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

KD: Interview with Lloyd Feller, February 19th, 2009, in New York City by Kenneth Durr. Well, let's start from the beginning. Where did you go to school?

LF: Wharton School, University of Pennsylvania, and then NYU Law School thereafter.

KD: Did you go to NYU with the thought that you'd focus on securities law or corporate law?

LF: No.

KD: Just law in general?

LF: Just law. I didn't know what, particularly, I'd be doing.

KD: And then you went into a firm for a few years after that.

LF: I did, although while I was in law school, I worked in the securities fraud unit at the U.S. Attorney's Office, and worked that summer with, among others, Art Matthews who was trying a case at the time. And Art then tried to talk me into coming to work for the SEC.

So that was my first exposure to the SEC. But, in fact, I started with a law firm in New York after law school.

KD: But that must've been a pretty important experience, I guess.

LF: It was fun. It was a busy summer. We tried some cases that were interesting. There were only four people in the U.S. Attorney's Office at the time in the fraud unit, all of whom were wonderful people, so it's very interesting.

KD: What kind of work did you do?

LF: I was a second-year law student, and they were generally at trial, so I was with them during the trial and also helped do some investigative work.

KD: Okay. Did you take pretty readily to that?

LF: Yes.

KD: Not something you thought you'd be getting into though.

LF: It was interesting, and having a business background helped.

KD: In what way?

LF: I was familiar with the business. My brother worked on Wall Street. My step-father ran a public company. So it was not an unfamiliar jargon or other aspects of the business. I understood this.

KD: Okay. This was corporate fraud, so –

LF: Yes. This was the unit that prosecuted stock frauds and white collar criminals.

KD: Okay. Now were you able to use that experience when you went into a law practice?

LF: Not really. The first two years I started and the law firm was split between doing a lot of acquisition work, and entertainment law.

KD: Which did you tend to specialize in, the acquisitions or the entertainment?

LF: Well, the entertainment law, really, is just contract law anyway. I spent a lot of time on corporate work, but in those days, law firms were a lot smaller, and you were more of a generalist being thrown into whatever occurred at the time.

KD: So how did you get hooked up with the SEC then?

LF: Well, apart from my initial introduction, through Art, someone named Cal Huge came to work for the firm I was within New York, and Cal had worked at the SEC for a number of years. And Cal and his wife really didn't take well to being in New York. So Cal went back and became a legal assistant to one of the Commissioners, and he knew my wife, who was then pregnant, was not thrilled about bringing up children in New York. So he suggested why didn't I come down and work at the SEC. So I went down, I met with Stan Sporkin and Neil McCoy, who was then the executive assistant to the chairman, Chairman Budge. And in those days, for some reason, he had to meet all new hires. In any event, Stan had come up with, I guess, a budget ploy to set up an organized crime group in the Division of Trading and Markets, and I joined that group in 1970.

KD: I think you answered one of my big questions, is why would you put an organized crime group in trading markets rather than –

LF: Well, there was no enforcement. The Division of Enforcement was not created until a couple years later, and it split the then-trading and markets division, which Irv Pollack was handling the market side of, and Stanley was handling the enforcement side. But it was called T&M. Not the same T&M that's been renamed from market reg, different animals.

KD: Okay. So you were essentially working with Stanley Sporkin –

LF: I worked for, I mean Stanley was running the group at the time, and I was a young attorney, so that's who I went with – I guess my branch chief at the time, there were two of them in the group. One was named Joe Burl and the other was Larry Grimes. Assistant director was Wally Timmeny. And I did that for about two years and then I went to work for one of the Commissioners.

KD: Tell me a little bit about that organized crime group. Why was it set up, and what was your work like?

LF: Well, I think it was set up, as I say, at the time to get some extra money for the division. But this was a time when there were so-called strike forces that had been set up in the government to coordinate among various agencies the attack on organized crime. We, in fact, did work with strike forces, or at least I did, on some of the investigations. And the investigations at least started off having some allegations that there might be organized crime involvement in the case.

KD: Was there a general nature, something that these tended to fall into?

LF: I don't think so. There were some where we worked with the D.A.'s office, and they effectively prosecuted what were boiler rooms or bucket shops. But other cases went off and might be viewed as more typical securities fraud cases, although there were allegations, in some instances, that there was organized crime in the background.

KD: Were there any that were really strongly linked to organized crime that you were involved in?

LF: No. Well, I shouldn't say that. I listened to some tapes that were pretty clear, but we didn't bring that case. It was handled by the New York District Attorney's Office.

KD: Okay. Did you work with state regulators at all in any of these?

LF: No, other than district attorneys, but not attorney generals.

KD: Because I know in New York State, for example, that is the kind of thing that some of the state regulators might've gotten involved with.

LF: I have no recollection of the type of activist in this kind of area at the time. That was a later development. I think the attorney generals or the state attorney generals tended to focus on other types of matters.

KD: Now did that organized crime group go away at that point?

LF: I don't know when it disappeared as a budget issue. It was really just another part of the division that I think Stanley got to hire some extra people by calling it that.

KD: So then you went to work for Commissioner Herlong.

LF: That's correct.

KD: Tell me a little bit about that and how you got into that.

LF: Well, in part, I got into it because Cal Huge, the person that I had been friends with, was Commissioner Herlong's legal assistant, and he was leaving that and going – I forget whether he went to corp fin or enforcement at the time. But I had helped him on a variety of matters when he was up there, and he suggested to the Commissioner that he talk to me, which he did, and he hired me.

KD: What's involved in being a legal assistant?

LF: Well, at the time, and this is true both for when I was with Sid Herlong, and Al Sommer when he came in after that, there was a single legal assistant for each Commissioner, and so you did it all. You reviewed everything that was on the calendar, you helped prepare speeches, if he was giving speeches, and you just generally acted as counsel to the Commissioner.

KD: So this was definitely a full-time job then.

LF: Yes. It was a full-time job, plus it was a great learning experience, because when you're at the Commission level, you see everything. You don't just focus on one aspect of what

goes on at the Commission, you have to learn and be familiar with all aspects of what goes on.

KD: Were you surprised at the kinds of things that you were seeing, once you got that perspective, after being in this organized crime group for a couple years?

LF: No. I generally knew what was going on in securities law and around me, so I wasn't tunnel visioned into just one aspect of it, and I recall the first case I brought, this is back I guess 1971, I brought it against one of the major accounting firms, and also a partner of a law firm in New York. That exposed me at the time, in getting that approved, to working with the chief accountant, with the general counsel, and a variety of people throughout the Commission, because it was not the norm back then to go sue the major accounting firms or partners of law firms in New York. So it was interesting.

KD: That would've raised a few eyebrows.

LF: It took a while.

KD: And so you went to the folks you talked about. Did your superior take this to the Commission and say, "This is what we want to do, this guy's got this idea"?

LF: Well, it wasn't an idea; it was a case. We spent a lot of time getting the support of the general counsel's office and the chief accountant before we went to the Commission.

And even after we went to the Commission, I recall Jim Needham, who was then a commissioner and who was an accountant prior to—he was always an accountant, but prior to coming to the Commission, had been a member of an accounting firm—took particular interest in the details of that case and how we charged it because he was concerned about it.

KD: Did the SEC pursue that?

LF: Yes.

KD: What was the case?

LF: It was a case called ***SEC vs. Utilities Lucent Corporation,*** and Arthur Andersen was the firm that we sued, the accounting firm.

KD: Okay. Was this sort of a classic accountant type case where they're –

LF: It was a very easy case in some respects. The chief executive of this company had taken certificates of deposit that belonged to the corporation and pledged them for his personal loans. And the bank had confirmed this fact to Arthur Andersen. So in today's world, this is not a very difficult case. It was surprisingly difficult to convince people at the time that we should sue Arthur Andersen over it, although they did consent the next day.

KD: Any other notable cases from that period, that first period?

LF: No. I spent time on another matter which I then handed off to someone. It was notable only in the sense that it was during a very short period of time when Bob Morganthau was not involved as either the U.S. Attorney, or now the District Attorney of the City of New York. He was in private practice representing the person that I was investigating. So that was interesting and fun. But that case never was brought, so I won't go into it.

KD: Okay. But you've had some pretty formidable opposition.

LF: I don't know that it was formidable. It was interesting to work with him and watch how he operated. It was not an adversarial relationship at the time the way he handled the investigation.

KD: How about Sidney Herlong? Did you watch him, and did you learn from him in a similar way?

LF: Sid was someone who had been in Congress for twenty years prior to coming to the SEC. Was good friends with Judge Budge, Commisioner Budge, and did not have an extensive background in the securities law. He relied, I think, to a considerable extent on his legal assistance to help him and tell him what the right thing to do was, which was all he wanted to know, what's the right thing to do here? So it involved a fair amount of learning and responsibility to just tell him what the right things were.

KD: Would you just tell him, or would he want you to show him and lay out –

LF: With Sid, I would generally write memorandum to him on something, and then we'd discuss it. I'll contrast that to when Al came in. And with Al, he would read everything, and Al and I would just sit around and talk and discuss our views on the various matters, so we had a different kind of relationship, given Al's background in securities laws. He was much more knowledgeable. It was just a very different relationship than I had with Sid, who relied more heavily on my advice. Al, I think, listened to my advice, and then he made his own decisions.

KD: Was there something that someone like Sidney Herlong brought to the Commission, having this outside perspective and maybe not being immersed to the extent that somebody else might be?

LF: Possibly. One thing that he did bring, which was very useful, was he had very good relationships with the folks in Congress because he had been on the appropriations committee for many years. And when we needed to get the word through to Congress that, not withstanding what the administration wanted as a budget, it might be helpful to increase that budget, he was quite effective in doing that on behalf of the Commission.

KD: No small thing.

LF: That's correct.

KD: Well, you took up exactly the question I wanted to get to, which was comparing and contrasting the style of these commissioners with very different backgrounds. Can you tell me a little bit more about Al Sommer and working with him?

LF: Well, I worked with Al starting, I guess, in '73. I was his legal assistant while he was at the Commission, and then, as you may know, Al and I, when I left the Commission, we joined and were partners for the next— I'll pause for a second. When he stopped being a partner, maybe sixteen years or so, he continued with the law firm, so he was of counsel after that, and he still –

KD: This is Morgan, Lewis?

LF: That's right. Al and I started on the same day in the Washington office to help build that practice.

KD: Was that a New York based law firm?

LF: No. Philadelphia.

KD: So this was just the time that the firms were starting to branch out into other –

LF: Well, they had a Washington office, but not a terribly large one, and not much of a presence in the securities markets. And Al and I were the first two to join to build that practice.

KD: Well, back when he was a commissioner, as you've pointed out, he knew a lot about securities law and the industry and regulations. Were there particular subjects that he was most interested in?

LF: Well, there were a number. When he first joined was at a time when we were looking at what to do with fixed commissions. So as I recall, we spent some time working and educating Al because that wasn't an area that he was all that familiar with on some of the issues that were involved on fixing of commissions and some of the market structure issues that were percolating at the time. As you may know, Al was always interested in accounting matters. He had a special interest in that, and he was very active in working with Sandy Burton, who was the chief accountant at the time, and working on accounting policy-related issues.

KD: Do you remember what the specifics were?

LF: I really don't. I know that we dealt with a whole range of issues that, Sandy had a broad-ranging list of things that he was interested in.

KD: Were you working with the financial accounting standards board at that point?

LF: Didn't exist at the time.

KD: Okay.

LF: It was during that time, I believe it came into being as a successor to the body that was in existence then. If I look back, somewhere in the 70s, mid-70s is, I think, when the FASB comes into existence. And, yes, Al was involved in that process. Al was very much a believer in the private sector setting standards.

KD: So he was definitely focused on accounting.

LF: Among other things.

KD: Among other things. You talked a little bit about market structure.

LF: Yes.

KD: Where did you pick up your knowledge of market structure issues?

LF: Well, a couple places, I suppose. One, having lived through most of the studies and going back all the way to the early 70s when I first was at the Commission, and starting to read all the reports that were coming out—the *Future Structure Statement*: John Liftin,

who I think you met with earlier today, was a college friend of mine. I knew what he was doing. And you sort of pick it up. Plus, as I mentioned, my brother was in the market, and I had gone to Wharton, I had been a corporate finance major there, so I had some sense of how the markets worked, and it was interesting to me. So I looked at the stuff, even though, for example, when I was in trading and markets, I wasn't doing that, I was still reading it. So once I was up at the Commission, I spent four years, three or four years there, at a time when the Commission was very actively involved in market structure issues. And so I, of necessity, had to read all that stuff and found it interesting.

KD: So you kept your eyes open, even though that wasn't necessarily on your list of tasks.

LF: Yes.

KD: I know that Al Sommer led some task forces or something like that at some point. It might have been after you were his assistant.

LF: I was his assistant the entire time he was there. If you mean the Advisory Committee on Corporate Disclosure?

KD: That may be what I'm thinking about. Were you involved with conducting that?

LF: I'm trying to remember. We talked about it, but I don't think I was actively involved. I think there was a staff person assigned to that committee.

KD: Okay. Any other highlights of your time as legal assistant to those commissioners?

LF: There were lots of interesting times. One of the ones that comes to memory goes way back, was the time that the Commission was considering a case, this was when Bill Casey was the chairman, involving Media Banca, which was very controversial at the time. This was the Dita Beard time, and also involved a time when there were congressional inquiries going on, and the SEC took steps to get documents, which it held away from the subpoena which was on its way over. It was a very interesting period. But anyway, that was a very interesting case. I do recall the discussions on that. And it was, again, one of those cases in which Sid just wanted to do the right thing, notwithstanding the fact that the chairman had a different view.

KD: So this was a part of the ITT –

LF: That's correct, yes.

KD: So I guess you must've spent a good big of time sitting and watching the –

LF: I was at all the Commission meetings.

KD: What were those meetings like?

LF: Well, they were very different than today's meetings. I don't know what today's closed sessions are, but in those days, there was no Sunshine Act, so the meetings were all in private except for hearings on an appeal. But they were interesting, depending upon the composition of the Commission, and that changed over time. Clearly, the most interesting time when Ray Garrett was the chairman and we had Phil Loomis and Irv Pollack and Al and John Evans and they were all just smart people with views and engaged, and it was very active. And Ray encouraged that and did not try to lead it towards his view. He was very much a collaborative person. I think they were different under Bill Casey, and tended to be a little quicker, and you could never tell what Chairman Casey was saying anyway because he mumbled a lot about what he wanted to say, and then it was done [laughter].

KD: But there was a sense that he had figured out what he wanted to –

LF: Oh, yes. Very smart, very smart man.

KD: So with a style like Ray Garrett's, would things go on while people mulled things over? Would the meetings last a long time?

LF: Sometimes. Yes, sometimes the meetings would go on.

KD: Because these are all guys who really like the details.

LF: They could go on for a while, yes. Al and I used to have a practice of going out with senior staff to lunch on a regular basis, which was also a good way of catching up with what was going on, so we would do that on a regular basis as well.

KD: And then, I guess following Sommer's interest in accounting, you went on and became counsel of the chief accountant?

LF: Part of that was Sandy Burton, who was just a wonderfully bright and engaging person. And it was interesting working with Sandy, which I did as chief counsel to the chief accountant, until he left to become deputy mayor of the City of New York during the crisis in New York. But he and I both had interests which transcended accounting. Sandy had an interest in the markets, and we would make our views known on a variety of different subjects, some of which may have surprised the other divisions that the chief accountant had a view of what he did. [Laughter]. And it was forceful. During that time, the thing I remember most focusing on was the beginnings of the Foreign Corrupt Practices Act, where I helped work with the chairman's office. David Boyd, who was then in the chairman's office, worked on the response to Senator Proxmire, who had asked for a report, and it was in that that we gave recommendations for what became the records part of the Foreign Corrupt Practices Act where we came up with that. I worked on that and put the accounting sort of common element to all the problems we were seeing in the bribery cases.

KD: Can you explain that a little bit more?

LF: Well, we were trying to think of a legislative response. In talking about it, one of the things you always found was that the books and records had been falsified. So that's what led us to deal with the internal controls part of the FCPA. I think Harvey, who was in the general counsel's office at the time, Harvey Pitt, was dealing with the other aspects of the FCPA.

KD: Okay. But this was something that you could isolate.

LF: It was something we worked on what we should put in the report, and David was in charge of that, I guess, from the chairman's office, and he's a friend. He and I worked on it together.

KD: What else were you helping Sandy Burton out with?

LF: Whatever. The flow of issues that go through the chief accountant's office that can range on views from proposals for standard banking. Even though I didn't have a great input into that, I learned about that. And then there were enforcement cases that involved accounting issues that would come up for our views. And then there were the everyday accounting issues, interpretations that would make their way up to the chief accountant's office, and I'd sit in on the meetings of those.

KD: Okay. So the more unusual things would be the enforcement cases, things like that.

LF: Right.

KD: Were there any policy changes that were happening at that point in accounting, as far as the SEC was concerned?

LF: They were working on oil and gas accounting. That was one of the big issues at the time, I believe. I'm trying to think what the other issues were. I'm not remembering.

KD: Some safe harbor provisions came up later on, I guess.

LF: I think I created one of those.

KD: In what respect?

LF: I think I came up with one of the safe harbors for projections, as I recall, or one of them. I'd have to go back and look, but I was involved in coming up with language for a safe harbor.

KD: Okay. Well then moving right along, you went into market reg, is that right?

LF: Right. I had an office that was responsible for market structure and trading practices. My predecessors, like I said, had been John Liftin, who you talked to this morning, then

Andy Klein and then me. That was in 1977, a very active two years of dealing with a range of subjects on how to create a national market system following the '75 acts amendments, which mandated that the Commission help create the national market system, so this was in the early days of implementing that.

KD: Well, can we unpack those a little bit?

LF: Sure.

KD: It's particularly interesting, seeing as how I did just talk to John Liftin about this, and a lot of work went into it early on, well before the '75 act was passed.

LF: That's correct.

KD: And in some respects, some things got done and some things didn't, and I want to talk about why that might be. So what were the biggest issues for you when you came in?

LF: Well, when I came into it, they were just starting hearings on 390, so that was one of the biggest issues. Then we did a number of rule making proposals dealing with consolidating quotes and inter-market linkages during the period of time I was there.

KD: Proposals, you say?

LF: Proposals and adoptions.

KD: So these are rules?

LF: Yes. Rules that mandated the creation of certain facilities of a national market system.

KD: Okay. Well, let's start with the first one you mentioned, which were the hearings on Rule 390. That, again, is something that had been bruited about.

LF: For long periods of time. Even before it was 390, it was 394.

KD: Right. They changed it just to confuse everybody.

LF: That's right.

KD: What had been accomplished? Had the New York Stock Exchange –

LF: The New York Stock Exchange, it was very effective in trying to slow down anything which would increase competition to its floor, or at least that was the view that some of us had and may still have with the benefit of hindsight. And they were a very forceful lobbying group. And when you were in charge or trying to create policies that they said would have severe negative consequences, you always wanted to be careful in what you did so that you didn't have unintended consequences. On the other hand, we, I think, kept

pushing to bring greater competition to the markets, which was the purpose of the elimination of 390.

KD: These hearings, you said you were just starting hearings.

LF: They had been organized. I, literally, I think my first day down in the job, the hearings began. So I was not as active in those hearings because I, literally, had just come back from my vacation in between leaving the chief accountant's office and coming to market reg.

KD: Now was 19c-2 part of that?

LF: Yes.

KD: Okay. Tell me a little bit about how that played itself out.

LF: I'm not sure I have a clear recollection of day-to-day how that played. There were a variety of things that we thought we needed to accomplish. Getting rid of the restrictions of 390, which we took in pieces, starting with agency trades, and then doing the experiment was the way we went about doing it.

KD: The experiment?

LF: Well, experiment would be the wrong word. I think they took it off of new listings first for all trades, and then eventually all trades.

KD: Was that after your time in there?

LF: I believe some of that occurred after I left in '79. It was something we were talking about before I left, but I think that part of it came in after I left. 19c-3, which was the agency part, was when I was there.

KD: Okay. So there was a deliberate attempt to take this thing in pieces.

LF: Right, and move it along. We got frustrated at times. The inter-market trading system, which was one of the first linkages, which was again a fairly clever way by New York to buy off the regional stock exchanges, by giving them free access, which they did not have at the time, to the floor of New York in exchange for them not arguing for different types of linkages. But nonetheless, representing a first step in linkages was something we did at the time.

KD: ITS is connecting the floors.

LF: That's correct. It took the various floors, but not NASDAQ, not the NASD, and connected them so you could trade from one floor to the other. And that meant a regional

stock exchange. Specialists could get his trade done in New York without having to pay a fee to someone, which was very important to the regional members.

KD: So were they sufficiently bought off from the –

LF: For a while.

KD: How about Cincinnati? Were they already experimenting?

LF: My recollection is Don Weeden took control of Cincinnati sometime around maybe '78, '79, sometime while I was still there I believe they did that, and we were supportive in a variety of ways of him doing that and the steps he was trying to take to automate the process.

KD: They were going after a Hard CLOB system at that point?

LF: I'm recalling a visit Al and I had—I think it was Al and I, back to see Don Weeden even before he did this where he was going through one of his systems. When you say a Hard CLOB, you can't have a Hard CLOB unless you force all orders into it, so I pause.

KD: I guess it had the potential if you forced –

LF: Yes, if you forced everything into one person's system, you could have a central limit order book.

KD: Was that ever considered by the Commission?

LF: Oh, yes. The staff was, I think, and a lot of people at the Commission from time to time flirted with the idea of forcing in some manner or another the consolidation of all trades into a central book so that you could assure best execution, or so went the argument. There were countervailing arguments on what that might do, but certainly, there was a lot of study that went into that, and a lot of discussion among the members of the staff and the commissioners.

KD: I know that with the '75 act, it was actually written into the act in some way that the SEC would create this national –

LF: Facilitate.

KD: Facilitate, take some responsibility for it. And later in the 70s, there was a little bit of push back, Congress saying, you know, "You're dragging your feet," this kind of thing. Do you remember anything like that?

LF: Well, there was always a push and pull in terms of how quickly you should or should not mandate market structure changes. As I say, I think the Commission was generally of the

view that it would be best to push the industry to develop the mechanisms because it did not believe that it had the knowledge or expertise that could be brought to it that the industry did. But the industry had to be pushed, and that was the tug of war. Whether that's fast enough for politicians or others who are feeling that they're competitively disadvantaged in trying to get a greater competitive advantage is always what you go through at the time.

KD: How much of this would've depended on who was the chairman?

LF: A fair amount. When I was there, Harold Williams was the chairman, he was a very cautious person, and I think certainly someone who, while wanting to move forward, also wanted to be careful in how he was doing it. The other thing that happened at the time was, and I forget when, we had to deal with the fact that all meetings had to be public meetings. And as a result, you couldn't get two commissioners together to talk about their views on these important issues without doing so in a public meeting subject to notice.

As a result, I spent a lot of time going from door to door to commissioners' offices discussing market structure issues when we had proposals, and sometimes going back and forth as the intermediary for negotiations between them, because it's not something they wanted to do in a public meeting where you wanted to just present what your final product was. So it resulted in this kind of shuttle back and forth between the various

offices whenever we had major proposals, which was with some frequency during that period.

KD: That must've been a really interesting experience, going and talking to each commissioner individually.

LF: It was, but I'd also been talking to commissioners since I worked at the Commission, and it was interesting, it was part of the job.

KD: This would've been a pretty different Commission from the one you were describing earlier.

LF: Yes. It was a somewhat different Commission.

KD: Was Roberta Karmel on the Commission at that point?

LF: Yes, she was, indeed. And she was one of the persons I talked to.

KD: And she probably talked to you a lot too.

LF: Yes, she did.

KD: I was talking with John Liftin this morning about the advisory committee structure that he'd employed.

LF: That had been put in by Chairman Casey, and John, among others working in his office, had run these various advisory committees, all of which laid the predicate for the *Future Structure Statement* and along with there was a House study and a Senate study that were going on during this period of time, I think from '71 to '73 or something. Harvey Rowan was running Congressman Moss's study, and Al Harris was running the Senate study, both of which produced interesting studies that laid the predicate for the '75 acts amendments.

KD: Did any of that continue after the '75 act, for example, looking at your national market system issues?

LF: There were none when I was doing it, but there was one mandated by the '75 acts amendments, as I recall, another advisory committee. I think that's the one Sandy Yearley ran, Alexander Yearley. But when I was there from '77 to '79, we did not use any advisory committees. The other thing which I do recall at the time, which was interesting—I was, without getting into who, dispatched to New York to meet with some people about concerns they had about how the options markets were operating. And these were some senior people on Wall Street, and I think it was Mark Finerman and I went up and met with some people, came back and reported on that, and that led to the special study of the options markets.

KD: Was that your recommendation, that we need to open this up and look at it again?

LF: I think when the information came back, we talked about it in market reg and talked to the chairman about it, and I think they stopped the expansion of the options markets while we studied the markets.

KD: Right, and that went for a few years.

LF: That's correct.

KD: Well, what was the experience like? I mean, did you go and say, "Oh, my gosh, anything could be going on here"?

LF: Well, things were going on, and I think it was clear that the Commission didn't have a good understanding of what those practices were, and that's why they did what they did.

KD: That would've been about '77 or so?

LF: No, a little later, I think. Maybe '77 or '78 is when we started. One of the things I best recall by the way, is the wonderful staff I had during the time, but the options markets reminds me. Rick Ketchum, who worked for me at the time, was one of the people we assigned to work on that options study.

KD: Okay. So he was one of the people that you took to New York to –

LF: No. He just worked for me in Washington. He was part of my staff. But when we came back, we organized the special study of the options market. We took people from different offices within the division, and also from the different divisions. There were representatives from the Division of Enforcement also who worked on it, but Rick was someone from my office who went to that study.

KD: Okay. We haven't talked too much about your staff in other areas either. Who were the people that you were relying on at this time?

LF: When I worked in market reg we just had a group of good people. There were three people who became directors of market reg. after I left, Rick, Brandon Becker, and Doug Scarff. And then there was George Simon, who was involved in market regulation issues and still is. And then there were other lawyers on the trading side, John Osborne and Jeffrey Sapir, Rick Sharp. We had a good group of lawyers, and we used to try and stay current with what was going on at the Commission when I was there because I thought they'd be better lawyers if they didn't just focus on what we did, but tried to stay current with what the Commission did. So we used to have a practice of having coffee and donuts every Friday, and someone would tell us what was going on at the Commission that week, apart from the market reg stuff.

KD: So somebody would have to work over the weekend.

LF: Someone would read the Commission memos that went up that week and sort of give a talk, or some interesting case law that came out that week and make a report to the group.

KD: I think I heard mention of that before. Anything else that we haven't covered about your time at the SEC? We've sort of walked through the various stages.

LF: I'm sure there's more, but it was nine years.

KD: Yeah. All right. Well, the decision to leave, what was behind that? Had you exhausted the sorts of issues that you were interested in?

LF: Well, when I came to the Commission, I assumed I'd be there a year and then move back to New York. It turned out it was quite interesting, and I was able to effectively change jobs every couple of years. But as your family grows, and as you need to move on and put them through school, I thought it was time. The other thing is that it does get tiring trying to fight politics when you're working on national market system issues. It's always a little frustrating because there are issues that get involved on the give and take that make it frustration to staff people sometimes.

KD: You mean just that sense that you're pushing against the New York Stock Exchange?

LF: Well, the New York Stock Exchange you may have a chairman who's not as enthusiastic as a prior chairman may have been. They're just issues, and it was a political issue at the time. But I think the primary driver was just I felt it was time to move on and Al was moving to a new firm and had wanted me to come with him wherever he went, so it was an easy thing for me to do.

KD: And you stayed in Washington then.

LF: I did, although over time, I had an office in New York at the same time, I had one in Washington, because as the practice grew and as I became involved in a variety of things that brought me to New York, I had, over time, an office in Washington, which was the primary office and where my family was, but I also had a New York office. By that time, Morgan Lewis had a few hundred person New York office, so it had grown significantly in New York.

KD: What were the kinds of issues you looked at? I noticed some very interesting high profile type things, but I'm wondering what the bread and butter was for you.

LF: In private practice?

KD: Yes.

LF: It was a combination, and it varied at the time. There was a period of time when I did a lot of enforcement-related work. I'm currently the general counsel of Jeffries, but during the Boesky days of the late 80s, I represented Jeffries and Company through an SEC investigation, a U.S. Attorney investigation, which led to an indictment of Boyd Jeffries, but I represented the company for about three years in dealing with the U.S. Attorney's Office and everything that came out of that. I also was involved in the review of some brokerage firms and representation of brokerage firms that had settlements with the SEC. I was involved in the review of Drexel Burnham after they settled with the SEC, Morgan Lewis was selected to be the independent reviewer, and I led that group until they went into bankruptcy.

Another interesting assignment was I represented the person who had been picked by Judge Pollack to look at First Jersey Securities as part of a settlement in an SEC case, and Judge Pollack had wanted someone who was not a lawyer to be that person. That person then asked me to give him some advice on some stuff he had come across.

KD: Who was that?

LF: You'll have to give me a second to remember. I will remember his name. I'll pencil in his name. So that was interesting. We got involved in some interesting FCPA cases. I got involved in representing the NASD in negotiating some market structure related issues. It was a pretty broad-ranging practice, and we built a group of some good folks.

KD: So in some sense, you got to remain a generalist.

LF: Somewhat of a generalist. I did a lot of broker-dealer related things, but because my background touched on so many different aspects of securities law, it allowed me to not just be channeled into one aspect. And because I had done transactional work, I occasionally did transactional work, so I did a variety of different things, and it was very interesting.

KD: And how about the decision to come to Jeffries?

LF: Well, it wasn't Jeffries. In 1999, one of my then partners at Morgan Lewis and I left to become co-general counsel of Wit Capital. And Wit Capital was a client that was developing the mechanisms to do public offerings over the Internet. They are the ones who invented the process, and who got the no-action letters out of the SEC on how to do it. And so they were in the vanguard of the use of the use of the Internet for that process.

KD: Had they come up with that idea when they brought you on?

LF: They were already pursuing that idea. It was actually, it had first come up when a former lawyer at Cravath named Andy Klein, but a different Andy Klein, had gone out and raised money for a beer company, and then decided to create a secondary market for its shares on the Internet. That's what got him a phone call from the SEC. And I literally remember receiving the phone call because this partner at Morgan Lewis, Bob

Mendelssohn that I worked with, was someone Cravath used to refer people who needed broker-dealer assistance to. And I picked up the phone call from Andy looking for Bob, and that's how Andy came to Morgan Lewis. But it was not for a couple of years later that this had germinated into a much more robust kind of company.

A former commissioner, Ed Fleishman, was on the board of Wit. And he and Bob worked together, and Bob and I had often said we would never leave except to work together because we liked working together. And so they asked Bob to join, and Bob said, "Well, I have this deal with Lloyd," and the then president of the company had been the vice chairman of Charles Schwab, and I had done work for him at Charles Schwab, which had been a client. And he said, "Great." And so we both went. A couple weeks later, Goldman Sachs bought 25 percent of us. Two months later, we went public, and it was a lovely ride while it was a lovely ride, and then the Internet bubble burst. The company eventually grew significantly and then shrunk, and ultimately was sold to Schwab.

Its name had changed and I had become bored. I had moved to San Francisco, and at three rounds of downsizing, there wasn't, I thought, any reason they needed me there. And while I was thinking about what to do, I got a phone call from the then general counsel of Jeffries, who I had represented for fifteen years, who said, "I'm retiring. Any interest?" And I said, "Okay. I'll talk." And so I went and met with the people who were then running Jeffries, a very different group of people. And here I am.

KD: So how long ago was that? Early 2000s?

LF: I came here in December of 2002.

KD: Well, do you get a chance to look back on your experience with the SEC and think about how that influenced the way you do your job now?

LF: Sure. I thought it was a terrific experience, as I think most folks who were at the Commission do. And I think that that experience guides you in how you view and counsel people. And I think for most, it stays with you. And I think it's one of the benefits that you get by working there. I know that, from time to time, particularly these days, people think that it's a revolving door that isn't healthy. I actually think it is healthy. And I think that people who work at the Commission who then go in private practice and who work for companies do so in a way that promotes what they learned at the Commission.

KD: Is it a matter of having the perspective of seeing the enforcement in action, and seeing it from that point of view? Or what is it about the experience?

LF: It may be seeing enforcement, but I don't think it's fear. I think it's more based upon a belief that that's the way the system should work. Certainly knowing that there may be consequences helps you explain to people why they should do the right thing.

KD: Yes. So again, we're talking about explaining to people what the right thing is.

LF: Correct.

KD: Which is something you were doing at the SEC.

LF: Well, you try always to do that.

KD: Anything else we should talk about before we wrap up?

LF: No, that's fine.

KD: All right. Thanks very much.

LF: Thank you.

[End of Interview]