Securities and Exchange Commission Historical Society
Interview with Jeffrey Bartell
Conducted on April 28, 2008, by Kenneth Durr

KD: Telephone interview with Jeffrey Bartell, April 28th, 2009, by Kenneth Durr. I want to begin by getting you into the state regulator's position, and getting some background. Did you go to Wisconsin?

JB: I did. I have an undergraduate degree in economics from Wisconsin, and went on to law school and graduated in 1968.

KD: Did you focus on securities law when you were in law school?

JB: Not at all. In fact, University of Wisconsin didn't have a securities regulation course when I was in law school. I saw myself, at that time, as perhaps a labor lawyer; took a lot of labor and employment courses, and constitutional law, and a little bit of criminal law; very little corporate law, accounting, or anything like that.

KD: Well how did you get into the specialty you're in now then?

JB: Isn't it funny how those things happen? I began my legal career with the attorney general's office, as Assistant Attorney General. I passed up corporate law opportunities and wanted to do good deeds, so I went to work for the state. And I had a variety of assignments in the attorney general's office, including consumer protection and criminal

appeals. I represented the Division of Correction in prisoner litigation, and did a little prosecution as well. And after about three, three and a half, years, I came to the attention of the governor, by reason of staff work I had done for a task force to reorganize the court system of Wisconsin. And we had developed a constitutional amendment, judicial articles of the state of Wisconsin—a lot of reorganization of the court system. When I finished that, I met with the governor, and I told him I was either going to go back to the attorney general's office or run for district attorney, which was kind of interesting. And he said, "How would you like to be Securities Commissioner?" And I said I didn't know we had one. And he said, "Well why don't you think about it, and let me know." And I went back to the law school, and talked to some of my professors there, and read the statute; and I came back to the governor, and I said, "I'd like to take the job."

KD: What was it that the professors said, and that was in the statute, that made you think this was a good idea?

JB: I was struck by the amount of discretion that the securities commissioner had in regulating the sale of securities, and licensing and regulating broker/dealers and investment advisors. It seemed to me to be right at the center of economic development in Wisconsin. It seemed like a very interesting subject. As I say, I didn't have a lot of background in it. When I talked to my wife about it, she said, "What are you doing? You don't even know how to spell SEC." And I said, "Well, I think it would be fun. I'd like to try it." So I actually extended my leave of absence from the attorney general's office—

KD: Just in case it didn't work out?

JB: Just in case. That's right. And I was confirmed by the State Senate, and took office in December of 1972.

KD: Well, you must have had a pretty steep learning curve. Tell me a little bit about the things that appeared right off that you thought: "This is going to take a lot of work."

JB: Well, I was very fortunate; I had an excellent staff. We had about, at that time, probably twenty-five people in the agency. And they knew what they were doing. And initially, I actually organized—it was kind of an on-the-job training session for me; but it was also designed to let everybody in the agency know what everybody else does. So we did an early morning presentation series, so that each of the divisions in the office described their procedures, what they do, why they do it, what their issues are. And we all sat around—it was voluntary, you didn't have to come; but I was there every day. And my new deputy, who remains my partner today at this law firm, Quarles & Brady—

KD: Who's that?

JB: Conrad Goodkind. And Conrad actually worked with on that court reform project that I mentioned. And I appointed him deputy, and the two of us had a steep learning curve. But each of the divisions presented what they do, and that helped me understand the

process. And then, of course, I had to jump right in on a number of issues. I think the first one was the first contested corporate takeover law—corporate takeover under the new corporate takeover law in Wisconsin.

KD: Tell me a little bit about that.

JB: Wisconsin had just, within the last year, adopted a corporate takeover law which was fashioned somewhat after the Williams Act. And it required, in circumstances where a tender offer was made for basically a Wisconsin company—target company—that you had to file a registration statement and the Wisconsin securities commissioner had both disclosure responsibilities, as well as obligation to determine the fairness of the transaction for Wisconsin investors. And the very first corporate takeover law was filed, I think, within ten days after I took office. And it involved a company called EZ Painter, of Milwaukee, the control of which was being sought by Newell Company of Chicago. And I called a hearing, and held about a three or four day hearing in regard to the transaction. And ultimately issued a decision that prohibited Newell from going forward without changing the deal, and making other disclosures.

KD: So, you essentially held this hearing to determine the merits of the takeover?

JB: That's correct. The corporate takeover law, like the Wisconsin Uniform Securities Law, had substantive standards that permitted the commission to deny access to Wisconsin investors to a transaction that the commissioner didn't believe was fair. And over the

course of my tenure as securities commissioner, we probably entertained maybe a dozen of those corporate takeover proceedings, through the law. And it was right in the vanguard of those state corporate takeover laws before they were challenged federally.

KD: Right. The '70s would have been a bit of a lull between some of the conglomerate stuff in the '60s and then what came later in the '80s, I guess. But it sounds like you had a good bit of M&A type stuff happening.

JB: We did.

KD: This idea that you were able to really look at a case and assess whether it was fair or not, is that the basis of the old Blue Sky Law?

JB: Exactly. The state securities laws, the Blue Sky Laws, as they evolved from the first one in Kansas in 1911, I believe—by the time I arrived on the regulatory scene in Wisconsin, it was a fairly well-developed set of substantive criteria that had been adopted mainly in the Midwest states, although throughout the country, to evaluate the fairness of securities transactions. And we had the authority under our statute to look at such things as underwriting commission, and offering expenses, options and warrants, cheap stock, and capitalization, debt equity, offering price, shareholder voting rights, the promoters' investment in the deal. And we did look at those things very carefully, and evaluated them. And had the authority to either require the registrant to change the deal, or modify the terms of the deal to the benefit of investors, or they wouldn't deny registration, let

them go elsewhere—even if they made full disclosure of finances and terms. And some did avoid Wisconsin; or come to Wisconsin and if they couldn't get in, go elsewhere. Interestingly, during the time I was there, we did a study of the efficacy of the Blue Sky standards in Wisconsin. We included, with respect to some of those standards—not all of them, the ones that I just mentioned. On as objective terms as we could, we evaluated them. The companies that succeeded in registration were more successful than those that didn't.

KD: So you looked at those who had been allowed to come in, and those who were not.

JB: Were not. And kind of looked at them one and three years later, and concluded—and I think we wrote something on this; there's a *Law Review* article on this that—Conrad Goodkind authored it—on the Blue Sky Law merit requirements and how effective they were at that period of time.

KD: Well you mentioned disclosure. I've been spending a lot of time looking at the SEC; so, of course, this kind of merit regulation that you were able to do seems really fantastic in a way. Theoretically speaking, everything that the SEC did for most of its time was based on just the idea of disclosure. How does this idea of merit regulation compare with that, as far as its theoretical basis?

JB: It certainly gives the regulator considerably more authority with respect to the terms of the offering. Now I know that the SEC's regulatory philosophy is disclosure, and

theoretically, if you're willing to identify all the warts in your proposed transaction, or business organization, adequately you can sell under the federal securities laws. But having had some considerable experience over the years with the SEC, I know that it isn't so clear that disclose is the be all and end all. I think that examiners tend to require additional disclosure, and further disclosure and more disclosure until you reach a point where you maybe decide you'd better change something. So it isn't that far removed from merit regulation. But, clearly, at least under the regulatory philosophy in the '70s when I was commissioner, we had absolute authority to set the rules with respect to fairness. And it wasn't just out of the blue. Though these were Blue Sky laws, we actually went through that process of administrative rule adoption, and adopted rules regarding debt coverage, or how much a promoter had to put in to the deal before we would allow it to go forward. Or what terms are fair in a real estate limited partnership. That was an area that became very prominent during the '70s: how we should regulate the sale of limited partnership interests in real estate.

KD: Are these something like real estate investment trusts?

JB: No. Real estate investment trusts are entirely different; although we had rules dealing with those too. The real estate limited partnerships were entities that were formed to raise capital for development of real estate. It was the initial wave of seeking investment capital from ordinary investors for this kind of thing. And there were some very massive real estate limited partnerships that were put together in those days. And the rules for that were really developed by states like Wisconsin. We had, by the way—and I don't

know if you know this—but we had several organizations of state securities administrators in those days. We had what was called the Central Securities Administrators Council, which consisted of Wisconsin and Illinois and Minnesota and Iowa and Ohio, Michigan, Indiana. And then we had a larger organization called the Midwest Securities Commissioners Association, which actually was comprised of pretty much all the merit regulation states, even though they weren't in the Midwest; for instance, California was a prominent member of the Midwest Securities Commissioners Association. And then the largest association, NASAA, which did not deal, at least at that time, with any kind of substantive registration provisions. At that time it was more just a general sharing of information and enforcement.

KD: Okay.

JB: That organization still exists.

KD: Right.

JB: The other two do not.

KD: Well now, did they merge into NASAA?

JB: Well, there was no formal merger. Basically, NASAA started taking on functions that the Midwest and the Central Securities Administrators had performed before, and there was no longer a need to maintain those smaller organizations.

KD: This Midwest Securities Commissioners organization, for example: You mentioned that those were essentially the merit states.

JB: The merit states.

KD: Now, what was the role of the Uniform Securities Act in sort of forming common ground for these members?

JB: Well, the Uniform Act, as you probably know, was begun as a project of the conference of the commissioners of Uniform State Law. And the Uniform Act was drafted by Louis Loss, Professor Lou Loss, as a statute that states could adopt to provide some uniformity in the regulation of securities. It did not include any kind of substantive standards, although it did permit the states to adopt substantive standards, and apply them to the registration of securities. By the time I was involved in state regulation, the Uniform Act had been adopted in almost all of the states, although not all of the states had adopted merit regulation, although if they adopted the Uniform Act, they had authority to do so. Some of them didn't do it. Those of the states that did it, tried to—through the Central Securities Administration Council and the Midwest Securities Commissioners' Association—make the merit regulation as uniform as possible. So, we would get

together regularly, as these organizations, and adopt policies—formulate policies that we would then take back to our states and adopt as administrative rules. And those rules were in the areas that I mentioned, like underwriting commissions: how much you could pay an underwriting commission; offering expenses—how you could set the offering price, what price range you could have; and procedures like what you have to do with offering proceeds: you had to escrow them until you had reached a minimum amount.

KD: So you're actually setting guidelines for offerings in cases like this.

JB: Right. And the terms of offerings.

KD: Was this successful?

JB: I think it was very successful. And as I mentioned, we did this study in Wisconsin, and felt that as a result of imposing the merit standard on offerings that cleared Wisconsin, I think we had more successful companies that raised capital in Wisconsin than those who went elsewhere. Now that wasn't true uniformly. I have to tell you that there were a couple of fairly significant offerings that we turned down that were ultimately very successful; including, as I recall, Federal Express, which came to Wisconsin. I don't recall why we turned it down, but they felt they had enough interest elsewhere that they didn't want to fool around with us. They went elsewhere.

KD: Did Wisconsin subsequently approve Federal Express for issuing in that state?

JB: Well, of course, after it went public, it could trade in Wisconsin. And in the secondary market, all of the shares of companies that went public traded here.

KD: Okay. You'd mentioned some states that didn't apply the merit standard. What were those? Were there some specific ones that were very influential, for example?

JB: I think a lot of the east coast states did not use merit regulation. There were some western states that didn't. New York had a different system entirely. In fact, I don't think New York ever had the Uniform Act. Some southern states that didn't apply the merit standard. I can't recall right offhand.

KD: That's okay.

JB: But we didn't work with those states very much. We worked more with the Midwest, the states around us here. And you probably have talked to some of my colleagues in some of these other states around us, guys like Hugh Makens in Michigan, Keith Sutherland in Indiana, David Wunder in Illinois, and John Short in Missouri and Willie Barnes in California; that was a strong merit regulation state. Those are guys that I spent a lot of time working with.

KD: As a historian, it's interesting—it seems like a lot of these Blue Sky states were the old Populist, Progressive states.

JB: I think that's true.

KD: I was interested to note that David Lilienthal was a predecessor of yours. He was a really colorful character in American history.

JB: Right.

KD: Can we get a sense of what your workload was like back in the '70s? For example, what was routine that you did in your office? And what was unusual?

JB: Well, the routinized part had to do with reviewing registration filings. That happened all the time, every day. There were filings made for initial public offerings and secondary offerings, or stock option offerings. Any kind of offering that was not exempt from registration had to be filed; and it would be reviewed by our registration division, which consisted of several examiners who would go through it, look for the points that are required. And then, give responses to the registrant. And if they didn't like that, sometimes they would bring that to the commissioner. And I'd have to review that. So that was regular. We licensed and regulated broker/dealers and investment advisors. That was a constant during that period of time. We'd do surprise inspection of brokerage offices in Wisconsin, and correct some of their practices. Sometimes we'd have to discipline them if they were not complying with the statute. And so that was a routine activity.

KD: Tell me a little bit about the disciplining. Did you work with the attorney general's office to do that sort of thing?

JB: Ordinarily, the attorney general's office didn't get involved in it unless there was a real serious criminal kind of matter involved, in which case we would refer it to the attorney general, or to a district attorney, for prosecution. For the most part, we had summary order powers. I could issue an order against an entity or a person, prohibiting them from engaging in an activity, or even revoking their license. And then they would have a right to a hearing, and we would go through that from time to time.

KD: Okay.

JB: It would be a contested hearing. They could bring in a lawyer, and have witnesses, and so forth.

KD: Okay. Any notable cases stand out?

JB: Well, yes. Occasionally, a firm would—usually it wasn't one of the big brokerage firms, but a smaller brokerage firm would be selling unregistered securities, or would be selling securities that were not suitable for their clientele. We would have to bring an action against them, and discipline them.

KD: And I guess that gets to some of the non-routine things that you did.

JB: Right.

KD: And I was definitely interested in some of those.

JB: Well, of course, the first non-routine thing I did was the corporate takeover, which was very exciting, and made front page news all around the state here. Other things that came up during that period were enforcement kinds of action—and the other thing that we did, is, of course, bring enforcement action. But as I recall, shortly after I got there, there was a period of time when we were dealing with church bonds. There were some major religious organizations, some of them television churches, around the country that were basically selling church bonds to people who they felt were their members. I remember a fellow by the name of Rex Humbard.

KD: Oh yes. From Akron, Ohio, right?

JB: From Akron, Ohio—Cathedral of Tomorrow—who, over the radio and television, was getting purchasers to buy, at a thousand dollars a crack, a bond which may or may not ever have been paid back—without making disclosures about that, and worrying about the securities statutes, federal or state. And a number of the states, including Wisconsin, issued an order against him. I remember they got real mad at us, and felt that we were interfering with their right to practice their religion, and so forth. But other areas, as I

recall, that we were dealing with during the ‘70s is there were time-share contracts that were very popular at that time. People would purchase an interest in a time-share, and basically they would have a right to occupy an apartment—or what we would now call a condo, but it wasn’t called that at the time—and they would call it an ownership interest, but it really wasn’t an ownership interest. A management company would lease it out for the—There were a lot of shady operators in that area at the time, some of whom deserved to be the subject of these enforcements, some of them just trying to figure out how to comply with the law. There were people selling silver and gold contracts. Purchase an interest in silver bullion, but you never saw it. It was presumably segregated for you.

KD: These are the reworking old mines, and things like that?

JB: Yes, that kind of thing. There were all kinds of things. There were investment contracts in earthworms. There were pyramid schemes. There were some penny stocks we were going after. And boiler rooms were always big.

KD: Yes, this is really colorful stuff. And I talked to a gentleman who worked in the Denver regional office of the SEC; and of course, they were always involved in the mining stuff, and the penny stocks. How much would you have worked with, SEC regional people on something like this?

JB: We would regularly work with the SEC. And I haven't really addressed that with you yet. But we in Wisconsin, we in the Midwest, and we nationally, maintained a liaison with the SEC, at various levels. I worked with the Chicago regional office here regularly.

KD: Who was there at the time?

JB: Bill Goldsberry was the administrator at the time that I was there. And there were several others, but I can't recall them. And then we would work with the enforcement division. I met with Stan Sporkin regularly, worked with Irv Pollock, and some of the others there. I should say that the enforcement people at the SEC were much more appreciative of the state regulators than were the division of corporate finance, and others, who felt that we were just screwing around with the capital markets, and should leave that to the SEC. Now, it wasn't that they were overtly hostile; they just didn't appreciate everything that we were doing. But the enforcement people did, because we were their eyes and ears on the ground. We got the complaints immediately, because people knew where to reach us, and we were right around the corner. And so we would refer matters to the SEC, and they would refer matters to us, depending on whether a state could handle it best, or they could handle it best.

KD: Well what kinds of things would they refer to you?

JB: Oh, if it was a matter limited to one or two states that was not a huge deal: somebody was selling interest in an orange grove in Wisconsin and Illinois, and there were a couple

hundred thousand dollars involved, or maybe even a million dollars involved; it didn't look like it was anything that went beyond that, they might call it to our attention, and we'd go after them. If it was something that involved a half dozen states and several million dollars, we might work with the regional office on it, cooperate doing some investigation, and refer it ultimately to the U.S. Attorney, or maybe to a district attorney in the state where they're located. So I would say our enforcement relationship with the SEC was really very good and effective. And we would regularly interact. They would come to our Midwest Securities Commissioners' Association meeting, or our NASAA meeting, and maybe have a couple of speakers on our panel. Stuff like that. So we were really quite familiar with the SEC staff, particularly the enforcement division, but general counsel and other divisions, as well.

KD: But when would you, for example, call up corporation finance?

JB: It didn't happen very often. It might happen if we were trying to find out when an offering was scheduled to become effective—something like that. But we didn't coordinate with them very much, because their mission was different from ours. We would certainly be interested in their comment letters. We would ask the registrant to give us a copy of the comment letters from the division of corporate finance, so that we could see what corp fin was looking at. And maybe we'd missed something, or maybe they missed something we could bring to their attention. But of course, we were regulating the merits of the offer.

KD: Right. Which is something that they were not really doing. Would you find yourself in with the SEC, say, in doing amicus on certain cases?

JB: I don't recall doing that. It's possible that we did it, not an individual state, but the association did it. But I don't have a specific recollection.

KD: Well, one of the things that was going on at the time that we haven't talked about are mutual funds. And I assume that you had some responsibility for regulating those.

JB: Yes. We had substantive requirements in that area that were really, I think, probably closer to the Investment Company Act regulations than our general securities regulations were to the '33 Act. And we did regulate them. I think we probably deferred more to the SEC in that area than we did in other areas.

KD: Okay. This was not a particularly good time for mutual funds. A lot of people were taking their money out. So, did you see a deterioration in the quality of the funds as the decade went on?

JB: I don't have that recollection now. I'd have to go back and look. But that isn't my sense. It's possible that it happened, and I don't recall it.

KD: But it sounds like this would not have been a major part of your portfolio?

JB: No. There's one other thing that we were regulating at the time, and I forgot to mention. We started regulating franchises during that period. Some states were regulating franchising as investment contracts, under the definition of security. Wisconsin and a handful of other states actually adopted a statutory scheme for the regulation of franchises. The securities commissioner had that responsibility as well.

KD: And that would have been taking off at that time, as well, I guess.

JB: It was. It was getting huge.

KD: Now, is this the sort of thing that you would have shared with, say, the Midwest Securities group, or with NASAA?

JB: The franchising?

KD: Yes. How to approach these kinds of problems that are cropping up.

JB: Yes. There weren't that many states at the time that were regulating franchises as we were. So, yes, we would share the information, but there was not a unified franchise regulation.

KD: Let's talk a little bit about, again, consulting with these groups. Now, I think the Midwest Securities group went away sometime in the '80s, is that right?

JB: It may have been before that. I'm not sure. I just can't recall. I think it was towards the end of my term. My term ended in—

KD: I guess I'm wondering how it overlapped with NASAA and what the point would have been to having these two different groups?

JB: Well, initially, the point was that NASAA didn't concern itself with merit regulation because there were a lot of NASAA states that didn't do much in that area. So the Midwest Securities Commissioners' Association felt a need to exist because of that. But later on, as NASAA evolved, there was more interest in merit regulation—at least toward the end of my tenure. I was president of NASAA in '78, '79.

KD: Was it for two terms? Or one term?

JB: One-year terms. And by that time, as I recall, if the Midwest Commissioners were still in existence, tI don't think it did much because I think NASAA had assumed responsibility for what it might have been doing.

KD: So it sounds like you saw significant change in NASAA over that decade.

JB: Yes.

KD: What was driving that change?

JB: Well one of the big changes that occurred, and it was toward the end of that decade, was that NASAA developed, with the NASD, a uniform securities agent examination. One of the biggest complaints that we got as state regulators during this period of time was lack of uniformity, particularly in the area of licensing securities agents. They would have take a Wisconsin exam, and then they'd have to take a Florida exam, and then they'd have to take an exam from Colorado, and so forth.

KD: So even if they're sitting in Wisconsin, if they get on the phone somebody in Colorado—

JB: Yes, they had to—so working with the NASD, we developed a uniform examination, and procedure for licensing agents in all the states that participated. And we did this through NASAA.

KD: Whose idea was that?

JB: Well, I don't—I was involved in it, and my staff was involved. We were pushing that. There were others, I'm sure, who were involved in it. And the NASD was very receptive.

KD: Is this your staff at NASAA, or in Wisconsin?

JB: My staff at NASAA.

KD: Okay.

JB: And, in fact, a couple of members of my staff helped draft the exam, the first version of the exam. And as a result of that, we entered into an agreement—NASAA entered into agreement with the NASD for procedures to administer that exam, and the cost of it, the price of it, and to share the proceeds. And NASAA, which to that point, had been just scraping by year to year on the fees that it could charge the industry members who came to the annual NASAA conference, and whatever the states could afford to contribute, all of a sudden became flush with the proceeds of uniform examination. And ultimately, before long, it hired an administrative person, an executive director and staff, had an office, and became really quite potent in the area of state regulation.

KD: When did that happen?

JB: Well it was right toward the end of my term, probably ’78, ’79, ’80—in there.

KD: Okay. So just as you were in there, you developed this—

JB: Uniform exam.

KD: Right. That brought in some revenue.

JB: Yes.

KD: Were you the one then who looked around and hired a director?

JB: I did not hire a director. I finished my tenure as president of NASAA, would have been in about maybe August or September of ’79, and then I left off at September of ’79. But I believe that I was one who signed the final agreement.

KD: So you were right on the cusp of this significant change.

JB: Yes.

KD: Something else that’s going on. The late ‘70s is a time when deregulation is all over the place, and there’s the old saw about regulatory agencies being a captive of their industry. Did you see any of that?

JB: Not really. Not among state regulators. The complaint was the opposite. Felt that we were impeding fair capital-raising; and to the extent that we regulated the brokerage/investment advisory industries, I don’t recall any criticism that we were in bed with those industries.

KD: How about NASAA itself? Was there any industry influence in there?

JB: There were complaints about coziness—hobnobbing with members of industry at the annual NASAA convention. And I never felt that that was a serious concern. I never felt it was a problem to sit down with members of the industry and talk about what issues they had, and how we could coordinate our actions to make things easier for them without loosing the effectiveness of our regulation. But there were some complaints about that at the time. And in fact, I recall that NASAA was thinking of eliminating some of the involvement of industry in its conventions. And I didn't think that was a good idea. And I don't think it ever happened.

KD: Well I know that there were states, or state administrators, some of whom were considered to be a little more radical than others in their approach. So I suppose that was a manifestation of that sort of thing.

JB: I suppose that's right. I'm not sure where I was in that spectrum. I don't think I was radical. One thing that I was thinking of telling you about if you weren't aware of it is that during this period of time—during the '70s—there was a major effort to codify the federal securities law. It's called the Federal Securities Code. I don't know if anybody's mentioned that to you. It was an effort that, again, was headed by Professor Louis Loss of Harvard. And a committee was elected, a really elite committee of securities lawyers and regulators, on which I was very privileged to serve. And I was the only state regulator on that committee. And we met over a course of quite a number of years during the '70s; and ultimately came up with a code that brought together the '33 Act and the '34 Act particularly, and the Holding Company Act and the Investment Company Act

into one federal code. It also accommodated state regulation, although it limited state regulation in several areas. And it was introduced in Congress, never went anywhere. It was a shame, because it was really a very fine, carefully thought out product. And I felt it would have simplified and unified the securities laws.

KD: Yes, it's interesting because Louis Loss is lionized at the SEC, as being the grand old man, and all that. But this particular initiative is almost never discussed. I get the impression that folks in the SEC weren't terribly thrilled about it.

JB: Well I think that maybe have been the case. Some of the names of SEC alums that are still recognized as leaders over the last fifty years were involved in it, and it's surprising that it didn't really go anywhere. Guys like Al Sommer, Milt Cohen—I'm trying to think of who else—Milt Kroll was involved. I think some of these people you've interviewed, or others have interviewed.

KD: So you worked pretty closely with SEC people in framing this thing?

JB: I did work with them. I was really privileged to be part of that process. It wasn't all SEC people, but it was—

KD: Who else would have been involved?

JB: Somewhere I have my book here. I don't see it on the bookshelf here, but—the list of members. I'm sure you can find it.

KD: Yes, that's the kind of thing that can be looked up.

JB: David Ratner was involved. I think Allan Mostoff was involved.

KD: After you left, I guess it must have been, you were also on the advisory committee on tender offers?

JB: Yes.

KD: And of course, that's when the M&A stuff really gets kicked up.

JB: Right.

KD: I guess around '83, something like that?

JB: Right.

KD: Tell me a little bit about that experience.

JB: Well, again, my involvement in that resulted from my unique perspective, which was as a former state regulator. Wisconsin was very active during that period of time in developing regulation dealing with corporate takeovers. And in fact, we had one of the first control share statutes in Wisconsin.

KD: Control share?

JB: Control share. It was the next generation—it was really the second generation of corporate takeover regulation. It had to do with not registering takeovers, like the first generation did. The first generation statutes became unconstitutional. The second generation, some of which are still in effect, provide that in certain circumstances someone who makes an offer to control, to get more than ten percent, or sometimes it's fifteen or twenty percent, of the shares of what is in essence a public company, which has a unique tie to a particular state because its principal office is there, or a substantial number of shareholders are in that state, has to do certain things, by law. And usually these statutes, the control share statute, or sometimes called the fairness statute, are in the corporate law—state corporate, as opposed to being a statute that is administered by the securities commission. And it's self effective.

KD: And this advisory committee: I understand that there were some folks, I guess securities lawyers type people who would represent takeover.

JB: Sure. Marty Lipton.

KD: Right. You look at all these mergers and acquisitions going on, and essentially, the interesting thing here, I think, is that the SEC—and I assume the state regulators—took a position that wouldn't necessarily be seen as the people wearing the white hats, and that they were generally behind that takeover folks rather than the corporate management.

JB: Well, I don't know where the white hats are in this circumstance. It was often the case that states that administered a corporate takeover law were regarded as impeding the free flow of capital, by limiting what a offeror could do to try to take control of a company. And I don't know whether that's a white hat or a black hat.

KD: Right. It depends on who you ask.

JB: And so it was not entirely clear, although the SEC clearly did not appreciate the states stepping into the corporate takeover arena, as they did. And there were constitutional issues. The Williams Act regulated fairly comprehensively the process of takeovers. And the argument from the states' standpoint was: Well, yes, the SEC regulates securities offerings also, but the states have reserved a right to regulate in that area, and to impose merit standards in that area; and why shouldn't they be able to do so in the area of corporate takeovers as well? So that argument went on for a decade or more. And ultimately the states pulled back a bit, with the help of a couple of court decisions, and limited their involvement in that area to such things as the control share statutes. There's this combination statute, which is another one that you'll find in a number of states'

corporate law. I've kind of dodged your question, because I don't specifically remember what our committee on tender offers recommended. I just cannot recall what we said.

KD: Well, it'll be a matter of record. You've shed some light on the kinds of things you were thinking about.

JB: Yes, right.

KD: Now this was after you left—you decided to stop being a securities regulator. And did you leave the government at that point?

JB: I did. I'd been in government for eleven years. And I went into private practice. We had five kids at that time. I thought I needed to make a living.

KD: Yes, that's often the case. Were you one of the founders of the firm that you're with now?

JB: I opened the Madison office. We're a firm called Quarles & Brady, which at the time had a Milwaukee office. And my secretary and me. And we now have forty-five lawyers here. The firm has about four hundred and fifty.

KD: Now with the folks who have been in the SEC, they often spend the rest of their career working on the other side of the fence, dealing with securities laws, and things like that. Has that been a specialty for you?

JB: Well it has been. I certainly have done securities for the last, really, thirty years. But my practice has expanded considerably, and I've been doing some insurance regulatory work—I represent some insurance companies—and general corporate work, administrative law, a variety of corporate law.

KD: Now, from your office though, you've obviously been looking pretty closely at Wisconsin state securities regulation.

JB: Yes.

KD: Has it changed fundamentally since your time?

JB: Yes.

KD: How would you appraise that?

JB: Well, basically, the NSMIA statute—federal law pre-empting state regulation—in many respects has taken the teeth out of state regulation, as far as regulating offerings in the state. There are very few multi-state offerings that are subject to registration, in fact.

KD: And these are small offerings?

JB: A very small offering might be registered, and still be subject to merit standards. But for most offerings, it would not be—it would just be coordinated with the federal registration. So, Wisconsin doesn't really impose any of its merit standards on it.

KD: Okay. Well is there anything else that we haven't discussed that we should touch on?

JB: I don't think so. I think just finishing up that last point, the office here in Wisconsin has not grown, in fact, it has shrunk a bit, because it doesn't have that much to do. It still does enforcement work. And Wisconsin still coordinates, or participates, with the other states in NASAA. And the state commissioner here is now—the office has actually become part of the Department of Financial Institutions, so it's no longer an independent agency. And the person who runs it is now called the administrator, not the commissioner—not appointed by the governor.

KD: Which would reflect the changes that happened in '96, I guess. Well, if there's nothing else, then I guess this is a good enough place to stop. I've taken an hour of your time.

JB: Well I appreciate it. Thank you.

KD: Well I very much appreciate talking to you. Thanks a lot.

[End of Interview]