Securities and Exchange Commission Historical Society
Interview with Jonathan Burks
Conducted on July 27, 2012, by James Stocker

JS: This is an interview with Jonathan Burks for the SEC Historical Society's virtual museum and archive of the history of financial regulation. This interview was recorded on July 27th, 2012 at the Romney campaign headquarters in Boston, Massachusetts. James Stocker conducted the interview.

Jon, thanks very much for talking with me today.

JB: Happy to be here.

JS: To start off these interviews, I usually like to ask people where they were born and where they grew up.

JB: I was born in Columbia, Maryland, a suburb about halfway between Washington and Baltimore, but I grew up in Boiling Springs, Pennsylvania, about two hours north of D.C. I came back down to D.C. for college and never left.

JS: Were you always interested in politics and policy?

JB: Yes. That was always the thing that was the most interesting to me, and I've always known that Washington and government was what I wanted to do.

JS: Where did you go to college?

JB: Georgetown University.

JS: What did you study there?

JB: International politics. I've always thought of myself as more of a foreign policy and defense guy who keeps getting involved in economic policy and other issues.

JS: So during college, did you study economics or economic policy or anything like that?

JB: Yes. Georgetown's School of Foreign Service requires all their students to take a minor in economics, and I did a little more work in this area just because I was interested in the subject.

JS: How did you start working for the Congress after college? How did you make that transition?

JB: Sort of randomly. I was going to see my academic advisor, and he asked what I was doing for the summer. I said I was looking for an internship, and he asked where. I said the Hill. He said, well, Republican or Democrat? Republican. He picked up the phone and he called a guy by the name of Mark Lagon, who, at the time, was Congressman Chris Cox's deputy staff director on the Republican Policy Committee. So I started interning for the Policy Committee, and then ultimately they offered me a job at the end of the summer. I started working there in the fall of 1998.

JS: What sort of things were you doing as an intern? Were you actually working on policy issues, or were you making photocopies?

JB: A little bit of both, actually. It was a great thing about the office – they really gave you an opportunity to do as much as you were capable of doing. I'd like to think I was making grand policy pronouncements, but there's certainly a lot of making copies and running errands.

JS: Did you work on financial issues at all at this time?

JB: A little bit. Primarily on sort of international trade and international export control kind of issues. It was stuff that had an economic component, but it wasn't purely economic.

JS: Now, as an intern, did you have much access to the Congressman himself?

JB: Yes, absolutely. That's the great thing about the Hill. Especially on the House side, members' offices are just so small that you have a lot of opportunity to interact with a member.

JS: Did you have any contact with the Securities and Exchange Commission at this time?

JB: Later, once I was on staff, we did deal a bit with independent director rules and on accounting standards, because Congressman Cox had always been very interested in those issues, and so I did a little bit of work on those things. Other staff were the primary contacts, but I helped out as needed.

JS: Had the Gramm-Leach-Bliley Act already passed when you joined the Congress?

JB: No, it was going on that summer, and then it passed finally in 1999. I was on staff when it finally passed, but the interesting thing about Gramm-Leach-Bliley is that a lot of the hard work for it was done in 1998, then it was pushed across the finish line in 1999. Congressman Cox was on the conference committee that completed the bill, and so he was very involved, but I can't say I personally was very involved at that point.

JS: Another thing that happened while you were still there in the Congress – in 2001, the House Committee on Financial Services was created. Were you there at the birth of that committee?

JB: This was one of those interesting side effects of having had the Gramm-Leach-Bliley-Act passed, and an issue that had a lot to do with personalities and member politics. At the time, jurisdiction over financial services issues was split between the Banking, Housing and Urban Affairs Committee and the Energy and Commerce Committee. The idea was, "we've created this new law to rationalize how we deal with financial services on the executive branch side. Shouldn't we do something similar on the legislative side?"

Add on to that, you had Mike Oxley and Billy Tauzin both competing to become Chairman of the Energy and Commerce Committee. Obviously, two people can't be chairman simultaneously, and so the compromise that was reached by leadership was to expand the jurisdiction of the Banking Committee by adding the securities portfolio from Energy and Commerce and create what became the Financial Services Committee.

There's obviously a lot of politics involved in this. Members make their careers on their committees. So for someone like Congressman Cox, who had been a securities lawyer in private practice and had been very interested in the Energy and Commerce Committee's securities work, the idea that that jurisdiction was now going to a separate committee is a jarring thing. One of the compromises they reached was that – even though Energy and Commerce was an exclusive committee and Financial Services was now going to be an exclusive committee – they made some arrangements for some members to serve on both committees for a period of time.

JS: Was that split between Mike Oxley and Billy Tauzin? Was that something that the staff was aware about at the time?

JB: Yes. If you look back at the newspapers at the time, *Roll Call* or *National Journal*, there's a whole lot of discussion about who was going to be the next Chairman of the Energy Committee. It was one of those contests that energized members as far as fundraising for other members and doing campaign events for other members, so you had a lot of energy going into this. It was one of those issues where – because both members were viewed as solid and viewed as good members – there was a lot of pressure for leadership to try to figure out a compromise.

JS: In 2001, you joined the White House staff. What was your position there?

JB: At the beginning of the administration, I worked for Vice President Cheney as a Special Assistant for Domestic Policy. I handled a grab bag of minor issues, to be blunt, that other staff didn't want to handle. Then following the terrorist attacks of September 11, I took over as the Deputy Staff Secretary and then eventually Staff Secretary to the Vice President.

JS: Just to go back a little bit, did you know Mr. Cheney before you started working in the Vice President's office?

JB: I didn't. I had met him once or twice because he had served on an advisory board that Congressman Cox had chaired. I had met him, but I didn't know him, really. My connection to that office really came, again, from Congressman Cox. His Chief of Staff, Dean McGrath, became the Vice President's Deputy Chief of Staff. So early in the administration, Dean asked if I was interested in coming across to the executive side, and I jumped at the opportunity.

JS: Now, was Vice President Cheney interested in financial reform or financial issues, particularly, or was that not something that got much emphasis within the office?

JB: It was something that was important to him. Obviously, at the beginning of the administration, there was a lot of discussion eventually around Sarbanes-Oxley. That was definitely an issue that was important to him, and it was a major economic issue at the time, and he was very engaged on those issues.

JS: Now you were working in the Vice President's office when the problems at Enron started to emerge, right?

JB: Yes.

JS: Do you recall that being a major issue within that office, or was that handled elsewhere within the administration?

JB: Certainly the Vice President was engaged on it. I don't know whether it was a major issue. The first year in office, the Vice President was very focused on the Energy Task Force and developing an energy policy. Then he has had a long history of being engaged in national security issues. The nexus of that sort of activity was in the NEC staff, and the Vice President is a member of the NEC, and was obviously engaged. Together with the tax cuts and the development of the energy policy, this was the third major economic policy issue going on in the administration.

JS: Were you consulting with the Congress on the bill that eventually became the Sarbanes-Oxley Law?

JB: Was I?

JS: Yes, you personally, or the Vice President's office, in general?

JB: The Vice President was engaged. I wasn't personally. It wasn't my area of responsibility.

JS: What about the formation of President Bush's ten-point plan for corporate accountability, which came out in March 2002 – was that something you guys were working on?

JB: By that point, I had moved into the Staff Secretary role for the Vice President, and so one of the nice things about being Staff Secretary is that everything comes across your desk and you have a chance to weigh in on everything.

JS: Tell me about that position. What is your role there?

JB: Basically, the idea is that if you are going to have a principal who has the decision-making authority, you want to make sure that before documents and decisions are presented to him, that you have got a fully considered and fair and balanced package of information on which to make that decision. The Staff Secretary serves as the gatekeeper to make sure the process has been completed, and make sure that the documents and the decisions that are being presented are fully considered.

JS: Another issue for the Bush administration during these first few years in office was efforts to overhaul GSEs – Fannie Mae, Freddie Mac. Were you involved in that?

JB: Yes. Especially when I moved over to the Chief of Staff's office a couple of years later, we were very engaged in dealing with GSE policy. The GSEs at the time were a political issue. A small group worked on these issues and tried to ensure that we kept a tight message discipline, and kept a focused policy on how we dealt with the potential risks that these entities posed to the economy.

JS: Later on, there would be some criticism of the Bush administration. Some people would say that the Bush administration had been in office for eight years and had not really done anything about GSEs. But what you are saying is that there really was an effort to try to overhaul those.

JB: Yes, absolutely. If you look back, there were several efforts in Congress to move legislation, and ultimately there wasn't a majority in Congress to act until after the financial crisis struck. I think if you look back at our budgets each year, if you look back at the legislative proposals, the administration put forward the need for better regulation of these entities. I think it's fair to say we didn't anticipate the scope of the financial crisis before it happened, but we certainly recognized that this was a potential area of risk and wanted to improve regulations so that we could deal with that risk better.

JS: During these years, there was also a joint investigation of Fannie Mae and Freddie Mac by the SEC and IFHAO, investigating their accounting practices. There were allegations that they had smoothed earnings, and they eventually ended up settling for something like $400 million. Do you recall this being an issue in the Bush administration at this time? Is that something that you worked on?

JB: Obviously, investigations, whether they are civil or criminal, were always handled at arm's length from the White House so that you don't have political interference. People were aware that there was an investigation ongoing because it had been publicly reported, but it was not something that the White House had any more information about, frankly, than your average reader of the *Wall Street Journal.*

JS: From 2005 to 2007, you worked in the Office of International Affairs at the Department of the Treasury?

JB: Yes.

JS: What was your position there?

JB: I was the Senior Advisor to the Undersecretary for International Affairs. Essentially, that meant I was the Chief of Staff for that 200-person Office of Treasury that dealt with

Treasury's international economics portfolio.

JS: Can you tell me briefly how you ended up making the move to there from the White House?

JB: During 2004, I had been in the Chief of Staff's office working on policy issues, and I'd gotten to know Tim Adams, who at the time was the policy director on the Bush-Cheney '04 campaign. When Tim was nominated to be the Undersecretary for International Affairs, he called up one day and asked if I'd be interested in coming over to Treasury with him. It seemed like a very interesting opportunity to get more in depth with the issues. The problem with the White House is always that you are dealing with so many different things that you can only go so deep. So this was a great opportunity to really get more in depth on a series of issues I was interested in.

JS: So the Office of International Affairs, what did that office do exactly?

JB: We had two halves to the office, if you will. One half that dealt with regional economic issues. Like today, they would be very engaged on the European financial crisis. We also had a functional set of offices that dealt with issues like international banking or international investment and trade issues. The office managed the U.S. relationship with the international financial institutions, the IMF and the World Bank, and then also tried to provide government-wide coordination, bringing together the independent regulators that are very active, obviously, on financial services domestically.

Over time, that has become a much more internationally relevant set of issues. Part of what we did was to try to bring together those regulations, and try to coordinate positions so that the U.S. actually spoke with a coherent voice in these international fora.

JS: You were mostly dealing with other U.S. government agencies and trying to get them to speak with a united voice, rather than reaching out to other countries and dealing with the equivalent of a treasury department in different countries?

JB: Yes. Certainly, my role was more dealing with internal U.S. agencies. But the office was obviously focused on bringing together all the different pieces of the U.S. government to speak internationally. We engaged regularly with our counterparts, particularly Europeans and the Japanese, and the Chinese increasingly.

JS: Was it difficult to get them to speak with one voice?

JB: Yes. At the end of the day, each of these regulatory agencies has an independent charter, has a commission that is appointed by the President, confirmed by the Senate, and has a statutory responsibility to execute as they see fit. It's not a relationship where Treasury can dictate outcomes. It's very much one where, through discussion, through analysis, we try to arrive at common positions.

JS: Did you find that other countries would sometimes be annoyed or a little bit irritated that the U.S. couldn't settle on one position on certain issues?

JB: Sure. I mean, there's no doubt – whether it's U.S. companies or whether it's foreign companies or foreign countries, I think everyone can be a little frustrated with the fragmentation of the U.S. government. Financial services is certainly one of the more fragmented areas of the U.S. government.

JS: What were some of the specific issues that you were working on during this period?

JB: There was a lot of discussion, for instance, of international financial accounting rules. There was one issue where the world has been moving towards a common set of accounting standards. There's interest in the U.S. in moving in that same direction, but of course, accounting standards here are set through a somewhat complex mechanism between the SEC and FASB.

The ability of the U.S. to move expeditiously to a more principles-based accounting standard is not necessarily transparent. There are also prudential and statutory requirements about how we think about and approach accounting here in the U.S. So there are a lot of issues to deal with there.

JS: Were you engaged with the Congress on that issue?

JB: Yes. Obviously, more so when I moved to the SEC in a couple of years, but certainly, Congress, especially after the Sarbanes-Oxley, expressed a newfound interest in auditing and accounting standards. Congress was interested, and that's definitely something that you always have to consider when you're making policy in the U.S. government.

JS: What about the Basel capital requirements, is that something you were working on too?

JB: Sure. At the time, Basel II was in the offing. It was anticipated that the U.S. would be implementing Basel II over the next couple of years. There was a lot of preparation work going on. Going back to the point about fragmentation, there are a lot of different banking regulators. It was a time period in which that was a very active issue. There was also a lot of interest and discussion about undergoing a financial sector assessment program, which we eventually did do in 2007 or 2008, I think.

JS: Who would have conducted that?

JB: The IMF had begun doing a program of these FSAPs, looking at best practices, looking at how countries across the world could improve on their financial services regulation. There was talk of whether the U.S. should do this, because we were always, and of course are, the gold standard for financial regulation. It helps to encourage other countries to participate by the virtue of our agreeing to participate. That was one issue that we were very active on the Treasury, trying to convince the other regulators to agree this would be a good idea and that this would be something worth pursuing.

JS: Were some regulators hesitant to do them?

JB: There's always hesitancy from the U.S. government to submit ourselves to international inspection. I think that's a healthy reticence. But I think as we got more experienced with how the IMF was conducting itself in other countries, I think it was useful in building confidence.

JS: Now was your office also working on issues of international cooperation as regards criminal investigations or perhaps investigating terrorist finance?

JB: Yes. We had a limited role there, because about maybe two years before I got to the Treasury Department, the International Affairs Office had been split. There was the International Affairs Office, which was focused on Treasury's international economics portfolio. Then we also had the Office of Terrorism and Financial Intelligence, which was focused on money laundering and anti-terrorism financing issues.

So we still had a role to play, especially as the primary interlocutor with the IMF, which, through its FATF process, or, I should say FATF was separate, but through IMF standard setting and other international bodies, we had the primary responsibility for managing the Treasury relationship with these bodies. We continued to have a role, but really the driving force there was Stuart Levey, who was a national asset and just a tremendous amount of work that he and his shop did on making it harder for terrorists to finance themselves.

JS: Then in February 2007, you started to work at the SEC as the Director of the Office of Legislative and Intergovernmental Affairs, is that correct?

JB: That's correct.

JS: How did you end up moving to that post?

JB: By that point, my old Congressman, Congressman Cox, had been appointed Chairman, and basically, in 2007, I was interested in moving on from the Treasury Department. He got word of that and one day I got a phone call asking me if I'd be interested in coming over to chat. I went over, we caught up for a while, and towards the end of the conversation, he's like, "I've got a couple of openings here on staff, and I would love for you to consider coming over here and joining the team."

JS: Had you stayed in touch with him over the years?

JB: Yes. He's always been a mentor to me, and so the opportunity to work with him again was very appealing.

JS: Tell me a little bit about Chris Cox as an administrator and as a leader. What was his personality like?

JB: Chris is one of the smartest people I've ever met. He's just very analytical. He has a very sharp mind that really allows him to cut through to the core of an issue quickly. He's also just a genuinely nice person. I wouldn't say he's the kind of person that is a back slapper, as you might think of as a typical Congressman, but he's a genuinely nice person.

JS: There are a lot of news articles from this period contrasting his personality with another Congressman at that time, Barney Frank, just in terms of style, appearance, everything else. Was there any concern that Congressman Cox might have trouble getting along with Congressman Frank?

JB: No. It's funny, he and Barney actually had been friends in Congress, so they knew each other – perhaps friends is probably too strong – but they certainly knew each other and respected each other. *Roll Call* usually runs an annual "smartest members on the Hill" article, and Chris and Barney would often be one-two. I think there was a mutual respect there that made it easy for them to work together. The thing about Barney, in particular, is he's a very straightforward human being. He's a very straightforward legislator. Even if you disagree, it doesn't have to be personal. There's no subterfuge involved. It's a clash of ideas.

JS: Very businesslike.

JB: Yes.

JS: The Office of Legislative and Intergovernmental Affairs, what did that office do exactly?

JB: The idea was that the office was going to both manage the SEC's relationship with Congress, and then also with state and local governments, as issues arose, we'd be the point of contact for those entities, as well. The office was a small one and attached to the Chairman's office. It was very much a direct, tenth-floor office, if that means anything.

We would work very closely with all the Commissioners' offices, because we really did view ourselves as representing the Commission, not just the Chairman. It was very small office. I think we were at peak six folks, and really had a dedication or a focus on providing Congress with the information that it needed to make financial regulatory policy.

JS: So your office was in charge of answering queries from the Congress and things like that?

JB: Yes.

JS: What was the volume of correspondence with the Congress like? Was there a lot?

JB: Yes. It definitely was an active relationship. I think that the 2002 financial scandals brought those issues to the fore. It was one of those things that was of interest to more people than the SEC had been traditionally. We would deal with a lot of questions, and do a lot of explaining of how the securities laws worked.

At the end of the day, it was something that was suddenly of interest to a lot of members of Congress who did not have a lot of experience with these issues. A huge part of our job simply was educating them on, well, this is the structure of the statute and this is how the Commission operates, so that they could understand what we could and could not do in regards to problems that they had identified as priorities.

One of the old saws about the SEC is that it's a creature of Congress. Because we were created by Congress, because we've got a board that has a statutory balance and that it's supposed to be somewhat independent of day-to-day direction from the White House, there's definitely a closer relationship between the SEC and the Congress than there would necessarily be between, say, Congress and Treasury.

JS: Now, it's the Office of Legislative and Intergovernmental Affairs, so were you also dealing with other branches of the government, with Treasury and Federal Reserve?

JB: No. We were dealing with them, but the intergovernmental piece was both the state and local stuff and then also sort of intragovernmental, dealing with State and Treasury and the Fed. It was an interesting thing because it was a new responsibility that had been added back to the office.

That office had been the Office of Legislative Affairs for some period of time, and then prior to that, it had also been the Office of Legislative and Intergovernmental Affairs. Part of what Chris wanted to do was to bring back that intergovernmental piece so that there was a focal point within the agency for our interactions with state and locals, as well as with other agencies of the government.

JS: One other question – a just general question about working at the SEC. At the SEC, as in a lot of different government agencies and organizations, there are career staff, and there are people that just are going to be there for a couple of years and probably head somewhere else. Did you notice a cultural distinction between the two within the organization, or did everybody work together well?

JB: No. At the SEC, there is a pretty small layer of people who are sort of politicals, if you will. Then you've got a much larger body of the agency that is career staff. Even with the career staff, there are definitely a lot of people who are going to be there for three or four years and then go into the private sector, whether that be private sector law firms or private accounting, to make use of the expertise they gained in government in implementing the securities laws.

I think there was a healthy influx of new people and new ideas going on pretty constantly at the SEC. It was not necessarily the kind of place where there is just a stodgy bureaucratic viewpoint, as there was always sort of a new influx of lawyers and accountants coming in from the private sector or going out to the private sector that brought in new perspectives and sort of ground truth from the markets.

JS: I've got a long list of issues to ask you about, and they are sort of divided into two categories, some having to do with the financial crisis and others that are non-financial crisis related. I'm going to start with the latter first, if that's all right.

JB: Yes.

JS: First, appropriations. As I understand it, one of the big jobs of your office is to deal with Congress as regards SEC appropriations.

JB: Absolutely.

JS: Was that ever an issue? Did the SEC always get the budget it wanted?

JB: It didn't always get the budget it wanted, but we did usually did pretty well in the appropriations process, especially since the financial scandals, as there was a lot of interest in Congress in making sure the SEC had the resources it needed to do the job. When I got there, we had just peaked budget-wise so that there was a large influx of funds that allowed a lot of hiring.

The task that I faced was looking at what made sense and what had been overshooting. In response to any crisis, there's always a tendency to throw money at a problem. Then after a period of time, you can assess that this is what we actually needed to be doing as opposed to some of the stuff perhaps we don't need to be doing. Basically, the budget started to level off, which was a perfectly appropriate reaction to the needs going forward.

JS: At various times in the history of the SEC, there has been a push from within the organization to try to get the Congress to allow the SEC to keep some of the money they collect. Not just fees, but also disgorgements and things like that. Was that ever an issue while you were working there?

JB: It was certainly something that several of the Commissioners thought was a worthy idea. There has always a delicate balance between as part of the executive branch. Obviously, the budget is ultimately the President's budget request that goes up. Asking for an independent funding stream would have been something that would have required coordination with the White House. That was probably not something that was likely to get a favorable reception. (Laughter.)

JS: At the White House level, you mean?

JB: But it was certainly something that always had been talked about, that folks had talked about over the years.

JS: One of the big issues that the SEC was working on was municipal securities regulation. What was the concern about municipal securities?

JB: The fact is that it's a largely unregulated market at present, and there is a lot of potential for abuse there, and there have been some documented cases of abuse. So the thrust of what Chairman Cox was interested in at the time was increasing transparency in that market because there's just so little information available to the average investor in municipal securities.

We were looking at ways that we could increase transparency, both in the way that these municipalities presented their financial statements, and also what disclosures they were making to the public of that information. It was really just a matter of a significant-in-size market that was not getting adequate regulatory scrutiny because the statutory regime didn't allow for that.

JS: The statutory regime specifically didn't allow the SEC to regulate certain aspects of the municipal market. Was there much pushback from either Congress or from the bonds community or from anyone else about efforts to regulate municipal securities?

JB: Yes. There were limits to what actions the SEC could actually take, so it was a question of what we could do to educate Congress about the shortcomings in this area of regulation. In conversations, there were definitely those members who were not convinced there was a significant problem there. So it was an ongoing educational issue. I think a lot of attention obviously shifted away from munis to the other segments of the financial market once Bear Stearns faced its difficulties.

JS: Another of the perennial issues that the SEC deals with that came up during this time was the question of executive pay. Now as I understand it, even prior to the outbreak of the financial crisis, some people had been concerned about the level that executive salaries had been reaching, and the implications that had for investors and for the economy. Was that something that the SEC was particularly interested in during this period?

JB: Yes. There was obviously a lot of discussion about it, particularly around the issue of say-on-pay – shareholder resolutions. The view the majority of the Commission at the time took was that disclosure was the best medicine here and that requiring the disclosure of these salaries was sufficient to allow investors to make informed decisions on that subject.

There was definitely a lot of interest on the Hill, in particular, on requiring executive pay packages to be approved as part of the shareholders' annual votes. Ultimately, that ended up as part of Dodd-Frank, and so it wasn't a bolt out of the blue when it ended up in Dodd-Frank. It had been something that had been under a lot of discussion for several years.

JS: Would you characterize that as primarily a Democratic or Republican issue, or was it something that had support on both sides?

JB: It was primarily a Democratic issue. It was one of those issues that where people talk about board members and Main Street, and it was really framed that way. People started talking about CEOs' salaries being multiples of an average worker's.

JS: Another big issue during this period was the implementation of SOX, Sarbanes-Oxley, and in particular, Section 404, which had to do with auditing requirements. In May 2007, the SEC voted to relax Section 404 of Sarbanes-Oxley. Was this something that you spent a lot of time working on, or was that already decided when you came in?

JB: No, it was definitely an issue where everyone was very focused on implementing 404 because you had a lot of interest on the Hill. There was a lot of interest from members on both sides who were getting complaints from their constituents about the implications of this provision. The reality of 404 implementation was that it was very difficult to imagine a certain tier of public companies being able to implement the requirements successfully. At the end of the day, it was not clear that the costs of implementing it were commensurate with the potential benefits. More than any other issue that I worked on while I was at the SEC, this got a lot of attention from the Hill, because it got a lot of attention from people's constituents.

JS: Would you characterize the Hill's positions, as split into Republican and Democratic?

JB: Certainly most of the folks who were pushing for stricter implementation of 404 were on the Democratic side of the aisle. Most of the opponents were on the Republican side. You definitely would hear concerns from members of both parties, and you would also hear sort of different things, depending on whether you were in a public setting or if you were in a private one. A lot of members who would push for a strict interpretation of 404 in public would in private say "no, we understand that you guys need to make some accommodations." So there's a bit of posturing involved in this sort of thing. Wouldn't that be shocking, Congress posturing? (Laughter.)

JS: Yes, imagine that. Another thing that came up during this period – at various times from the media, from the Congress, there were charges that the SEC was being more sympathetic to business than usual. In fact, there was a hearing in June 2007 in which all five SEC Commissioners testified before the Financial Services Committee about this issue. Was this actually a problem for you in your day-to-day business?

JB: No. It was a very interesting perception. Regardless of what the facts are, a Republican-majority SEC is always accused of being too close to business, and a Democratic-majority Commission is always accused of being too anti-business. Chairman Cox always made the observation – his speeches always started off with that SEC is a law enforcement agency, and he viewed it as the job of the SEC to enforce the rules of the road.

Then when you go out and look at making new regulations or reviewing old regulations, you certainly want to incorporate economic analysis and incorporate cost benefit analysis, both as required by statute and as a matter of good policy, so that you implement the laws in a way that is most efficient and least burdensome to the economy. At the end of the day, the whole purpose of having the SEC is to ensure efficient capital markets, and that has two elements. One is enforcing the rules so that there is not fraud, so that everyone feels like the market is on the level. At the same time, efficiency requires that you do things in a way that is least costly. The two elements of that official market always have to be balanced, and those five Commissioners have to weigh this on each decision that is brought before them.

JS: You mentioned that the SEC was Republican-dominated at this time. It was three to two Republicans to Democrats. In late 2007 and early 2008, both of the Democratic Commissioners left the SEC – completely by chance, of course, it's not like they were forced out. There was no Republican coup going on.

JB: No.

JS: Was this a problem for you in dealing with the Congress at all?

JB: I don't know if it was a problem, though in terms of the legitimacy of actions the Commission might take, it is better to take these sorts of actions when you have a full Commission, so that there's not the implication that "oh, you just snuck it through while the Commission was lacking in Democratic members."

JS: Do you ever recall it coming up that someone said, well, maybe you shouldn't act on this particular issue until you get some other Commissioners confirmed?

JB: Yes, I do remember that coming up, and I can't remember what the specific issue was. There were staff on the Hill who would make that argument, usually because they were trying to delay action on a regulation that they did not think should go forward. The fact is that Annette Nazareth and Roel Campos had very strong relationships with the Hill, and so it was always an asset to have their perspectives on how we could approach issues with the Hill. It was definitely a loss to see them go, but we got two new Commissioners that were high quality in replacement.

JS: As we mentioned earlier, when you started your position at the SEC, the subprime mortgage crisis was already starting to happen. Did you have any idea that there was going to be any sort of major financial crisis, any gut feeling about that?

JB: A major financial crisis, no. I think everyone expected there was going to be some trouble in the housing markets, but that ultimately, it would correct itself, and the economy would work through it. I don't think anyone anticipated the depth of what we ended up having. I think one thing that is telling, though – in early 2007, Chairman Cox and the Commissioners decided to set up a task force to focus on issues in the financial market and to coordinate the different divisions who work in this area. It was prescient that they figured out or at least identified that this was going to be an issue that was going to reach across a variety of the SEC's functions, and got that going early on.

JS: Now, in regards to the subprime mortgage crisis, in 2006, Congress had granted the SEC the authority to oversee the ratings agencies. What were you all doing in regards to the ratings agency during this period?

JB: At that period, the regulations to implement the Credit Rating Agency Reform Act had not gone into effect yet, and so the comment period was still open for a long period of time at the beginning of the crisis. The regulations themselves went into effect, I want to say, maybe in August 2007. I think that's about right. Interestingly, the way the statute is set up, it really is a disclosure statute. The SEC was explicitly prevented from providing any view or regulating in any way the way that the NRSROs conducted their ratings. We began a series of reviews pretty early on, once the regulation had gone into effect, that were an examination of those agencies' practices so that we had further information on how they were conducting their businesses.

JS: Do you recall that the Commissioners were fairly united about how they wanted to proceed with that?

JB: Yes. The statute was pretty clear. This wasn't one of those areas where there was a great deal of discretion that the SEC had to exercise. There was certainly, I think, a difference of opinion among the Commissioners about what the law should say and whether amendments to the law were merited. I think there was good unanimity on what the regulations that the SEC had control over.

JS: Do you recall the moment when you realized that the economy is heading towards a giant crisis and this is going to have huge implications for our agency?

JB: I wasn't prescient on this. Bear Stearns – I think that weekend really was an eye opener.

JS: This was March 2008. Can you tell me a little bit about how you experienced that particular weekend?

JB: I left work on Friday afternoon. Being in Legislative Affairs, we weren't in the mode of "we need to operate, we need to figure out how to resolve this institution." Someone sent me an e-mail saying "Hey, stick by your Blackberry. There's some stuff going on here." It was one of those issues over the weekend where I just kept monitoring e-mails. I had a couple of conversations with the Chairman, because obviously the Hill was interested in what was going on. It wasn't entirely clear, frankly, what was going to be happening. (Laughter.)

The arrangement that was made to sell Bear highlighted the difficulty of these highly complex interconnected investment banks that didn't have a guaranteed source of funding, that weren't eligible for funding through the Federal Reserve window, and yet, the failure of them could have broad reaching implications for both financial stability and for the economy. It opened up a set of issues that was not new, but it really brought them into sharp focus. We had been in discussion with Congress over the previous five or six months on the regulatory regime that the SEC administered called the Consolidated Supervised Entities program that was overseeing the five major investment banks.

There had been a lot of scrutiny and attention given to this regulatory regime, about whether it needed a statutory basis, whether it was adequate to the task. We had been doing a lot of thinking on that, but I think Bear brought into a sharp focus these issues.

JS: In the weeks and months that followed, Chris Cox came under a little bit of criticism. He was seen as having taken a "backseat" role during this period, I think was the term that some people used. Do you think that's a fair assessment?

JB: It's a difficult thing. I go back to what he always liked to start his speeches with – that the SEC is a law enforcement agency. The SEC is in an awkward position as both the regulator of Bear Stearns and then also as the regulator of the financial markets generally, and someone who could potentially bring charges against people involved in transactions, or against the firms for past practices.

There was always an inherent tension there, and it is a tension that I think people ultimately decided was untenable. The CSE program was ended and the idea of having these large, independent investment banks that were not subject to the bank regulatory regime was done away with. There was just, at the end of the day, an irreconcilable tension.

JS: Did you notice a change in the tone of comments coming from the Hill or letters, phone calls after Bear Stearns?

JB: Certainly. The Hill was much more critical of the SEC's performance afterwards. There's no question about that. That's to be expected. At the end of the day, when things don't go well, Congress has every right to be critical about that, and to ask why it is that things went poorly.

JS: After the Bear Stearns debacle, there were a couple of different plans that were floated for reforming the system of financial regulation. One came from the SEC; one came from the Treasury Department and the Federal Reserve. That one in particular urged combining the SEC with the CFTC and taking some other drastic steps. Do you recall communicating with the Hill about these different plans?

JB: Yes. This was 2008, and the Hill made clear none of this was going to happen before the election. There was a lot of politics between SEC and CFTC on the Hill, because of the split jurisdiction. Going back to what we were discussing earlier, as far as the creation of the Financial Services Committee, one glaring element that was left out of the new Financial Services Committee was jurisdiction over the CFTC, which remained with the Agriculture Committee. There was a similar split-up on the Senate side.

There are always a lot of commissions or recommendations that come out for consolidating the financial regulatory structure. It generally founders on the difficulties of dealing with jurisdictions and different missions. You look at banking regulators, for instance – they have a prudential responsibility or prudential approach, while the market regulators are much more in the enforcement mode, more hands off. We'll require disclosure, establish clear rules of the road and then enforce them, as opposed to working with institutions and trying to ensure that they are being run in a prudent manner.

We have a very fragmented system, as we were discussing earlier. That fragmentation also reflects a variety of different perspectives on the issues in the financial services industry. It's probably not optimal, but it is what it is, I guess.

JS: Did you hear a lot of calls perhaps from the Hill to reinstate the separation between the investment and commercial banking, Glass-Steagall?

JB: I'm trying to think back. I think a lot of people thought that the horse is out of the barn. The reality is that U.S. financial institutions were engaged in a variety of lines of business, and it was just seen as next to impossible to untangle. There were also issues of the competitiveness of U.S. businesses, where this would encourage them to move offshore where those restrictions had never been in place.

I think if you look back at the crisis, I don't think there is a lot of evidence that Glass-Steagall was the issue. You had both banks and nonbank financial institutions in trouble. You had insurance companies in trouble. It was a very broad cross-section of the financial sector that was troubled. It was not necessarily banks making loans to unsound affiliated institutions that was at issue.

JS: Now in July 2008, you were still at the SEC and Fannie and Freddie were taken into federal conservatorship. Do you recall the SEC working on that much at that time, or was that something happening separately?

JB: That was something happening separately. Obviously, the SEC was on the board of the new Federal Housing Finance Agency, the new regulator that was finally put into place in 2008. The reality was that it was relatively quickly after FHFA was set up that the decision was made that they needed to be taken into conservatorship. The SEC, in its role the market enforcer or regulator, has to maintain somewhat of a hands-off approach to these things because as we were discussing earlier, Fannie had violated the securities laws several years before. So there was definitely the potential for other violations to happen, and the SEC necessarily has to be a third party to this sort of thing.

JS: In August 2008, you left the SEC. What did you end up doing?

JB: I decided to go to grad school, so I went off to Johns Hopkins School of International Affairs and got a master's.

JS: Were you working on financial issues at all?

JB: I had more of a focus on international economic issues. It was sort of the heart of the financial crisis. There was obviously a lot of discussion of international monetary policy and all the rest. It was a fascinating time to be on the sidelines watching all the players and being able to understand what the motivations were.

JS: Then in August 2010, you went back to work on the Hill? Where were you working there?

JB: I worked for the House Budget Committee. I joined the staff sometime in summer 2010. I was handling defense issues and international affairs issues, and then eventually became the policy director for the committee.

JS: Now you're working as a deputy policy director for the Romney campaign.

JB: Yes.

JS: Do you think that financial regulation is going to play a role in the election this fall?

JB: Absolutely. Governor Romney has made a point of discussing the uncertainty and the burden that Dodd-Frank has placed on the economy. Part of his program is repealing Dodd-Frank, and he was just talking about that, in fact, the other day.

JS: Jonathan, do you have any final thoughts to share with us before we wrap up?

JB: No, I think this was a very interesting set of issues to go back over. It has been a while since I've given this much thought to some of this stuff, so thanks for your time.

JS: Thank you, Jonathan.

[End of Interview]