

Spotlight: A Conversation with Congressman Paul Kanjorski

November 20, 2017
by Jordan A. Thomas

In September, Jordan A. Thomas spoke with Congressman Paul E. Kanjorski (ret.), a veteran legislator from Pennsylvania, who served on the Financial Services Committee between 1985 and 2011. During a career spanning a quarter of a century, he played a leadership role in the crafting and passage of two landmark corporate reforms, the Sarbanes-Oxley Act and Dodd-Frank.

JAT: Did Dodd-Frank accomplish what you had hoped?

PEK: To some extent. It gave authority to presuppose what could happen and then take actions to prevent it. We've historically been reactive with financial crises, which doesn't work well in deterring fraud. In Dodd-Frank, we created the needs test to make financial regulation more flexible and forward-looking.

JAT: Among its many provisions, Dodd-Frank established the SEC whistleblower program, the CFTC whistleblower program and generally strengthened corporate whistleblower protections. What role did the Madoff and Stanford cases have in the development of these new programs and provisions?

PEK: Those cases were so outlandish—Madoff could have gone on forever undetected—they made clear that we needed more than the status quo at the SEC. So the new whistleblower provisions did that. They enlarged and strengthened the army by putting more cops on the beat. A whistleblower coming forward armed with sufficient prosecutorial information really expedites a case.

Enron is a good example of that. And, I was always shocked by the equity insurance cases when it got to be such a sport to perfect fraud. You know, 1900 employees participated in the wrongdoing, not for their own self-interest but for the company. I was struck, not that so many people engaged in wrongdoing, but that so few stepped forward to bring it to light. This is where whistleblower programs will come into play in a meaningful fashion.

JAT: During the legislative process, was there bipartisan support for Dodd-Frank generally and its whistleblower provisions more specifically?

PEK: On the whistleblower provisions, we had fairly decent bipartisan support on key elements, so we were able to put it together in a workable fashion. We had a convergence of the executive people doing a great job, as well as the regulators and seasoned legislators. So, many competent people participated in the process.

JAT: Since the establishment of the whistleblower program, the SEC has received thousands of tips and whistleblower-driven actions have resulted in more than \$1 billion in monetary sanctions, much of which has been returned to injured investors. How do you feel about the performance of the program?

PEK: I'm proud that we cracked a hard nut; \$1 billion is a lot of money. Overall, it certainly put us on the road to more successfully intervene with that type of misconduct.

JAT: Did you anticipate these programs would be so successful?

PEK: I had a great deal of hope that it would, but I wasn't entirely sure, because whistleblowing challenges our ideals. Usually, we teach children: "Don't squeal. Don't be a tattletale." We've made a fundamental change, where people are starting to accept a greater responsibility. They feel an obligation to the greater society as opposed to merely individual obligations.

I think that's healthy. We have such a complicated financial system. If we don't have whistleblowers, our only alternative is more regulation by the government, which tends to be politically offensive to many people. So, this is actually the healthier way for the system to function.

JAT: Last year, whistleblowers were behind the SEC enforcement action against Merrill Lynch that settled for more than \$415 million. How important are whistleblowers to protecting investors in the financial system?

PEK: Without them, many of these frauds won't come to light. I think we've broken down a wall and hopefully it stimulates regulators to take more seriously the information obtained from outsiders. I think that's healthy and will break through a lot in this insider trading.

Ten years ago, it was part of the culture to go down to the University Club and stand around the bar and talk about who you screwed today, and how to do it. They perpetrated that together. That always surprised me. They were all very reputable people, other than the fact that they were crooks.

JAT: What can the financial industry do to reform its culture?

PEK: I always go back to my 3-5 percent Bastard Rule; that is, 3-5 percent of the participants in any industry are bad actors. So, there is no way to entirely flush the system. I also think we have to make rules and regulations less cumbersome. There is a deep conflict in our society between wanting government to intervene and protect citizens while resisting the expanded regulation to do so. In order for some of these crises to be prevented, there has to be more thorough regulation. But we can't scare people. It can't be onerous. Legislators have to summon the guts to tackle the real issues head on and correct them, not just continue their winning streak. Finally, CEOs must understand that they have a duty to behave responsibly and protect the public trust.

JAT: Given all the investigations that Congress did in the aftermath of the financial crisis, do you think more people on Wall Street should have been prosecuted criminally?

PEK: Yes. I think there was a soft hand there. Congress worked to end too big to fail, but our government hasn't done enough to end too big to jail. I know we in the Congress paid more attention to saving the economic system than focusing on those that had failed the system or had done something improper. I joined the school of thought that we had to take extraordinary action and do extraordinary things. We acted in a dire emergency, grabbing life preservers to stop the drowning.

JAT: Having worked on Dodd-Frank, are there any parts of it that you think need to be reformed?

PEK: I think we need a better structure to test systemically important financial institutions and determine when and what action to take. We didn't make provisions for the tremendous growth of major banks, and some are larger now than they were prior to the crash. If we had an opportunity to address that, it would be worthwhile.

However, if we simply try to impose the pure free enterprise system without regulation as some in Congress now want to do, we'll be right back where we were prior to 2008, except now we have even larger institutions. Finally, we still haven't addressed some of the fundamental problems beyond the financial system such as executive compensation, shareholder returns, and operational issues at the SEC.

JAT: If you were sitting on the Financial Services Committee today and you could enact any piece of legislation, what would it be?

PEK: I would take a serious look at how we can address the conflicts of interest that exist in the economic system; not necessarily returning to Glass-Steagall, but to possibly construct something new. In the narrow sense, we should make our system more efficient. I'm concerned, too, that we haven't really come to grips with the insurance industry with respect to state vs. federal regulation.

JAT: You spent almost 30 years in Congress. How did we get to a place where lawmakers seem so unwilling to work with one another?

PEK: A number of reasons, I think: the system itself through gerrymandering, the worship of money, and the 24-hour news cycle. One of the big mistakes we made was allowing private industry to be purchasers of communications, when we turned a newscast and communications into moneymaking systems. So, we're having a values breakdown. You should go into the ministry because you believe in God and want to teach it to somebody. You should go into law because you want to preserve our system and ensure people have access to justice. You should go into journalism to communicate important things to people, not to make money.

JAT: Now that you've retired from politics, what are you doing?

PEK: I'm enjoying myself. There is a lot of fun in relaxation. My wife and I travel a lot. I consider myself the luckiest man in the world to have the experiences I've had. I'm a firm believer that an individual doesn't succeed alone, and I was very fortunate to have long-term staffers who worked hard and had a good sense of what was right. Hell, a lot of times I couldn't wait to get to the office. They became my family, and we worked hard in service to the public.