisions come to your office **[*Laughs*]—** it was a very interesting occasion. I had just gotten the Manny Cohen Award as an outstanding young attorney for the tender offer work. They wanted me to come back to Disclosure Policy to run integration.

Now to his credit, Ed Greene was the director that really got integration moving okay. Now what does that mean? What that means is there was the Milton Cohen article in the 1960s that basically said the '33 and the '34 Act didn't work well together; they didn't play well together as children. The '34 Act should have been adopted before the '33 Act. The fact of the matter is something has got to be done. That's nice, but that was just an article. Louis Loss, bless his heart, who was an Assistant General Counsel went to Harvard and started the Loss Code, which was a humongous revision of the Federal securities law—soup to nuts. I was not privy to those conversations but the Commission really always wanted to administer its own Federal securities laws **[*Laughs*]** rather than to have Congress change them and if you want to see some examples of that go read Sarbanes-Oxley and what Congress is doing today. I was always taught as a young attorney that you never let the Congress get a hold of the Federal securities laws.

Integration is the high-water mark of the Commission doing what Congress couldn't do or wouldn't do, and the fact is the work that we did was preceded by another study, by

Mickey Beach, and it was done also by the adoption of a new form, called S-16. S-16 was the first short-form registration statement that used incorporation by reference. And incorporation by reference is the grease that makes integration move. The fact of the matter was, nobody was using S-16—nobody and if you did the homework you would find out that it was because investment bankers did not want to have a 12-page prospectus to sell something. They wanted to have something to sell. So therefore the concept of short-form registration was not being used at all.

KD: People didn't trust the short-form? It was just too different I guess?

JH: It was too different because you used to have these big registration statements and people said well it's all in there.

KD: The heavier it was the better I guess?

JH: Let's put it this way—not necessarily heavier but the more that an investment banker could write to tell his or her story, the better, and it's about selling. And so the idea of how to blend and this is a very important point with respect to integration—how to in essence do what Milton Cohen wanted and how to make S-16 work, how to in essence modernize the Federal securities laws was my job as Chief of the Office of Disclosure Policy. I had eight people total. We did the whole thing soup to nuts, in a three-year period and I used to have train schedules. They was a schedule that was on the wall. Linda Quinn had S-K. Linda Quinn was working in my office at that time. She would have a train schedule and that train schedule basically had—this was done in the kind of way that was team-oriented and extremely cooperative because all of these moving pieces had to fit together. When the 2005 revisions came in it was one release of several hundred pages; it was proposed once. What we did in integration was there were multiple releases; they came off like a conveyor belt because if your train schedule would have this being done at this time with this comment period and all of them had to mesh because at the very end you were going to be done with integration.

So the idea of doing S-K first, the idea of doing the forms second, the idea of understanding that you had to do Regulation C with respect to all the procedural rules and how that fit into this—everybody had a task. Everybody had something that they had to do. But they all had to do it on time and they had to cooperate and they had to coordinate with each other and one of the biggest things that I did was to involve operations because nobody was more cognizant of what was happening in the world at that time than the people who were reviewing filings. And things like—go back to the bank holding company point—banks used to come to market in a herd and this industry specialization had begun, and so Dick Towle was now the Assistant Director in terms of banks and there was no requirement that you had to review one company every three years like you do under Sarbanes Oxley now, so when somebody came in with respect to the first registration statement they would be selected for review. The next three or four would be selected for review. But the next 20 would not. And so you had these companies coming; medium-term notes was a brand new kind of security at that time, and so lots of companies were coming to market. The staff was becoming a bottleneck with respect to capital formation. Go back to my point about the role of the SEC was investor protection and capital formation. It's actually written in the '33 Act; I keep pointing that out to Enforcement that capital formation is in the statute.

But the fact of the matter is it's a huge point that the staff was becoming a bottleneck and there used to be an informal rule called the 48-hour rule that you had to be on file for 48 hours before you could be declared effective. So at the same time that the market was starting to perk up—and it wasn't perking up for equity; from 1975 to 1983 equity was still really dead, but it was perking up for debt after 1980—'81 when interest rates all of the sudden went down from a prime rate of 19 percent to a very low prime rate and in those years you would have like 60 to 70 changes in the prime rate. So banks and financial institutions that needed capital **[*Finger Snaps*]** would watch to see if the prime rate was changing. Once the prime rate changed in their favor, they would all rush in with their registration statements. The staff was the bottleneck. So you had to do something with respect to this because—and this is the other point here—the Euro market was growing. The Euro market was taking away business from New York. In essence, the gold standard was still New York, but the Euro market was coming in with faster, better, quicker execution with respect to trades. And they didn't really care about the niceties of disclosure **[*Laughs*]** as much as the SEC did, so something had to be done, okay.

And there was a big meeting in Ed's office about what to do and just like all the rest of these meetings, at the end of it you know the person that got the assignment **[*Laughs*]** to fix the problem was me. I loved that; I just wanted more instruction than what I normally got because this one was a really tough nut to crack because shelf registration had been around for a long time but it had never been turbo-charged. Shelf-registration started in the 1960s with respect to a series of acquisitions by a really big company that were in essence all done in rapid fire order, so instead of having one big S-4 for 50 different things, you could do one S-4 for a series of acquisitions.

KD: Okay; and then do them all in pieces?

JH: And then do them all in pieces. The fact of the matter was—the theory was if that worked for acquisitions why couldn't that work for debt? And if that worked for debt why couldn't that work for equity? And if that worked for equity why couldn't that work for anything, okay? In other words, this is part and parcel of the Commission staff thinking outside the box. There are lots of things where the Commission staff reacted to something but also lots of things where the Commission staff went to the next level. In other words, things like EDGAR, things like electronic filing; there was a project at the—a patent office, and it had been going on for years before the Commission got into this. The staff was drowning in paper; we had these stupid little things on microfiche, that literally nobody could read **[*Laughs*]**. The staff used to ask for copies of filings to be delivered by registrants who could never understand why that was the case. Well because the staff couldn't read the microfiche, okay. So EDGAR was in essence a way of the staff getting information okay so that they could read it. The tangential effect of

EDGAR was it took the Commission from the late 20^{th} century way into the 21^{st} century and it was the predicate for the Commission looking super-modern okay in 1984.

KD: Did this idea that you could use the '60s model, this older form of shelf registration—had that been discussed at this meeting that you talked about?

JH: Yes; it was discussed but it was, you know, can it work this way?

KD: Right; so how do we get from there to where we want to be?

JH: There were lots of different alternatives that were discussed. In other words this wasn't—nobody at that meeting had *the answer* so there was a wonderful meeting. You have to understand; I went to lots of meetings where there was a huge discussion, lots of points of view, but at some point somebody had to do something and you had to do it quick. And by our standards quick is a whole lot longer than the Commission's standards today and I do not envy the Commission staff because they have to do things quicker and quite frankly they're more complex than they were when I was there.

So we went and did the shelf rule. The shelf rule was the apex of integration in terms of the theory. S-4 for merger proxies was the apex in terms of getting the '33 and '34 Act together and S-4 followed okay shelf registration. But shelf registration was proposed I think four times before it was adopted, okay and there was a huge debate about shelf registration.

KD: Proposed four times before—you had that sort of—I think it was a one year trial?

JH: Yes; we had a pilot program. We had lots of things; it was proposed as Rule 462-Cap A. That was an awkward term; we finally got to 415 and the common knowledge from the staff was it was called 415 because that's when the lawyer was called in order to do a deal the next morning - 4:15 p.m. Okay to actually the deal done the next morning because that's how fast transactions were going and it raised issues with respect to diligence. It raised issues with respect to the ordinary kinds of issues with respect to the congruity of Section 11 okay liability with marketing and selling.

And see the beauty of integration was that Rule 176 was there with respect to liability under Section 11 and 176 was already in process when the shelf rule was in process. And you had the capability of jiggering 176 so that it fit with what you were going to do under shelf registration. And so there were proposals; there was a trial period. There was a question as to whether or not it should be just restricted to S-3 companies or it should be allowed to be used by everybody. There were huge discussions on Wall Street with respect to the issue of whether this was a good idea or not.

I'll give you an example. I was one of the hearing officers for the Commission hearing on this and you had the Commissioner up on a dais in the hearing room and then you had the staff and then you had a person testifying in front of the Commission. And one day, this fellow's name was John Whitehead from Solomon Brothers—from *Liar's Poker*—

and he was decrying the fact that the Shelf Rule didn’t allow Solomon Brothers to do any due diligence and he said grass would grow on Wall Street and this was the most awful thing in the whole wide world. I’m sitting there listening to this thinking that the Shelf Rule is now doomed. This is one of the premier investment banking firms decrying the Commission’s action. I didn’t have a Deputy Director so I was in charge of operations and Anne Wallace was an assistant director and she came into the hearing room. And she said we have a problem. I said you have a problem; I’ve got a problem with Solomon Brothers. **[*Laughs*]** And she said funny thing, Solomon Brothers is the underwriter for a deal that was just filed this morning and they want to go effective this afternoon. And there was this thing called the 48-hour Rule that I alluded to before that you could not go effective quicker than 48 hours even if you were not going to be reviewed by the Division. I looked at Anne and I said you tell whoever you’re talking to that John Whitehead is saying he needs time with respect to doing due diligence on this filing and you ask them if they’ve done their due diligence, because he’s saying that the Shelf Rule doesn’t work because of this point. She left; she never came back, so the fact of the matter is whoever she talked to dropped the point with respect to trying to go effective that afternoon.

But the Shelf Rule turbo-charged capital formation. The finest compliment that was ever paid to me was—and I’m the Division Director that got it adopted; in other words you had Ed Greene proposing it, you had Lee B. Spencer proposing it; Lee left in the early part of 1983 and I became the Director and he looked at me and he said piece of cake—won't be a problem for you to get it adopted. Well right after I became a Division

Director, my boss, John Shad, gave a speech which was just like John Whitehead's speech **[*Laughs*]** about liability under the Shelf Rule.

It's a speech that was fascinating to me because what he said was it was only a matter of time before you would have liability under the Shelf Rule, Section 11 Liability. Now what I find fascinating is—and knock on wood—the Shelf Rule was finally adopted in 1983. You haven't had this case that everybody said was going to happen. And the fact of the matter is here I am going against my own boss, the Chairman, in terms of this point and Barbara Thomas was a Commissioner at the time and she was against the Shelf Rule and I acted as the honest—and this is what I used to tell people when I was visiting their offices—I was the honest broker trying to get the Shelf Rule resolved.

KD: Did you do things like go to Barbara Thomas and explain?

JH: Oh every day for a long time.

KD: Did you get anywhere at all with her?

JH: Not with Barbara but with John Shad I did.

KD: Yes, I would think.

JH: Well, go back to his speech. I'm objecting to my boss and again that goes back to the culture point. What's really important is to understand that you can have an argument and still be friends. You can disagree with a superior and they can actually say I don't agree with you, or they can say gee, I'm going to give you the benefit of the doubt, or there's a whole bunch of different kinds of things. But none of them ever included "that's the dumbest thing in the world; you're fired." **[*Laughs*]** So the fact of the matter is John Shad and I and Jim Treadway—the whole Commission at that time was intent on getting something resolved. And it was; eventually it was resolved. But the fact is Shelf Registration was *the thing that changed the Euro Market*, the point about Alan Beller that I was alluding to before, the SEC Historical Society had a big panel on integration when Allen was the director of the division and he said—and you can go back to the film for that because I think it was filmed—he said that he was in Europe at the time. And when shelf went permanent which was the fall of 1983 you could hear the sucking sound as all of the money left Europe and went back to New York City. And to me that was the proof of the pudding with respect to the point which I knew at the time, but it was a confirmation that the Shelf Rule had done what it was supposed to do.

The Shelf Rule was more than just the idea of being part of integration. It was getting the staff out of being a bottleneck with respect to capital formation and it was important for this balance, this balance between investor protection and capital formation not to disadvantage capital formation and the Shelf Rule was the way that was done. EDGAR was the way that in essence the staff got information—go back to my point that I always wanted **[*Laughs*]** operations to be happy because quite frankly as a former examiner I ran the division as a division director as an examiner would run it. If you were an examiner how would run the place? That was how I thought. Every day in every way I tried to make it better for people in operations because hey those are the guys that do the work and so if they've got to look at this crazy little microfiche okay and go blind okay are they going to be happy?

KD: Was EDGAR—you talk about Shelf Registration going up in the fall of '83. This is pretty early in your time as director of the division, so you've had this special project and you've been s working on that—the nuts and bolts and as a technician to some respect. And at this point you're the Director of Corp Fin and you've got shelf registration which you say is the apex of integration, so these are big hurdles that you've jumped right at the beginning of your time.

JH: Right.

KD: What were—what was the next big challenge? What did you have going forward? Was it EDGAR?

JH: Well let's put it this way. EDGAR started with a speech from Lee B. Spencer, Jr.; it was called the Electronic Library. I commend that speech to you because in it he posited what was really needed. It didn't turn out to be a library **[*Laughs*]**; I mean the fact of the matter is EDGAR was something when I got the promotion to be director shortly thereafter, John Shad and I met and he said we want to do this. John Shad named

EDGAR. It was a contest. John was a very wealthy man and he ran a contest to name EDGAR and EDGAR was named by a person named Herby Scholl. Herby Scholl was the first and until recently the only head of the EDGAR project. Herby got a $100 savings bond from John Shad for naming EDGAR. The fact of the matter was EDGAR was a personal project for John Shad. And one time we went up to Congress to testify because Congress did not want to authorize any money for EDGAR and this was in front of John Dingell and you had Schumer, Markey—a whole bunch of people who were now Senators—and at this hearing, I'm sitting to the right-hand of my boss. We knew it was going to be bad; we didn't know how bad it was going to be. And we came into the room and they had EDGAR written on the wall—big letters. I don't remember who was the person who led the charge from the House side but the fact of the matter was they went through what EDGAR was like—electronic data gathering analysis and retrieval—and said well there's no way that it's going to retrieve and so they took the R off; there is no way it's going to analyze; they took the A off; there's no way it's going to gather, so they took the G off, and then what was left was ED. And there was a TV program called *Mr. Ed* which was a talking horse, and so they then had a movie of *Mr. Ed*, the talking horse.

Now my guy had just named EDGAR, and you could be rest assured I had to hold him down in terms of the point because he didn't agree with any of this. And as we were leaving he looked at me and said you know I'll pay for it myself because he was so convinced—and having a Chairman on your side—you talk about what the next wave was, well the next wave was the biggest IPO wave that we ever had. In December of 1983 the Division got over 180 IPOs filed in very short order and when I first started out as an examiner there were less than 175 in fiscal year 1975. So all of the sudden, the division which at that time was no more than 300 people, was literally inundated with filings and for a while the division—and see there's a concept called interim lapse time which is time from filing to first comment, and again capital formation—having a long period of time was not a good idea because the market was hot. And you had to still get your comments out, have them complied with, and the fact of the matter was, for a period of time in early 1984 the Division did not review 10Ks; the Division only reviewed IPOs.

And it's a very little known fact, but interim lapse time went down to 23 days and I knew that I was in good shape when people started complaining that we were being too fast in terms of—in other words investment bankers and I would talk to people in terms of how are we doing, okay? And the fact of the matter is that was the answer that we were just fine with respect to the point. And quite frankly we did a lot of good with respect to disclosure. And see if you take too long to do a review you're not helping investors. It's sort of like just in time kind of stuff; you have to do things in a right kind of fashion. The example I would give you is when I was there tax shelters were still going on. There were lots of tax gimmicks that permeated the system and got a Masters in tax from Georgetown, not to become a tax lawyer but to become a better securities lawyer, but the fact of the matter is I called up the IRS. I'm the SEC at that time; I'm a division director okay. I'm having conversations with the Fed and with the Federal Home Loan Bank Board about you know Mexico, Brazil, and Argentina, and savings and loans so why not talk to the IRS about tax shelters? Roscoe Edgar was the Commissioner of the IRS at the time and there were these brand new tax gimmicks that were coming in that were being registered. The Division's expertise with respect to tax was very limited. It used to have a Special Counsel in charge of Tax; the person left, couldn't be replaced, nobody wanted to come work at the SEC and be a tax lawyer **[*Laughs*]**, but the fact of the matter was I called up the IRS and got a meeting with Roscoe—first of all with his assistant and then with the Commissioner and I said look. All the newspapers are writing these things up as tax scams and I know enough about tax to know that in about four or five years you will go after these people and get money. I tried to make an arrangement with the Internal Revenue Service that if the Internal Revenue Service would help the division analyze these tax problems and in essence coordinate on this point that—that would be a really good thing for investors because they won't be disadvantaged by losing their money three—four years from now. They'll know the disclosure that there's a tax risk now. The Service was very enthusiastic about helping; we started talking about timing. And they looked at me and they said you know we can help you. And I said great; how long will it take you to analyze a particular issue? Mr. Edgar said six months at a minimum. They thought that they were being quick. I looked at him and I said six weeks to eight weeks is the only thing we can do and on the timing question it became the end. In other words—

KD: Couldn't do it?

JH: —couldn't do it because the Commission could not hold up filings for six weeks waiting for the service to come down from the mountain. And the fact of the matter was all of those filings, the staff put in, the disclosure that they could with respective warning; this might actually have a tax problem. Well they all sold anyway because by that time the market was taking off with abandon because once the market turned in the fall of 1983, John Shad looked at me and he said we're on the verge of the biggest bull market in history. And one thing you didn't do with respect to John Shad was bet against him with respect to market moves. He was always right with respect to market moves and he started bringing people into my Division because he wanted to make sure that Corp Fin took care of this matter. And so all of the sudden I started getting slots from other divisions and that's a good thing and a bad thing—people from Market Reg were not necessarily happy that they were losing slots but Corp Fin was going up to 350, which it hadn't been at for a long time since Alan Levenson in the early 1970s, so when I left the Division was huge relatively speaking.

KD: And these are mostly just people looking at registration statements?

JH: These are people examining registration statements, giving comments, and having analysts, lawyers, and accountants working together across professions to get the best product that they possibly can.

KD: And you've still got the system setup where you've got different people specializing?

JH: Oh yes.

KD: Somebody is doing airlines; somebody is doing—?

JH: Yes; industry specialization was really hitting—that's a very good point because industry specialization started out—it wasn't easy. But by the time the early to mid-1980s came, industry specialization was going like mad. And coordination among and between the division and other offices was happening all the time. Another night that I was there—another **[*Laughs*]** analyst walks in. I mean go back to the point; accountants are there early; analysts and lawyers are there late. He said we've got this problem with this company called *Paradigm*. I said, what are you talking about? He said the Atlanta Regional Office has got an insider trading inquiry on it. They've left for the day. I can't do anything about it; what do you want me to do? Well you know it's not on that sheet but the fact of the matter is it's a pretty good story.

Paradigm was a filing by the hottest computer company at the time. It was in Florida; it was not in Silicon Valley. There were lots of these situations; Eagle Computer was another one. But this one was one in which as it turned out, and see you have to understand. If something is okay and the staff makes the determination that the disclosure is adequate it's going to go through. If something is not and there's a problem the staff is going to sit on it. *Paradigm* was sat on because they did not give good answers to questions and as it turned out there wasn't a problem with respect to insider trading—at least not one that the staff was concerned about. As it turned out, and this was another Enforcement referral, *Paradigm* had used somebody else's computer which is now a company owned by Hewlett Packard that used to be a Texas company that Hewlett Packard bought several years ago, a Compaq computer and put a *Paradigm* name on it and did a request for proposals to the Social Security Administration for the biggest contract that SSA had ever done. They had phonied up a request for proposal. And their disclosure basically said this contract will give us entrée to government agencies because we got this contract for $75 million with respect to the Social Security Administration.

Well the statement necessary to make the statement made not materially misleading is "oh by the way we might be debarred and we might never get another contract from the United States Government." See some of my best cases were cases that I brought on 12(b)-20, statements necessary to make the statements made not materially misleading. The first MD&A case against Hutton was on that theory; they were kiting checks. Well the Commission didn't sue them on you were kiting checks and that's illegal. The Commission sued them on if you ever stopped kiting checks that was a known uncertainty and so the statement necessary to make the statement made about your revenue was that you were kiting checks and if you ever stopped kiting checks all that revenue would go down by 17 to 20-percent. The same basic point was there with respect to *Paradigm* because they had made the mistake of touting in their Annual Report which was incorporated by reference into their registration statement that they were going to knock the socks off of Government contracting.

Harvey Pitt was the lawyer for *Paradigm* and the Commission did not allow Harvey to withdraw the registration. And one of the things about jurisdiction is that there are things called stop orders and that sort of thing but the staff just sat on it. They made a request to withdraw the registration statement which since nothing had been sold would have taken all of the Section 17 of the '33 Act away from the case and at that time I was coordinating with Enforcement again with respect to the point and we went up to the Commission and literally the Commission was asked to overrule me with respect to the idea of withdrawing the registration. The Commission sided with me and if you look at the case it's the Section 17 case.

KD: So you want to keep the registration statement that you're sitting on?

JH: Yes; because there's an ongoing offer.

KD: Explain that to me.

JH: In other words, Section 17 which is the Anti-Fraud Provision of the '33 Act which has got a negligence standard in it, allows you to sue for an offer and sale. Now, 10(b)-5 under Blue Chip Stamps is a purchase and sale, so there was no 10(b)-5 action here because people had not sold off of the registration statement; so the idea of withdrawing the registration statement took the case out of people's hands okay. Significantly, I did a lot of work at the SEC; this was the only registration statement where the underwriters personally called me up and thanked me for stopping it because literally you stopped a bunch of Blue Chip investment banking firms from having a real problem with respect to *Paradigm*. *Paradigm* doesn't exist anymore.

KD: Okay.

JH: And so throughout this time period, the focus of the Division went to—in 1984 S-4 came in and S-4 was in essence the perfect example of integration because you took the concepts of an S-3, S-2—S-2 doesn't exist anymore, but an S-3 company and an S-1 company and you literally put that into a registration statement, so if the acquirer was an S-3 company and the acquiree was an S-1 company—that was the quantum of the disclosure in the S-4. If they were both S-3 companies the merger proxy was really short, because they could both incorporate by reference. And by this time, by the early 1980s investment bankers had concluded that incorporation by reference was not bad; they could have all of the stuff that they didn't want incorporated by reference and then they could have their sales material in there as well. And so integration—go back to the S-16 point—took off like a bandit because Shelf Registration turbo-charged the offering process. S-3 allowed it to be done quickly; you could have a 12-page prospectus if you wanted and the fact of that matter is you put the two of them together and it went faster than a speeding bullet, okay. And everything that you see today in terms of the offering process on public offerings was built and the foundation was put into place at that time in terms of things like exchange offers at that time, a tender offer in which the consideration is a security is an exchange offer, S-4 dealt with merger proxies and exchange offers but there was no exemptive authority on the staff. That came later and so the idea of putting cash tender offers on the same plane, same platform as an exchange offer was not something that happened until the Commission got exemptive authority.

KD: Okay.

JH: And so if you want a regret, the regret that I had was that I couldn't get exchange offers to be at the same time on the same platform as cash offers but Dennis Garris when he became the chief of the office, I got to know Dennis Garris and I remember one day he called me up and he said John; I finally did it. They're now equal. And so the fact of the matter is this point about the staff being a family, this point about the staff working together and thinking together transcends generations. Dennis Garris was years after the time that I was there but he knew that what happened in the early 1980s with respect to S-4 was not the end of the game. And he took up the cudgels and he actually got it done. And so that's the kind of coordination between staff people over generations.

KD: Did you bring up Linda Quinn to take over after you? Is that right?

JH: Linda Quinn came from Sullivan & Cromwell and there was an office that Ernestine Zipoy headed up. It was sort of an office that was supposed to sit and was a Quality Control Office in the division. There were a number of senior people that Ernie—and I made—Ernie was the first associate director who became—who was an accountant. And after her position there she came in as a professional accounting fellow—professional attorney fellow—and then became permanent staff. I think that's right; either that or she was permanent staff to begin with, but the fact of the matter is she then came to Disclosure Policy and Disclosure Policy for Integration; she did SK. Linda and I worked together for the entire time that we were there okay in Disclosure Policy and we had—I'll give you an example. We used to have these knock down, drag out arguments about the law but we were still friends. And the fact is there was one letter, the American Council of Life Insurance letter, which was one of the most important letters for integration because in essence what this letter said was that you could have—you could register a private placement in essence and it was still a public offer. And the fact of the matter was that the people who bought a tranche off the shelf were not a statutory underwriter.

We had a meeting between Lee and Linda and myself and I basically wanted this letter because it helped integration and Linda opposed it and the letter went out. It's the American Council of Life Insurance letter signed by Lee Spencer, but Linda and I were still friends. Linda was a brilliant lawyer; after I became the director I made her the associate director of legal and then she got the attention of Mr. Shad and she went upstairs to be the executive assistant to the Chairman and when I left she became the director.

KD: Did you give her this exchange offer thing and say you know we want to do this someday?

JH: Oh no; see the exchange offer thing—the most important thing that Linda and I talked about when I left was that the division at that time was in really good shape. And I'm not saying I did it; I'm saying that it was a progression of people from the late 1970s to the middle 1980s and the most important thing that Linda and I talked about was operations was as well-oiled machine at that time. I mean it literally ran. And when you're thinking about how Corp Fin works you have to keep in mind that operations is the heart of the process. It's not interpretations; it's not rule making. I got to be a senior person by going outside of operations and going through rule making which at that time people just didn't do. If you wanted to distinguish yourself you went to the chief counsel's office or you went through operations. I went outside the box and the fact is when Linda and I were working together, both of us had a very similar view of the law with certain minor exceptions **[*Laughs*]** like the American Council of Life Insurance, but the fact of the matter is what was important was that you could disagree with a person and still be friends. And this was a philosophy that I followed all the time—if I'm going to have a problem I want to know about it before I walk into a Commission meeting room. Linda was perfect at making sure that you know if I had a problem, she would tell me. She took great pride in telling me I had a problem. **[*Laughs*]** I appreciated that; it wasn't the kind of situation where Linda. I don't want you to tell me what's wrong. I wanted to know what was wrong, okay because (a) you've got a better product that way, and (b) you were far more successful. And in the mid-1980s the division was—first of all you had the biggest bull market in history—go see John Shad; second of all there was no Louis Loss Code anymore because the Commission had basically done integration; third, the Commission was doing studies like the study on tender offers, and the fact of the matter is the Division had its hands on every aspect of the capital raising process.

So I left—

KD: Why did you decide to leave?

JH: Most people left the Commission when their kids needed braces.

KD: Or going to college or something.

JH: I left because my kids were going to college. SEC bonuses helped you with respect to braces but there was a fellow by the name of Paul Gonson, and I'm going to now tell a story about Paul Gonson. Paul Gonson and I used to teach together. We taught together for years at American University and we used to always drive home. Paul had two sons, Ben and Max, and when Paul took out his third mortgage—I didn't even know you could take out a third mortgage for education—I thought to myself there's no way that I'm going to do that. So when my son was getting towards going to college I knew that was about it for me. And quite frankly Linda was the director for almost 10 years and I was the next preceding director for 10 years. I thanked her all the time for not leaving. I could predict what the division's position was because Linda and I had worked together so well. And the idea of her taking over from me for this division I knew it was in good hands; as a matter of fact, I knew it was in great hands because I knew that she would do the exact right thing by the Division of Corporation Finance.

KD: Terrific. Is there anything that we haven't touched on that we should hit before we wrap it up?

JH: Restatements; I want to talk about restatements. **[*Sighs*]** Go back a second to Mexico, Brazil, and Argentina; I had a chief accountant. His name was Howard P. Hodges.

Howard P. Hodges was an old-line accountant and I had lots of people who were older than me. I left the Division at the age of 38. I became the Director at the age of 34 and 35, I was a kid. Howard Hodges was my Chief Accountant and the fact of the matter was when Mexico, Brazil, and Argentina happened he came into my office and said that he had gone in public accounting in the 1950s and at that time it was Venezuela and these were all troubled debt restructurings.

He was concerned that these countries were getting better treatment than companies—domestic companies would get. We did a series of *Staff Accounting Bulletins* and at that time the director had to sign *Staff Accounting Bulletins*. One of the things that caused me to get interested in accounting was the fact that I had to actually sign the *Staff Accounting Bulletin* which if you want to look at 302-906 certifications today, having to sign something actually crystallizes the brain. But the fact of the matter is I got involved with accounting through Mexico, Brazil, and Argentina and the savings and loans but then things started to go into other areas. There was an article in *Fortune* magazine about Aetna. Aetna was a very big insurance company; and the fact of the matter was that I'd had a huge net operating loss carry-forward. At that time, go back to the Tax point; at that time an NOL was a huge kind of benefit. *Fortune* magazine questioned the utility of this NOL, okay.

Well the Commission staff reads the newspapers; we read magazines. We did a review; this was Howard Moran's Office. He was the Assistant Director. And the fact of the matter was that what was at issue here was APB 11, paragraph 11 with respect to whether the NOL was realizable. Go back to that point that I bought the three volumes; this was smack-dab in the middle of those three volumes. I knew this code, okay. The fact of the matter was it said beyond reasonable doubt. You could keep the NOL if its realizability was beyond a reasonable doubt. Well the company and its accounting firm—and I won't get personal here, but the company and the accounting firm were adamant that it was realizable. Had huge meetings; the fact of the matter was beyond a reasonable doubt sort of stuck in my mind, and this was before the internet and this was before word searches—this is before anything—I had a bunch of lawyers read all of GAAP to find every instance where beyond a reasonable doubt was used. There were three and in none of those instances was beyond a reasonable doubt more than a 50-percent standard. It was in the neighborhood of 90-percent plus. And so the fact of the matter is we had a meeting with the company and the accounting firm, the head of the accounting firm, subsequently became a Chief Accountant of the Commission, and I pointed out that beyond a reasonable doubt in this context was more than 90 percent, and therefore while they surely had made the case that it was more than 50 percent they hadn't made the case that this was a slam-dunk.

There was a restatement. And the fact of the matter was it was an exceptional situation to restate. Clarence Sampson, the Chief Accountant when I was the division director had a philosophy that the registrant won a tie. I firmly believe that. A registrant should win a tie; a restatement should only occur when it's wrong and it's wrong to a material extent. The point of my story and the reason why I'm saying this is now we have hundreds of restatements every year, and I can tell you that this is a wrong thing to do. You're not helping investors by having hundreds of restatements. If everybody has one then they don't distinguish themselves. If they're very few and far between they stick out and are memorable. I was at a meeting recently where I basically said you know APB 11 used to say this and all of the guys who were my age remembered the Aetna restatement and they all said yes; that was a big one. But you can't think of restatements today in the same vain because there are so many of them. And so part of the job of the Division of Corporation Finance is to make those decisions, to make those calls and to only make the call about a restatement when it really is wrong and really is material because that sends the right message to investors.

KD: Okay; well terrific. Well I appreciate you walking through all this material with me. It's been great.

JH: Any time.

KD: Thank you.

JH: It was a lot of fun.

[End of Interview]