Securities and Exchange Commission History Society
Interview with Senator Edward (Ted) Kaufman
Conducted on August 29, 2012 by James Stocker

JS: This is an interview with Ted Kaufman for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm James Stocker. Today is August 29, 2012. We're talking in downtown Wilmington, Delaware. Senator Kaufman, thanks very much for talking with me today.

TK: Thanks for having me.

JS: First, to start out, why don't you tell me a little bit about your background? Where were you born and where did you grow up?

TK: I was born in Philadelphia, Pennsylvania, and that's where I grew up. My father was a Deputy Commissioner of Public Welfare. He was a social worker. My mother was a teacher. I had three wonderful sisters. I went to school in Philadelphia through high school. I went to Central High School in Philadelphia, and then went to Duke University and got a bachelor's of science degree in mechanical engineering.

JS: While you were at Duke did you study any business or finance?

TK: I studied no business or finance. Back then the engineering program was such that you did not get a whole lot of choices outside of engineering. Really, business was not my interest. No one in my family had ever been involved in business. But after I left Duke, I went to work for the American Standard Industrial Division. I was basically what then was called a sales engineer. I was an engineer. I worked with consultants and consulting engineers and architects and big power plant companies. I would provide the equipment. We had to design the equipment for the specific jobs and I did that.

JS: About what time was this?

TK: I graduated from Duke in 1960. I went to Detroit for six months for a training program, and then came back to Charlotte, North Carolina where I worked there for two years, and then two years in my own office in Raleigh calling on these folks. What happened was that maybe after a year and a half or two years, I said,"this business stuff is really fascinating, and I really don't know anything about it."No one in my background was a businessperson, none of my family. I said,"I want to go back and get an MBA." I was living in Raleigh, married with two children, and there was a program at the University of North Carolina where you can go for one year to get an MBA. I had a company car. I could have kept my company car. I could have gone back to work after I got out of school. So I applied to the University of North Carolina.

Then I thought, well, everybody in my family has gone to the University of Pennsylvania. Literally everyone – my parents, my sisters– everybody had a Penn degree except me. So I said, maybe I would apply to Wharton. I applied to Wharton, and I got in. It was kind of like the old "road not traveled." If I don't go to Wharton, would I regret it? I went to

Wharton, and it was just an incredible experience. That's where I got interested in business.

JS: Tell me about your studies there. What sorts of subjects did you study?

TK: I did the full monty. I majored in marketing because that's what I had done, but I took a number of the really tough finance courses. I did administration. I did manufacturing, operations research. Essentially, I jammed a lot of courses into those two years. I never missed a class. It was like people in the front were giving out dollar bills.

I took investment courses. That's where I learned a lot about investments. It was just a great experience. While I had not done well in undergraduate school – I learned a lot of other things – but at Wharton I did very well.

JS: Did you go to Wharton with an idea in mind of what you would be doing afterwards?

TK: Not really. Law school is different. You come and they'll teach you a bunch of things, and same in engineering. But in business school, you really have to come with questions. That's why it's important to work before you go back. I had worked for five years before I went back. I literally showed up at Wharton with 500 questions: how do you do this, and why do you do that, and why do people do this, and shouldn't the companies do this, how does the market work on this, or how does this work? I came up with those questions and went to class searching for the answers.

Every day was just wonderful. I was used to getting up in the morning from when I was working, and I'd get on the train to go into town to get to Wharton. I would get in there at like at 8:00 or something like that, and regardless of what classes I had, I stayed until 5:00 in the afternoon. I loved it, and I learned a lot. I have said many times to people there is a lot of emphasis at schools like Wharton on making contacts for the future. I said early on, and it's even truer today, that if I had to choose between a Wharton education or the Wharton contacts, it would be the easiest decision I ever made; it would be the education. The people I got exposed to, the teachers. It was a great experience.

JS: You said you took courses on finance there. Did you also study financial regulation, how the SEC works, and things like that?

TK: No. None on the government side. As I remember, there were no courses like that. There was not a whole lot of interest. You have to remember what it was like back then. Government was not the factor that it's become now. There was no interest in that. There's the Fels School of Public Administration there, and I recommended a lot of people go there later on in my career. Back then I don't even think Fels was in existence, and there were no real courses on federal regulation.

JS: What did you do after you left Wharton?

TK: I went to work for the DuPont Company in Wilmington, Delaware. I decided I didn't want management consulting. I had really wanted to get into working in business, because I was interested in business and building a career. I didn't want to do investment banking. First off, I didn't want to move the family to New York. That's the biggest thing. I wanted to avoid the commute which is ironic, since I commuted so much to Washington later on. And what we did was great. I worked at the Chestnut Run Technical Services Laboratory. It was ten minutes from home.

The reason I picked DuPont is because I wanted to be a significant player in corporate America, and I want to be prepared for that opportunity to present itself. So I wanted to go to work for a company where you could learn all the different sides of business – learn about manufacturing, learn about marketing, learn about finance, learn about research, learn about all those things. DuPont was the kind of company that was structured so you could do that. My final choice came down to IBM and DuPont. I loved IBM. People were great. But basically at IBM you spent your whole career in marketing. You could rise up, practically to CEO, and never have any manufacturing or finance experience.

JS: You also mentioned to me earlier that you were trading stocks during this period yourself, correct?

TK: Yes. When I got out of Wharton, I was trading stocks. I was working with DuPont. I was in Wilmington for a year, then I moved to Boston for a year, and then to Los Angeles for a year. Basically I was what was known then is a technical representative, dealing with engineering products – engineering plastics in this case with everybody from Polaroid to Mattel and the automobile companies. When I came back, I was assigned to financial analysis. During that period when I was in financial analysis, those two years, I got heavily into investing. In fact, it was one of my best lessons. I learned so much from investing.

I remember the first time I invested in stock, it didn't turn out well, and I was talking to my broker. I said now, I've lost like $500, which back then, for me, was a lot of money. He said, just mark it up to tuition. It was the smartest thing he ever said. Investing was all about learning how to do it. I'll never forget how I learned about leverage in a solid way. There was a company called Pennzoil United, and they had – I think it was a convertible preferred bond or something like that. It fell under the category of bonds for which you only had to put up 10 percent margin.

I went out and I bought $100,000 worth of Pennzoil with $10,000. I had a little money that my wife had inherited. I didn't have much. I put it in Pennzoil United because I thought this was a really safe deal and I could make a lot of money. It went to $110. I had put it at $100. $100,000 worth of stock with just $10,000. It went to $110. I doubled my money. But what happened was, it was the early seventies and the bond market went to hell. Every day, Pennzoil was going down a quarter a point, a half a point. What happened then is you have margin calls. They'd call me up and they say Kaufman, we need another $500 or $1000.

I'll never forget. It went to eighty-seven. I now had $23,000 into this thing, and I was staring at the ceiling at 3:00 in the morning. There's no way you can learn about leverage better – it was the best thing that ever happened. Then fortunately, eventually it stopped and turned around, and I eventually sold the stock for essentially what I bought it for. That sears into your mind why leverage is dangerous, and that return and risk are directly proportional. If you have low risk, you're going to get a low return. If you have a high return, you're going to have high risk.

JS: How did you come to join Senator Joe Biden's staff?

TK: I joined Joe Biden before there was a staff. Essentially, I was working in financial analysis, as I said. Then I worked in research and development on Corian, which is the synthetic marble-type substance that people use in bathrooms. It was experimental, and then it went to commercial. Anyway, during that period I had some extra time, and I decided I'd get a little bit involved in politics. Both my parents were strong Democrats. My mother was a very strong Democratic committee person. So I went down to my local Democratic party and signed up.

I went through a whole process there. Through that process I met Joe Biden and his family. In June of that year, I worked very hard on helping get a gubernatorial candidate the nomination in the election. That was over in June because the incumbent Republican governor was in deep trouble because of financial crisis. In June, Joe Biden's sister Valerie, who ran his campaign, called me and said, "Ted, I know you're not working on that gubernatorial campaign anymore. Would you consider working for my brother?" I said, "Sure."She said, "Why don't you come down and we'll meet?"

I went down with Valerie and I met with Joe Biden, candidate for the Senate. I said absolutely I'd help him. The reason I'd help him is because he was really ahead of his time in a lot of issues that I really cared about. The environment. No one was talking about the environment. He was talking about the environment. He was talking about how we should have balanced budgets. No Democrats were talking about balanced budgets back then. He was opposed to the war. We thought we should get out of the war, but he didn't make a cause.

JS: Was this 1974 or before?

TK: '72, this was June of '72. He also was one of the first Democrats to talk about the fact that the people that got hurt most by crime were our people, and that we should have a tough criminal justice system. There were a whole bunch of issues like that. He was twenty-nine years old, and he looked every bit twenty-nine years old. He was running against one of the beloved elected officials in the history of Delaware, Senator Caleb Boggs. Senator Boggs had been a Congressperson. Then he'd been governor, and now he was the incumbent Senator. He was known and loved by everyone. Joe Biden was twenty-nine years old.

On top of that to make it even worse, it was the election where McGovern was the top of the Democratic ticket and Nixon was at the top of the Republican ticket. So I told him in June 1972, "Joe, I'll work for you, but I think there's absolutely, positively no chance you could ever win." I mean, the fact that a twenty-nine year old got the nomination is an indication. I think he turned out to be the fifth youngest person ever elected to Senate, running against Caleb Boggs.

Sure enough, he got elected. I will never forget. In a lot of ways it was momentous. I can remember being in the Gold Ballroom at the Hotel DuPont – not far from where we're doing this taping– that night, when they announced he won, I thought, I will never again believe anything's impossible. I mean, he had 19 percent of the vote on Labor Day. They did a survey – he had 19 percent of the vote against Boggs on Labor Day. So he won. I can remember at the Gold Ballroom, nobody knew what kind of staff he had. Nobody knew anything about it. I surely was not going to work for him. I was working for DuPont, which was my career. I wasn't going to work for him.

As you probably know – or maybe don't know –he was married to his wife Neilla, and he had two sons, Beau and Hunt and a daughter, Naomi. On December 18, he was in Washington, and Neilla was driving home with the Christmas tree, and got hit by a tractor trailer. She was killed. His daughter was killed. Beau and Hunt were put in the hospital. He went through a period where – it's in all the books –he was really blown away. I mean, totally, completely blown away. There are couples that are tight, and there are couples that are tight, and there are couples that are tight. They were a very close couple. For a long time he said he wasn't going to serve– that his kids needed him more.

Majority Leader Mike Mansfield; Fritz Hollings, the senator from South Carolina; Ted Kennedy from Massachusetts; Hubert Humphrey from Minnesota; they really did rally around him. Robert Byrd came up to the memorial service, stood in the back, and never said a word to anybody. A whole bunch of Senators took him under their wing and encouraged him, and Mansfield's argument was basically, look, try it for six months. If you don't like it, if you can't do it –he did it.

Early in January, he called me. Valerie was there, and Valerie told him to do it. He said, "Ted, I want to talk to you about coming to work for me and my staff."I said, "I'll talk to you, but I don't see how that could work." I went and talked to him, and he said – his basic argument was look, I want to put a lot of my staff in Delaware, in fact, half my staff. Back then, I think that the two Senators and the Congressmen from Delaware had two people total on their staff in Delaware. But we started to get fax machines. They were pretty elemental.

He said, "What I'd like you to do is take half the staff and put them in Delaware. I'd like you to manage them, and I'd like you to represent me in the state. If you would just do it for a year to get me started." I went to the people that I work for in DuPont and I said, "Could I get a one year leave of absence?" They said, "Sure, we'll give you one year of absence." I took a one year of absence. The rest is, as they said, history.

JS: At this time, and obviously still today, Delaware was known as a center for banks and corporations. Do you think these organizations had any influence on Senator Biden's positions on financial issues?

TK: Not really. When I was a Senator – let me just tell you my personal story. Credit cards. Delaware is a major private supplier in credit cards. I forget how many employees work here in the state. It's a big number. It's less than what it used to be, but it's still a big number. When I got to be a Senator, there was a major credit card reform bill. Here I am sitting here with twenty-some thousand credit card employees in my state. This is the thing I spent a lot of time talking about, lecturing about when I was teaching at Duke Law School for twenty years. I talked to the students about the conflicts that you face as a member of Congress.

One of them is the old Edmund Burke charge that we should worry about the national interest, not about our local interest. But there's a conflict between your national interest and local interest. Here's something that is very important to a number of people in Delaware. Fortunately for me, the Fed came out with a study. There was a compromise made. Everybody voted for it. It wasn't a problem. But to give you some flavor for how this works – you do worry about the state you represent.

For instance, the credit card issue is not as simple as it looks. We had twenty-some thousand people that worked in the credit card industry, but we have 600,000 people that had credit cards. So people want to make it a very simple kind of decision, but it's not a simple decision. I pretty much voted against the banks,and against credit card industries when I was in the Senate because I thought it was in the best interest of the people of Delaware and the nation. I never felt like there was a conflict there.

Because I had that position, a reporter from one of the papers, a smart guy, came to me and said, "Well, Kaufman, you're just like the rest of them. Here's this bill, and it's to help Delaware, and you voted for it." I said to him, "Do you look at my name in the paper? It says Ted Kaufman, D-Delaware." Every member of Congress has a responsibility to represent the state that they come from. Now it's a very difficult conflict between representing the state you come from and represent the national interest. The idea that I would vote for Delaware on a particular issue is normal. That's the way it should be. As I say, the only person that's elected at large is the President of the United States.

Every member in Congress has a responsibility to their home district and a responsibility to the nation, and dealing with that can be very difficult. Fortunate for me, during the two years I was in the Senate, it was very easy. There weren't any major conflicts between representing the people of Delaware and representing the country.

JS: You talked just now about your experience as a Senator. I want to ask you again about your experience as a staff member because we've got a lot of questions for you about your Senate experience later. While you were a staff member, did you have any contacts with the Securities and Exchange Commission at all? Did you know much about the organization?

TK: No. I'll talk about when I was a staff member, but also about my time as a Senator. When I became a Senator, I sat down with some people I really respect, and we asked, "What am I going to do while I'm here?" I'm a Wharton MBA. What do you do? You sit down and you plan goals and objectives and strategies and all that stuff. We basically decided the best thing for me to do, since I was only going to be there for two years, was that I should deal with the same areas that I was familiar with after twenty-two years working for Senator Biden.

Those primarily were the Judiciary Committee and the Foreign Relations Committee. As Woodrow Wilson said, "Congress in committee is Congress at work."When I started as a staff person, you could only operate on your committees. It turned out that the Senate had changed, and I had not focused on that. But I said, "I'm very familiar with the Judiciary Committee issues because I worked on them for so long. I'm very familiar with Foreign Policy issues because I worked on them for so long."Rather than taking something like the Commerce Committee and having to get up to speed on a whole new set of issues, these are the issues that I should take.

It worked out, and I asked Harry Reid for that. Harry Reid gave me those two committees. When I was working for Senator Biden, he was not interested in any of the finance issues. That wasn't his background. I did some regulatory things, for instance, I dealt with the commercial issues on Judiciary, because that was not an area of his expertise. I'm hard-pressed to think of a regulatory issue that I dealt with. I'm hard-pressed to think of a financial issue or a Wall Street issue.

That was really fascinating. When I got there as a Senator, I spent a lot of time in the Senate dealing with science, technology, engineering, math, education and all that. I was an engineer, which Senator Biden wasn't. And I got very involved in the financial area because that was part of my education and background experience.

JS: What about, say, the S&L crisis, do you recall being involved in that?

TK: During the S&L crisis, we were primarily concerned about putting people in jail. We were more involved in the area of financial fraud. I was very involved in that during my time in the Senate. I was very involved in trying to figure out how we can put some of these people in jail that committed fraud during the latest crisis. But no, during the S&L crisis, it was not about the financial side of the issue. It was totally about people committing fraud. It was basic Judiciary Committee issues.

JS: So what year did you leave Senator Biden's staff?

TK: In 1995. At that time, I was fifty-five years old. I don't want to ever retire, but you can't work the rest of your life as chief of staff to a United States Senator, which is a sixty-five hour a week, backbreaking job. I said I want to get into something else. I left Senator Biden's office in '95.

JS: Then what did you do?

TK: In 1991, I had started teaching at the Duke Law School. I taught a course in the Congress.

JS: Was the course on the Congress itself or on business in the Congress?

TK: No, the course I started with was the on the Congress. A fellow named Chris Schroeder, who is a professor at Duke, came and asked me to teach it with him. I met him during the Bork nomination. He had been hired by us to help with the constitutional issues on the board. I started teaching at Duke in 1991. I had done it thinking that I'm going to retire. I'm going to leave Senator Biden's office at some point, and I want to do things, and teaching would be great. In 1991 I started teaching a course on the Congress with Chris Schroeder for law students –my office is actually in the law school –and public policy students.

Half the class was law students, half was public policy students. Most of the public policy students were graduate students. We taught a course on the Congress together. I commuted back and forth to Durham, which back then, before security, it was not a much longer commute than to Washington. When I got out in '95, I said I want to teach two courses, and my wife and I went and lived down at Duke for the spring during the basketball season. I taught two classes, and it was fabulous. The second course I taught was a course on the relationship between government and business. That was for law students and MBAs. Half the class was law students and half the class was MBAs in Fuqua School of Business at Duke.

JS: What did you tell your students about the Congress and business?

TK: It wasn't just Congress, it was government and business. We could talk about that for hours. After all, I taught thirteen classes or something like that, each one two-and-a-half hours long, so it covers a lot. The thing I told them is there are a lot of very basic differences between government and business. The biggest difference centers on the fact that business has real, hard numbers that you can use for goals and objectives.

When we started decentralization, and DuPont was one of the first to do it, you decentralize everything except the finances. If you have six divisions – let's just take General Motors because General Motors used the DuPont system – you basically go to someone, and you say,"You're running the Pontiac division." If every year you have a return of X, and you have a market share of Y, and you are generating earnings of Z, we don't even have to talk to you, because we know you are doing a good job. So you can run a very big business in a relatively simple way.

The problem with government is that it concerns soft, squishy issues. Happiness, satisfaction, fairness – these are issues that you can't measure. The best example I can give is the Vietnam War. This example used to work a lot better twenty years ago, when there were still people around who were there during the Vietnam War. During the Vietnam War, the Secretary of Defense was Robert McNamara. He was a Harvard Business School guy. He had the Whiz Kids. They were all Harvard Business School guys. They had run the Ford Company very successfully. He became Secretary of Defense during the Vietnam War. The only way they could manage the Vietnam War day-to-day – you couldn't even talk about capturing land because it was a guerilla war– they came up with a measure of the body count. Why? Because the only thing you could measure was body count, and that's what they measured.

Even in Vietnam, even in a war, trying to figure out when you're winning, and when you're losing, and when you're getting ahead, and when you're not, what's success and what isn't, what's a successful strategy and what isn't – it's just so much more complicated than anything you'd ever run in the Ford Motor Company. And the Ford Motor Company is a very complex company to operate. So the basic difference is that government is very difficult to manage. I think it is much more difficult to manage a government department than it is to manage a business.

That was the heart of it. I also talked about the different culture between government and business. We talked about how the media interacts between government and business, and the differences and all the rest of it. It's interesting to watch the Presidential campaign, watching Mitt Romney deal with the incredible differences there are between running a business and running a government.

JS: It certainly is. So you are teaching during the 2000s when there started to be a number of financial scandals like Enron, WorldCom. Obviously, you're probably still following politics. Do you recall having a strong reaction to those scandals?

TK: Oh,yes. I had a very strong reaction to it, but I did not really study it. I was really more interested in the politics. Now the fact that I understood finance and the rest of it made the Enron thing just more unbelievable. How the hell did that ever happen? It deepened my criticism and my concern. To be totally candid, I never thought, how is the SEC handling this? What should we be doing about it? How should we stop it again? That's not where my interest was. I really was not doing a whole lot of investing at that point. I was investing, but I had people who were advising me on how to invest, and what my portfolio should look like and things like that.

Let me explain that. I didn't make a whole lot of money, but my wife's grandfather was with Abbott Laboratories. He was one of the founders. He, and then her parents, were kind enough to give her Abbott stock. The stock performed beautifully during the sixties, seventies, eighties, and nineties, so we accumulated quite a bit of money. I was managing the money, but it was not the same as back when I was actually trading stocks. We did very well, and I think probably I can thank Wharton for that. But no, I was totally not focused on what was going on. I'd read something about the SEC now and then.

JS: So you didn't have a sense of an impending catastrophe coming in the form of the financial crisis?

TK: No. I had no idea of an impending crisis. I had no idea, right up to when we had the meeting discussing what I would do with my two years in the Senate, that I would be concentrating on financial isues.. The one area that I did target, in our strategy meetings, was trying to make sure that anybody who committed a crime went to jail. Financial fraud enforcement was part of my job on the Judiciary Committee. It turned out that I could play a major role in that.

JS: I'll ask you about that here in just a second. Now you have spoken about this elsewhere, but tell me briefly how you came to be appointed to the Senate in 2008.

TK: I know I would never run for the senate. I never thought I'd be a Senator. When I became a senator I did a lot of profiles because I was in an interesting position. I'm not interesting myself, but it was interesting that I was taking over for the Vice President. People would say to me, "Well, did you ever dream about beiong a senator? I mean, you spent twenty-two years on the staff. Didn't you sometimes sit in a hearing and say, that should be me up there?" I can say in complete truth that I never once dreamed about being a United States Senator. Never once did I ever think about it.

The example I always use is that is volleyball. There are great strikers and there are great setters. Good strikers do not usually make good setters, and good setters do not usually make good strikers. I looked at myself as a setter. I thought I was very good at it. By the way, I think most staff people wouldn't make good Senators, but I also think most Senators would not make good staff people – with the exception of Senator Biden. I never once thought about it, because I knew I would never run for office. I never ran for anything in my entire life. I had never run for school board, or for homeroom representative to the student council. I never dreamed that or thought that I would be a United States Senator.

JS: So when did you get the phone call?

TK: I was involved in the transition. One of the big things for me was sitting with the Vice President, with the President – eight or ten people, laying out the entire Obama administration starting right after the election. That was a historic thing. Anyway, we were riding back from a meeting in Chicago right after the election, with the Vice President-elect and his son Hunter, who I've known for years. I think absolutely the world of him. We were riding back and somehow the discussion was getting around to who's going to replace you?

There was a lot of speculation, and some people they thought would get it. Hunter said, "Well, Ted, why don't you do it?" I said, "Oh, no. This is the wrong time in my life. I can't do any of this."The Vice President-elect said, "Yeah, why don't you do it? Look, think about it." I said, "Well, I'll think about it."He said, "Come back to me and tell me whether you want me to recommend you to the Governor." I thought about it a few days. I talked it over with my wife. We said, "God, let's do it. Let him put my name in."

The Vice President mentioned it to the Governor. I had been very close to Governor Ruth Ann Minner. I always remember 1972. Remember I said I worked for the gubernatorial candidate, Sherman Tribbitt? Well, when he got elected Governor, his receptionist was Ruth Ann Minner. Not his secretary, his receptionist. So I knew Ruth Ann back from 1972. I was on her strategy committee when she ran for Governor. We used to meet regularly to figure out their strategy for the campaign, and then I worked on the campaign. I was on her transition, so I knew Ruth Ann. Ruth Ann and I had a wonderful relationship.

The Vice President went to Ruth Ann, and suggested me. Then my wife and I were preparing to travel to England. We have a daughter, and her husband and three wonderful kids live in England, who were born and raised in England. So we were going to go there for Thanksgiving, and had bags full of paper turkeys and things like that. Honest to God, we had the bags packed, and were getting ready for the limo to come pick us up, and the telephone rings in my kitchen. I pick it up. It's Ruth Ann Minner. "Ted, this is Ruth Ann." I said, "Governor –"

She said,"I might as well tell you right off the bat I want to nominate you for Joe Biden's place to be the United States Senator." I said, "That's an incredible honor, Ruth Ann. I'll do it." The little sideline to it is that one of the big differences between Vice President Biden and I– I'm a planner. I like to lay out all my plans. It's like dominoes. I like to lay the dominoes out and then watch them all go down. Vice President Biden is someone that every minute of every day is figuring out is this the best thing that I should be doing? He is constantly rearranging his life. He's very good at finding his highest and best use at that particular time.

I said to Ruth Ann, "Gee, Ruth Ann, I'm just getting ready to go to the airport to see my grandchildren. I'll be back. Can we do it a week from Monday?" She said, "Sure. Fine. We can do it a week from Monday." I said, "Okay." I said, "Great." I said, "I'll be in touch." I hung up, and obviously the first person I call is the Vice President-elect, and I tell him what happened. There's this silence on the other end of the line. I said, "Joe?"

He says, "Ted. Do you really want this out there for ten days to get screwed up? I mean, do you really want to take a chance that this whole thing is going to break in the press? You know, it's tough keeping these kind of things a secret." I said, "You are absolutely right." I called Ruth Ann back and said, "Ruth Ann, I'll do it on Monday." Lynne got on the airplane and went to England, and I stayed there. We didn't do it on Monday. Something came up, but I ended up doing it on Tuesday. I had the press conference.

JS: You already talked to me a little bit about some of your priorities. You said the Judiciary, Foreign Relations, and I believe, punishing fraud.

TK: That was part of Judiciary. The financial part of what I was committed to do was going after financial fraud. Let me just have a minute. Right after I got there, I went to Judiciary Committee Chief Counsel Bruce Cohen and I said, "Bruce, I want to get involved in this fraud thing." He said that Chairman Leahy and Grassley are working on a bill to increase the amount of money for FBI agents and prosecutors to go after that. I said, "Great." I said, "I'd really like to be a co-sponsor." He said, "I'm sure that's no problem." I went to talk to Chairman Leahy. Chairman Leahy said, "Sure, I'd love to have you on. I'd love to have you work on it."

I said, "Look, this is something I really want to make a priority. I'm willing to go out there and work on this thing."He said, "Great." I said, "I'll write an op-ed. I'll go on the television shows and radio shows talking about it. I'll be active in the hearing."He said, "Fine."We had the first hearing, and there was Chairman Leahy and Chuck Grassley and me. Leahy asked me to come up and sit next to him, because I was the lowest of the lowest, so I was all the way down at the end of the table.

One of the people that testified was John Pistole. He was then an Assistant Secretary in the Justice Department. He went on to head up the Transportation Security Administration. He gave the key testimony. It goes back to your question earlier about the savings and loan crisis. He said during the savings and loan crisis, there were 1,000 FBI agents working on financial fraud. Now there were 200 people working on the financial fraud total. The reason was that after 9/11, we transferred a whole bunch of FBI agents back over to terrorism, and we hadn't replaced them. He said there were fewer financial fraud cases brought in 2007 than 2001. It was really compelling testimony. Based on that and what other people said, we got a bill passed to put an additional $175 million in the area of financial fraud enforcement.

JS: This was the Fraud Enforcement and Recovery Act, right?

TK: Yes. The thing that was so amazing about it – I don't know a freshman Senator who in their first two years ever went down to the White House for a bill signing, and actually stood on the platform with the President and the rest. Thanks to Chairman Leahy and Senator Grassley and the President, I actually went down to the bill signing. I was on the stage with the President when he signed the bill. I spent a lot of time the rest of my term on getting it fully implemented.

JS: This bill also authorized the creation of the Financial Crisis Inquiry Commission. Was that something that you pushed for?

TK: No, that was not. My main concern was not so much that. That was an important part of it, because you could find out what the crisis was. But no, my main emphasis was getting the prosecutors and the FBI agents to go after major Wall Street financial fraud.

JS: When you entered the Congress, were you concerned about short selling and the practice of short sellers?

TK: No. I never thought it would be of interest. I got in and – I don't know if it was February or March –I read about it. I think it was 2008 the SEC had removed the uptick rule on short selling. I'd done short selling when I was going through that investment phase. It was an article of faith that this was one of ways that you control predatory bears, which are people that basically bet on the market going down. The other thing is that you required them to go out and borrow stock at any stock they were going to sell. The uptick rule was an article of faith.

Now remember, there's nothing wrong with short selling. I've done short selling. Predatory bear short selling is where people drive down the price of a stock through many, not really legitimate, means. Predatory bears have been around ever since we have had markets. The uptick rule basically said that if you were selling a stock you had to wait until it had an uptick in price. Back in the old days when we had eighths, if it was twenty-and-a-eighth and it went to twenty, you couldn't sell. If it went from twenty to nineteen-and-seven-eighths, you can't sell. If it went from nineteen-and-seven-eighths to twenty, then you could sell short. You had to go out and borrow the stock to do it. That was a way to control predatory short selling. I read that it had been changed, and then I read that Mary Schapiro in her hearing gave the impression she was going to reverse it.

JS: Were there already other Senators that were aware of this issue?

TK: No, there weren't any Senators.

JS: There weren't.

TK: No, but Mary Schapiro was aware. But the banking committee wasn't doing anything about it. As soon as I found about it, I said, "My God, we got to do something about it."On March 17 – I'll never forget – of 2009, I sent a letter to Mary Schapiro. It said, "I read your testimony, and I really think you ought to reverse the uptick rule."Then I went out looking for Senators to support this, and there weren't very many who knew anything about it, but I got to Johnny Isakson, the Senator from Georgia.

JS: He was a Republican, right?

TK: He's a Republican. I got him and Saxby Chambliss. Both of them were interested. They'd had a number of constituents contact them on this and say how important it was. I got Orrin Hatch and a bunch of folks on the banking committee – Jon Tester and others.

JS: So this wasn't a partisan issue at all? Or do you think you had bipartisan support?

TK: No. This had bipartisan support. I think I sent another letter signed by I think seven of us. Johnny Isakson was the key Republican. Then we actually put in a bill to get it done, because I was amazed they weren't doing anything about it. Then I found out that the studies the SEC used to repeal it were based on the market during 2005. You're not going to find short selling then – that was a gigantic up market. You're not going to find short selling in an up market. I got more and more incensed about the fact that they had not reinstituted the uptick rule.

Then I found out that they had changed the standard for borrowing the stock for short sales. Even to this day if I go to sell short, and if my broker Merrill Lynch says okay, we'll borrow the shares, then you can do it, but you can't just sell short without it. That's called naked short selling. The SEC had put in what's called a reasonable belief standard. All I had to do was say I had a reasonable belief I could get the stock.

So when you go back and look at what happened during the Bear Stearns and Lehman Brothers meltdown, you find that the float was over 100 percent. People were clearly trading and selling stock they didn't own in order to drive the stock price down. I said we have got to do something about the short selling – the uptick rule and the reasonable belief standard.

JS: You wanted to see the uptick rule reinstated, but there are number of technical problems with that. For instance, there were no longer these one-eighth margins since the decimalization of stock prices. Were those the kind of reasons that the SEC gave?

TK: No, the reason the SEC gave is, well, we didn't renew it. There were two Republicans and one Republican on the SEC who said that we voted for repeal.

One of the things I think that we do way too much of in society today is we question other people's motives. Why they voted the way they did, I don't know. Why Mary

Schapiro did not push through an uptick rule, I do not know. But none of the arguments that I heard convinced me that technically we could not do it. Technically, we can do anything. With what we are doing now in the stock market with high frequency traders and algorithms and the rest, the SEC can institute an uptick rule.

Let me take a minute and talk about the reasonable belief standard. There was a solution to that, and they never tried it. A group of people that worked at the DTCC, which is the clearing house for practically all trades, came to me. They made a power point presentation to Johnny Isakson and me. They demonstrated that they could stop naked short selling very simply. The way the thing works now is if I buy stock – if the DTTC shows there's 200 shares of AT&T that they have, I can go in and borrow those 200 shares, and know there's reasonable belief those 200 shares are there. I can go out and sell AT&T short and say I have reasonable belief there's 200 shares. You can come in right behind me and use the same 200 shares, and Sam and Mary and Jane, all of them can come in and claim the same 200 shares. What the DTCC suggested was that they put a flag on a stock, once one person uses those 200 shares, and no one else can use those same 200 shares.

It was an elegant solution. It was a simple solution. The SEC never moved forward on it. The DTCC went down and talked to them. They got no response. When the SEC had a roundtable on this, the DTCC never raised it, That is because what the SEC did is they went back, from everything I've heard, and energized the member firms of the DTCC that didn't want to do this. Next thing you know the word came out – clearly came out to the folks who were in DTCC–that we don't want to hear this anymore. I've got the PowerPoint presentation they give me. It lays out exactly what was happened. They went and talked to the SEC, and the SEC never moved forward.

JS: That's very interesting.

TK: Very discouraging.

JS: So in April 2010 SEC did adopt a couple of amendments to Regulation SHO, which is the regulation that concerns this practice of short selling and naked short selling. It restricted short selling in instances where a company share drops10 percent or more in value in one day. Was that a satisfactory solution for you?

TK: Not even close. You have to know there has to be something that works a hell of a lot than better than 10 percent to reduce the shares. They can do 10 percent a day. I mean, during the Lehman Brothers, Bear Stearns, they just kept banging away at this stock. There's a simple solution out there – have the uptick rule, and get rid of the reasonable belief standard. The reasonable belief standard would really be extraordinarily easy to do. If they were really concerned about it, that's what they would do. What they are doing is compromising.

They are compromising because they are responding, in my opinion – just on watching them closely, and they are good people – they're responding to the overwhelming percentage of folks contacting them from Wall Street who do not want things to change. We can get into that later, why that is. Clearly they're just not – the SEC is not operating on what's best for the markets. They are trying to compromise with the vast majority of contacts they have, not just from folks on Wall Street, but also people that used to work at the SEC, and what they think is the right thing to do.

JS: Did you also feel that the SEC should have been more aggressive in bringing enforcement actions against people that were doing naked short selling?

TK: Absolutely. I don't know what the rules are, but there was plenty of anecdotal evidence around about not only what went on during Lehman Brothers and Bear Stearns but also who was involved in what in what went on. The main enforcement thing I worked on with Rob Khuzami, who is the head of the SEC Enforcement Division– and I had two oversight hearings on it – was the financial fraud with regard to the securitizations and mortgages, and what went on with compensation and the rating agencies, and those things that went on with regard to the housing market.

JS: Tell me a little bit more about that. What did you find out in those hearings?

TK: Well, first off, the hearings were by the Permanent Subcommittee on Investigations. I recommend reading them to everybody. There were four days of hearings, with the Chair, Carl Levin. When I first arrived at the senate I said I only wanted two committees. Most senators have more than one or two committees, but when Vice President Biden had been Senator we found the two committees is more than enough to keep busy. When Scott Brown won the seat in Massachusetts, they had to reorganize the committees. So the Senate Majority Leader Harry Reid came to me and said "Would you join the Armed Services Committee?"

I said, "Sure, I'll join the Armed Services Committee."Then Carl Levin came to me and said, "I'd like you to move onto Homeland Security because we have the Permanent Subcommittee on Investigations." I said, "Carl, I just said I was going to be in Armed Services. The reason I did it was to be with you." So make a long story not so long, right after that I'm on the floor and Harry Reid comes up to me with kind of a grin. He says, "Ted, you were asked to be on Armed Services. You said, 'Yes. That's right.'"He said, "I'd like you to be on Homeland Security, too."

I said, "Mr. Leader, I'm in four committees, big committees."My basic rule, however, was to say yes. So I said yes, and I was put on both committees. The reason I want to get on that committee is because the Permanent Subcommittee on Investigations led by Carl Levin with co-chair Senator Coburn from Oklahoma.

JS: You held hearings on a number of different subjects, right?

TK: We had four days of hearings. We met on rating agencies. We worked on Washington Mutual. We met on Goldman Sachs.

JS: Which do you think was the most penetrating, or found out the most?

TK: I think all of them were penetrating. I remember when we were doing Washington Mutual. Washington Mutual had something like ninety percent of their regular loans that were stated income loans, called liar loans. Something like 73 percent of their ARMs were stated income loans. That's where you come in, ask for a mortgage, and say, "I make $500,000 a year." They don't ask you for your W-2. They don't ask you anything. They just take you at your word for $500,000 a year. Can you believe this, in the subprime loans, these were over 50 percent of the loans?

When Carl Levin asked the head of the Office of Thrift Supervision John Reich, what he thought about stated income loans and he said they are an anathema to banking. Then I asked him, I said, "Did you know about these?" He said, "No, I didn't know the stated income loans. I didn't know that that was going on."The inspector general for the Treasury Department said this was a target rich environment for fraud. That was all sent over to the SEC and the Justice Department.

JS: On that committee did you consider looking more into the government sponsored entities, like Fannie and Freddie?

TK: No. By the way, Fannie and Freddie should have been looked into, and should have been part of Dodd-Frank. I totally believe that. Clearly there would have been space on the Permanent Subcommittee on Investigations to look into that. But there are plenty of government agencies, and plenty of committees looking at Fannie and Freddie. Putting one of these hearings together is incredible. No one really was looking into what happened on Wall Street, what happened in the brokerage industries, what happened with the banks. So I think Chairman Levin thought that should be the thing. But what went on at Fannie Mae and Freddie Mac was deplorable.

JS: Another issue that you were interested in during this period was high frequency trading. How did you get interested in that issue?

TK: Again, when I first arrived in the Senate, never thought about it. I didn't know anything about it. I knew in the back of my mind that we had gone from eighths to digitalization, and the rest of that stuff. When I started getting into the uptick rule, and especially the reasonable belief standard, the DTCC and trying to get rid of naked short selling, and the uptick rule, I was getting pushback. And Washington was getting pushback. By the way, nobody was very successful at lobbying the Congress on this issue.

They started saying this would be very difficult. If we did implement the uptick rule, and especially if we had a real standard for selling short, this would make life for high frequency traders very complicated. Well, I really didn't know what high frequency traders were. Basically these are folks that use algorithms to trade thousands of shares in a second. Right after I began to talk about High Frequency Trading, they had started a lobbying group. I said, wow, I'm helping employment. There's actually going to be a high frequency trading lobbying group to fight changes in the short selling. I got more involved with them.

At that time Tabb, which is a very authoritative group, said something like 70 percent of all trades were high frequency trading. Nobody really knows to this day how these folks function in the market. The people that are doing it, know it. But neither the SEC nor anyone else really knows. I'm not just talking about what their algorithms are that determine what their strategies are. No one knows –

JS: What impact they're having?

TK: No one knows what impact they are having. People say there's more liquidity, but nobody knows the mechanics of what is going on. In the old days, every single trade that went across the "tape"– who made the trade, when it was made, who was the broker – you knew all that kind of information. That information is not available on these high frequency trades. With all those thousands and thousands of trades, to this day 90 percent of the trades are cancelled before they are consummated. We don't know why.

Clearly, we had a major change. The basic argument I made, and maybe it's an engineering argument, is that we have had this incredible change in the market. We went from 0 to 70 percent of our trades coming from high frequency trading. We have no transparency. We don't know what's going on– we don't know each individual trade. We had the Flash Crash on May 6, which we'll talk about later. It took us five months to find out what happened. Well, it wouldn't have taken us five months to find out what happened ten or fifteen years ago, because we didn't have the same amount of data. Now, we have a lot of data, but we don't have it organized in what they call a consolidated audit trail, which is what we really need.

JS: Just to ask you, how specifically did this issue come to your attention? Was it a news article? Did someone come to you and say that this –

TK: Through staff and others who were pushing back against the change in the uptick rule. Who were the main people that are upset about this uptick rule thing, and who's lobbying the SEC? Just asking your staff person, what's the problem here? The problem was the high frequency traders.

JS: So you asked the SEC to look into this issue. What specifically did you want them to do?

TK: I sent them a couple of letters. I think it was August of 2009– this was before the Flash Crash – where I said, look, we have had this incredible amount of change. There's a lot of money involved. We don't know what's going on. We don't have transparency. If you don't have transparency, you can't have regulation. You're not regulating these markets. So we got to get in there and find out to regulate this market. This is before the Flash Crash. At the same time I was talking about the market structure issue, which is the fact that we had gone from basically two exchanges that were regulating exchanges to like fifty different venues now, including the dark pools.

"Dark pools" is a great name. I love it because it's true. It's dark. We don't know what's going on. We have lost the ability to regulate these markets. That is what my basic argument was. We've lost it through high frequency trading. I wrote this in 2009, laying out a concern about market structure and those issues.

JS: This was in August 2009, right?

TK: August 2009.

JS: I think your letter requested that the SEC undertake a comprehensive, independent, zero-based regulatory review of a broad range of issues.

TK: Which any business would do, and most government organizations do. We have what's called zero-based budgeting. Let's just start from scratch. Let's cut out all the undergrowth, and let's find out what's happening here. The example I use is like a bush in your front yard. High frequency trading and market structure had been allowed to grow completely untrimmed for years.

You can't get it done by just trimming a few pieces off the edge. You have to go into the bush and start all over again from scratch. You have to ask, "If I were designing this, how would I do it?" Now, maybe there are changes you can't make, but what's the right way to proceed in these things? That's what I asked for when I laid details on them what I thought they should pursue.

JS: Did you try to get other Senators to join you in this letter?

TK: No, I didn't. You have to understand. The Senate, the Congress, and the federal government are dealing with gazillions of incredibly complex issues. I'll just give an example. When I got on the Homeland Security Committee, I had been working the Senate for twenty-two years. I'm an engineer. I got an MBA from the Wharton School. I know a lot about a lot of things. I went to my first Homeland Security Committee and Joe Lieberman is the chair and Susan Collins is the ranking member.

They were dealing with some issue – I don't remember what it was – about how government functions. That's what the Homeland Security used to do. Before it was Homeland Security, it was called Government Operations. They were dealing with some esoteric piece of government that is very important. In the first half an hour, I didn't understand twenty minutes of what they were talking about. So you get these very complex issues. As Woodrow Wilson said, "Congress in committee is Congress at work" – you specialize in certain areas. You have to make a basic decision that I'm going to invest the time it takes to understand high frequency trading. I got some people to buy into that.

JS: Were they staff members or were these Senators?

TK: I'm talking about Senators. The staff members had become involved. Carl Levin clearly knew what was going on. It turned that out Mark Warner, who was on the Banking Committee and was interested in these issues, got involved in it. But when I started, this was between me and the Securities and Exchange Commission.

JS: How did the SEC react to this request that they undertake a review of the market structure?

TK: They were very welcoming. The chair spoke positively about the fact that this was going to happen. In fact, every one of my proposals to the SEC got a very positive response – they were going to do it. The problem is that not much was done.

JS: Now you mentioned dark pools earlier. Obviously, dark pools are closely related to this issue of high frequency trading. How did you get interested in those, just along the way?

TK: I started figuring out how high frequency trading worked. You could see with the change, the digitalization, and the impact that had had on the uptick rule, it just was one piece of a gigantic market structure. High frequency trading was not a problem in itself. It was part of a bigger problem, which was the change in the structure of the markets.

We have not talked about it, but what had happened was during the Bush administration was deregulation. This is not going to be a partisan political screed against the Bush administration. However, if you listen to what Mitt Romney says today, the one difference between Republicans and Democrats is that the Republicans basically think that we should have a laissez-faire system. Not no regulations at all, just not very many regulations. The say that regulations are what ruins everything, and we shouldn't have regulation. What they did on the SEC when they came in, was to do away with regulations. They basically made it very difficult to prosecute a case. All members of the Securities and Exchange Commission had to sign off on it. Bernie Madoff was clearly an example of what was going on.

I'm not for over-regulation, but I think it's important to have regulation. It's just like a football game. If the referees are stopping the play of game and the flow, people want to eliminate the referees. If we did eliminate the referees, on the first or second pileup it may be OK, but by the third pile up, well, it's not a pileup you want to be in. The same way with the police. It's like saying that if there's crime in a city, you are not going to send the police in because they are not going to solve crime entirely. They are clearly not going to solve all crime, but you're going to stop the person that breaks the window and grabs the money and runs, or just beats it on the street. The same thing applies to regulation. Even Christopher Cox, who was the chair at the time and afterwards, said it's clear that volunteer regulation did not work. That is essentially what we had. We had volunteer regulation. They removed the rules and things just spiraled out of control.

JS: When you were looking into some of these complex issues like dark pools did, did you have contacts with some of the companies involved, like Direct Edge, BATS, NASDAQ, etc.?

TK: Yes. Not only that, I would go up to New York regularly. I had learned how helpful it can be to talk to the press when I was on the Broadcasting Board of Governors, which oversees all U.S. and international broadcast – I'd travel around the world. One of the best things that I did when I arrived in a new country would be to meet with the American reporters from the *Wall Street Journal, New York Times* and *Washington Post*. They would be almost as good as the ambassador and the CIA about what's going on in the country.

So with the Wall Street thing, I'd go up to New York ready to meet with Gretchen Morgenson. I met with Andrew Ross Sorkin and just a whole bunch of folks and say what do you think is going on? What do you think is happening with high frequency trading? What do you think is going on with these things? I went and talked to the people at the exchanges. I talked to a lot of people in the brokerage business – the agents, the traders. Most of my comments are based on having talked to people. One thing I found out about Wall Street– it's just like doctors and lawyers and Senators – nobody wants to rat anybody out. Only wall street is even more extreme.

I used to say I should take t-shirts up there – the no-snitch t-shirts that are popular in certain parts of the city where people say you shouldn't snitch, you shouldn't tell. Wall Street's got that cubed. Loads of people would tell me off the record what was going on, but they wouldn't say it on the record. I had the number two person in one of our major banks in my office when I was started on the uptick rule. We got ready to leave. "By the way," he said, "What you're doing with the uptick rule is absolutely great. You keep at it." I said, "Can I quote you?" He said, "Oh, no. You can't quote me." He said, "They'll come after me." That's the honest to God truth. There's a no-snitch rule.

I got lots of information. There are all kinds of allegations. You'll never hear me make allegations about what high frequency traders are doing. I've heard all kinds of allegations about what's going. But we can't test any of these things. We are supposed to rely on trust. Trust is not something to rely on when you're handling what I consider to be one of the most valuable things United States has, and that's the credibility of our markets.

JS: We've talked about high frequency trading, dark pools, a number of other issues. Let's talk about the Flash Crash. Obviously there had been attention paid to this issue of high frequency trading prior to the Flash Crash. Do you remember when you heard about the Flash Crash, what your reaction was?

TK: I was presiding over the Senate.

JS: This was on May 6, 2010.

TK: I was presiding over the Senate. I came down off of presiding. My chief of staff was there and said there's been a market crash.

JS: Both the House and the Senate held hearings on the issue, right? Or it might've just been the House.

TK: Yes, I think it was just the House.

JS: When did you finally get a satisfactory answer to what caused the Flash Crash?

TK: I still don't know. Not to this day. No satisfactory answer. When you look at the answers that they gave, there is no kind of real analysis of what happened, because we don't have the information in order to make that analysis. It took five months, and they came up with an answer, but there are still plenty of credible people out there saying their answer isn't correct. That's not what happened.

We don't have a black box on our markets. Airlines have a black box. If there's a crash, they pull the black box. It still takes them some time to work it out, but with our markets, there's no contemporaneous gathering of the data in an organized way, in a consolidated audit trail that would tell us what happened.

JS: Let's talk about the Dodd-Frank Act a little bit. Was it obvious from the time that you entered the Senate that there was going to be a major financial reform bill like Dodd-Frank?

TK: Absolutely.

JS: What were your goals for the bill?

TK: The number one goal that I had and everybody in America had was to end "too big to fail." Essentially everybody agreed that never again would the American taxpayer be forced to bail out a bank because it was too big. That was just it. That's the thing. So that number one thing was too big to fail.

JS: Were there any thoughts in your mind of restoring the divisions of Glass-Steagall?

TK: Absolutely. The first thing is too big to fail. The second thing is that commercial banks were engaged in way too risky behavior. Basically those who were FDIC insured should not be engaged in credit default swaps and the kinds of deals that went on.

Too big to fail has essentially two parts: first, not too big, and second, not going to fail. We need to get banks back to what they were when there were commercial banks and investment banks. Commercial banks were basically little risk, low return. The Pecora Commission in the 1930s established the Glass-Steagall Act, and said that if you want to be a commercial bank, you would get FDIC insurance. That's the way we stop bank runs which had been a problem ever since the founding of the republic. They would have to have FDIC insurance. Then if you wanted to really invest in risky things and be a bank, you'd be an investment bank. That worked for us for sixty years until the nineties when

Alan Greenspan and the Fed started taking it apart. Then in 1999 we passed the Gramm-Leach-Bliley Amendment which did away with Glass-Steagall.

My basic approach was, look, it worked for us for all these years. The banks were engaged in risky behavior. The fact that they have FDIC-insured investments allows them to have a portfolio that's even more risky, which goes back to Glass-Steagall. So the first thing, too big to fail. Second thing was reinstitute Glass-Steagall. Third, we had to do something about the derivatives. The other thing that was outrageous was the Commodity Futures Modernization Act, which said federal government could not even look at derivatives. So those are the three things.

I wanted us to write the laws like we did with the Pecora Commission and Glass-Steagall. I wanted the Congress to actually legislate on this issue, not kick it back to the regulators, which is what happened. There were a number of reasons why I didn't want to kick it back to regulators. First was that the regulators have been the cause of most of the problems, in my opinion. So we got new regulators. Well, great. Let's just say we do have new regulators. A new president comes in, say, a Republican president, who says we don't need regulation anymore, and regulators are out again.

Right now we're running a Presidential campaign. Mitt Romney does not think we should have regulation. I guarantee if he gets elected President – and not because he's a bad person, or not because he's under the influence of Wall Street, or anything like that – he just basically believes we shouldn't have regulation. My idea was, look, let's make the laws like we did with the Pecora Commission, like we did with Glass-Steagall, and then let's implement the laws, number one.

Number two is if we sent all these regulations back to the regulatory agencies, they are going to be frozen. There's no way to deregulate regulatory agencies. For instance, high frequency trading was not even in Dodd-Frank. Market structure was clearly not in Dodd-Frank. So the SEC, for example, is trying to deal with market structure. They are starting to deal with high frequency trading. Now you're going to take all these other issues and just throw them back at them for rule making. It can't work. We've got to pass a law that is a bright-line law that makes the law clear. Then the regulators can regulate. Regulators are great at regulating. They should not be writing the law.

JS: So you mentioned three goals that you had with the bill. Let's take them one by one. The first one you talked about was restoring the divisions of Glass-Steagall. Was that a non-starter in the Congress or did you have support?

TK: That was a non-starter. I sponsored a bipartisan bill with Senators Maria Cantwell and John McCain to reinstate Glass-Steagall, but it was clear from the beginning that when you start out with the basic premise that Republicans were not going to vote for anything, then all you need is three, four, five Democrats who say this is too complicated. Let's give it to the regulators. That's essentially what happened.

JS: Did the White House express an opinion on it?

TK: Yes. Timothy Geithner, representing the President, fought a number of these proposals. Basically, Secretary Geithner's approach was we need to give it to the regulators.

JS: Second, you talked about, you know, ending too big to fail. As I understand it, the way that you wanted to that is basically sort of cap the size of the bank by limiting the amount of liabilities that they could take on, is that correct?

TK: Liabilities. I also wanted the capital levels to be changed. There was a bill, Brown-Kaufman it was called, an amendment. It would have skinnied down the banks. It would have limited their liabilities, their assets, as a percentage of gross domestic product.

JS: Then there's also another act called the SAFE Banking Act of 2010.

TK: That's it. That's the one.

JS: Is it the same thing as Brown-Kaufman?

TK: That's the same thing. Brown-Kaufman Amendment was the SAFE Banking Act. Sherrod Brown and I sponsored it, and it was one of the big votes on the bill. We only ended up getting thirty-three votes, and the big reason is that we only got three Republicans. The chairman of the Banking Committee, Chris Dodd, decided that he did not want that in the bill. He thought that might hurt its chances of passing. Timothy

Geithner and the Treasury Department and the administration fought the amendment. There's a great quote by a "senior" Treasury Official afterwards:"If we wanted Brown-Kaufman to pass, it would have passed."

JS: The third thing that you mentioned was derivatives. Did you make an effort to get that included, as well?

TK: Yes, I wanted to have that included. The main player on that was Blanche Lincoln, the Senator from Arkansas. She had an amendment. We went back and forth on that. Essentially, we ended up with a pretty good thing. But again, it was left totally in the hands of the regulators. I learned a fact that was absolutely a perfect example of this problem. The entire department at the SEC dealing with derivatives consisted of fourteen people. Derivatives are an incredibly complicated issue. Again, the law laid out some good provisions, but eventually pitched it back to the regulators to come up with the rules. They came up with the rules. CFTC and the SEC came out way late on the rules.

JS: So what is your final verdict on Dodd-Frank? Is it an improvement overall?

TK: That's a very difficult question. I had a very difficult time voting for it when it came back from the conference committee. There's a Consumer Finance Protection Board. I think that's really a good thing. The risk assessment commission could be a good thing. There were lots of things that were good in it. But the number one issue in the American people's minds – and for members of the Congress, if you go back and listen to the debate on the floor – the single thing they wanted more than anything else was to eliminate too big to fail.

This is absolutely, totally, completely clear in any objective analysis of where we are today. Sandy Weill came out and said we ought to go back to Glass-Steagall. I mean, this is the guy who led the charge to eliminate Glass-Steagall. There's no doubt that our banks are still too big to fail. Alan Greenspan said, "Too big to fail, too big."

JS: On October 1, 2010 you were appointed to the Congressional Oversight Panel for TARP, replacing Elizabeth Warren. Can you tell me about the circumstances that are around that appointment?

TK: Sure, it's really simple. It's just like I told the story earlier about Harry Reid calling me and asking me to go on Armed Services and Homeland Security. The majority leader called me. He said, "Ted, I want you to serve on the Congressional Oversight Panel." I said, "Sure." I trusted Harry, and Harry's looking after me, and it was a good thing. I read what it was, and I think the world of Elizabeth Warren. I obviously am concerned about the TARP and the oversight of the TARP. When he asked me to do it, I said fine.

JS: You were the chairman of the panel, is that correct?

TK: What happened was that he appointed me to the panel to replace Elizabeth Warren. Two or three days after I was in, the Republican and Democratic members all voted that I'd be the chair. It was really a great, positive affirmation of what a good job Elizabeth Warren had done, and the Republicans on the panel had done, in making it a bipartisan panel. It was also nice that they thought I could do it.

JS: Did it feel different being chair of that panel rather than being just an individual Senator? In other words, did you feel like you needed to a perhaps more neutral position on issues?

TK: No, I don't think that's the way the Senate works. I mean, you can have it from time to time. If you're writing legislation, it is always good if you're the chair. Most of the legislation is written by the chair. I can't think of anything I would have done that would have been different. I have chaired hearings in Judiciary and Foreign Relations Committees. I have been involved in the Permanent Subcommittee on Investigations. and to some extent Armed Services. I understood oversight. They were in the same building, the same rooms, the same format. You know, I served as chairman after I left the Senate. People thought I was still in the Senate because I was chairing this committee. So it was one of the easiest things I did.

The one thing I would say is that there was the one thing I was very concerned about when I came to the panel. I had had a wonderful staff when I was Senator Biden's chief of staff. Then I had a wonderful staff when I was serving in the Senate. I'm not just saying that. I mean, if you look at what I was able to accomplish in two years, it was a great staff. The Congressional Oversight Panel staff already existed. So I went over there not knowing what to expect. I had been used to a really good staff. It turned out that Elizabeth Warren done a wonderful job. The head of the staff was a woman named Naomi Baum. She did a great job. Thomas Seay was the communication director. Just a great group.

JS: Did you have any specific goals while you were chair of the Congressional Oversight Panel?

TK: Yes, trying to find out what went on with the TARP. I was trying to make sure that during the last months of the TARP, we did something about it, especially concerning about the housing issue, which had been very poorly handled by the Treasury Department. The HAMP. mortgage modification program was supposed to spend $50 billion, and spent, I don't know, a billion dollars by the time I left. It was supposed to modify some incredible number of mortgages, like three or four million, and hadn't modified nearly enough. The objective even changed from modifying mortgages to just trying to pass mortgages. It was a pretty sad tale.

JS: There are extensive records of the panel's activity, so I won't go into too much detail about that. In retrospect, would you characterize the TARP program as a success or a failure?

TK: That's a good question. I think in financial terms–the one test that you have, which is did they spend the money. Originally, we talked about $700 billion for TARP. It looks like it's going to cost like $25 billion. After $700 billion it got down to $350 billion or something like that. So clearly it was much less in terms of the cost. Damon Silvers, who was my vice chair, made some very articulate arguments, and I'd recommend that anybody who is interested in what we didn't do with that money, check that out.

Maybe we should have spent more of the money, especially in the housing area, and it would have been a real benefit to the taxpayer in terms of reducing the cost to the American people. There is a cost of inaction. On the other hand, we didn't spend anywhere near what we should have, so you have to give them high marks for that.

JS: I understand that while you were in the Senate, every week you'd go down to the Senate floor and speak about a particular federal employee. Would you mind telling me about that?

TK: Sure. There are a lot of great things about being a Senator, but one of the really great things was that for many years I had been upset about the way that the public discourse, including among elected officials and public officials, was critical of federal employees. My experience with federal employees working in the Senate, working at the Broadcasting Board of Governors, and in general, is that they are incredibly competent, hardworking, dedicated people. I remember when I was at Wharton there was a monograph that our business school put out. It compared the educational background of federal employees and corporate employees at the middle and upper management levels, and they were exactly the same.

That's what I found. I found so many great federal employees. One of the great things about being a Senator is if you have an itch you can scratch it. I decided early on that I was going to recognize different federal employees, not necessarily all the Nobel Laureates and all the great, successful federal employees that we all know, but everyone from the very top to throughout the federal system. So I would talk about an administrative assistant or secretary for someone. I went to just about every agency. I ended up recognizing 100 federal employees. I did it just about every week.

I also recognized an employee of the Securities and Exchange Commission – a group, really – who had done a great job in the Enforcement Division. Then I talked about the people of the Securities and Exchange Commission and what high regard I had for them, and the fact that they were dedicated people, who were doing their work for all the right reasons. We may have differences of opinion about strategy, but they were impressive.

A great thing happened to me after I had been out of the Senate for a year, or year and a half. The Market Abuse Unit of the Securities and Exchange Commission, which had been set up after the market meltdown, invited me to come back and talk about my experiences. They were there in the SEC building. They had a web broadcast set up so that any SEC office anywhere could turn it on and listen to what I had to say. In the introduction, the head of the unit talked about the August, 9, 2010 letter I sent about the Flash Crash, where I talked about market structure and how we could do something to do the market structure. He said that that letter was the roadmap that they used for their work.

They also thanked my staff. They just didn't say me. They said my staff. Jeff Connaughton, who was my chief of staff, and John Nolan who came over and Josh Goldstein who was there working while waiting to go to the law school, and Jane Woodfin who was my legislative director – they were just an extraordinary group of individuals in Washington and in Wilmington, most of whom had done an incredible job for Senator Biden, and ended up doing an incredible job for me. If anything I have to say about the SEC is wrong, that's me. If it is right, I guarantee you it was my staff.

JS: Well, no man is an island. Senator, before we wrap up I just wanted to ask you just briefly what you have been up to since leaving the Senate.

TK: Sure. I continue to teach in the Duke Law School. There's a program that Dean Levi set up. When he first came to the law school, he said that he wanted to raise the profile of Duke Law School in D.C. He asked Chris Schroeder and me if we would do a course in Washington. We have done this for the last few years. Students take off a semester, usually in the spring of their third year of law school. They take a job in Washington working in the federal government, or something relating to the federal government. Then once a week, we teach a course. Jeff Peck has helped us. He worked with us on the Bork nomination. We do a course on federal policy. I'm doing that. That's an important part of what I'm doing.

I'm writing a column. I mean, I never thought I'd do this. I'm writing a column every week in the Sunday edition of the Gannett newspaper here in Delaware called *The News Journal*, which I am very much enjoying. I just stepped down as the co-chair of the STEM Council in Delaware –Science, Technology, Engineering, and Math Education Council. We were twenty-six Delawareans from education and business and higher education, and we came up with a plan for how we can improve the quality of STEM education in Delaware. I'm on some social service boards of the Children and Families First and the Ministry of Caring. I'm enjoying my grandchildren. I'm helping Vice President Biden whenever he should call and ask for any help. It's a good life.

JS: Sounds like a full schedule there.

TK: Yes, it is.

JS: Senator Kaufman, any final thoughts before we wrap up?

TK: No. I just want to tell you that I thank you for doing this. I think the issues we talked about are important. The real reason I'm involved in this issue is that I believe that the two most important institutions that made America great, our crown jewels, are our democracy and our incredible free markets. If something happens to change either of those two things, it really hurts us, and it hurts our children and our grandchildren. Incredibly, the markets are under attack. We had a tough time with the dot-com meltdown. We had a difficult time with this financial meltdown.

Really knowledgeable people are concerned about high frequency trading. That average retail investors not being treated fairly. That it is more difficult for us to have IPOs. There's a wonderful piece by an outfit called Grant Thurman that laid out what's going on with the IPO business, why high frequency trading is done, and market structure problems. It isn't just key to finance. It's key to our entire country.

I think the SEC stands as an incredibly important part of this. I fought from the very beginning for greater funding for the Securities and Exchange Commission. There is a great group of individuals down there. One of the problems is they just don't have enough people to do all the different jobs. The Securities and Exchange Commission is important because it, along with the Commodity Futures Trading Commission, looks after our markets. As I said, the markets are, along with democracy, one of the two crown jewels of our society. I wish nothing but the best for Securities and Exchange Commission. A stronger, better operating Securities and Exchange Commission is essential for the future of the United States, not just the financial future, but the entire future of United States.

JS: That's a good thought to end on. Senator Ted Kaufman, thanks very much for your time.

TK: Thank you.

[End of Interview]